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Washington, DC 20002

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0169; Directorate Identifier 2008–SW–42–AD; Amendment 39–15833; AD 2009–05–09]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Inc. Model 412, 412CF, and 412EP Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron Inc. (Bell) model helicopters. This action requires reidentifying a certain part-numbered main rotor yoke (yoke) based on whether it was ever installed on a Model 412CF helicopter or on a Model 412 or 412EP helicopter with a slope landing kit. This AD also requires reducing the retirement life of the reidentified yokes from 5,000 hours time-in-service (TIS) to 4,500 hours TIS. Also, this AD requires recording the reidentified yoke part number (P/N) and the reduced retirement life on the component history card or equivalent record. This amendment is prompted by fatigue analysis that shows that the retirement life should be reduced on certain yokes. The actions specified in this AD are intended to prevent fatigue cracking of a yoke, failure of a yoke, and subsequent loss of control of the helicopter.

DATES: Effective March 31, 2009.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2009.

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

- *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 W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466 or at *http://www.bellcustomer.com/files/.*

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information 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 Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5170, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the specified Bell model helicopters. This action requires reidentifying a certain part-numbered yoke based on whether it was ever installed on a Model 412CF helicopter or on a Model 412 or 412EP helicopter with a slope landing kit. This AD also requires reducing the retirement life of the reidentified yokes from 5,000 hours TIS to 4,500 hours TIS. Also, this AD requires recording the reidentified yoke P/N and the reduced retirement life on the component history card or equivalent record. This amendment is prompted by fatigue analysis that shows that the retirement life should be reduced on certain yokes. This condition, if not corrected, could result in fatigue cracking of a yoke, failure of a yoke, and subsequent loss of control of the helicopter.

We have reviewed Bell Alert Service Bulletin (ASB) No. 412–08–128, dated March 4, 2008, for the Model 412 and 412EP helicopters and ASB No. 412CF–08–35 dated March 4, 2008, for the Model 412CF helicopters. The ASBs specify reducing the life limit of certain part-numbered yokes from 5,000 hours TIS to 4,500 hours TIS. The ASBs also describe procedures for reidentifying the yoke P/N and recording the information on a component history card or equivalent record.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, this AD is being issued to prevent fatigue cracking of a yoke, failure of a yoke, and subsequent loss of control of the helicopter. This AD applies to Bell Model 412 and 412EP helicopters with a yoke, P/N 412–010–101–123, –127, –129, or –133, with a (BHT–412–SI–62) slope landing kit, installed. This AD also applies to Model 412CF helicopters with yoke, P/N 412–010–101–127 or –129, installed. This AD requires the following actions within 10 hours TIS for each affected model helicopter:

- Review the helicopter records to determine all of the helicopter models on which the affected yoke has been installed since its production and the hours TIS of each yoke.
- If an affected part-numbered yoke has ever been installed on a Model 412CF or on a Model 412 or 412EP helicopter with a (BHT–412–SI–62) slope landing kit, P/N 412–704–012–101, do the following:
  - ○ Reidentify the P/N on the existing yoke data plate by using a vibrating stylus and etching two lines through the last three digits of the existing P/N and etching ''137FM'' adjacent to where you etched through the last three digits of the original P/N. This converts each affected yoke P/N to a new yoke P/N, 412–010–101–137FM. The serial number remains the same.
  - ○ Record the reidentified P/N on the applicable component history card or equivalent record.
- If you cannot determine all the model helicopters on which an affected

yoke has been installed since its production or whether it has ever been installed on a Model 412 or 412EP helicopter with a (BHT–412–SI–62) slope landing kit, P/N 412–704–012–101, installed, reidentify the yoke as P/N 412–010–101–137FM using a vibrating stylus. Record the reidentified P/N on the applicable component history card or equivalent record.

- For each reidentified yoke, P/N 412–010–101–137FM, record the revised 4,500-hour TIS life limit on the applicable component history card or equivalent record.

This AD revises the Airworthiness Limitations section of the applicable maintenance manual or the Instructions for Continued Airworthiness (ICAs) by reducing the retirement life from 5,000 hours TIS to 4,500 hours TIS for reidentified yoke, P/N 412–010–101–137FM.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, to prevent fatigue cracking, the actions described previously are required within 10 hours TIS. Also, replacing certain yokes that have exceeded 4,500 hours TIS but have not reached their previous 5,000 hours TIS retirement life is required before further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 115 helicopters and will take about:

- 1 hour to review the records,
- 2 hours to revise the maintenance manual or ICAs, record the new retirement life, reidentify the P/N, and
- 20 hours to replace a yoke.

The average labor rate is estimated to be $80 per work hour. Required parts will cost about $40,157 per helicopter. Based on these figures, we estimate the total cost of the AD on U.S. operators will be $278,142 ($27,600 to review and revise the records and $250,542 to replace the yokes, assuming 5 percent of the fleet or a total of 6 yokes have exceeded the 4,500-hour life limit).

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2009–0169; Directorate Identifier 2008–SW–42–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Regulatory Findings

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2009–05–09 Bell Helicopter Textron, Inc.: Amendment 39–15833. Docket No. FAA–2009–0169; Directorate Identifier 2008–SW–42–AD.

Applicability: The following model helicopters with the listed part-numbered main rotor yoke assembly (yoke), installed, certificated in any category.

Model	With yoke part number (P/N) installed
412 and 412EP	412–010–101–123, –127, –129, or –133
412CF	412–010–101–127, –129

Compliance: Within 10 hours time-in-service (TIS), unless accomplished previously:

To prevent fatigue cracking of a yoke, failure of the yoke, and subsequent loss of control of the helicopter, do the following:

(a) Review the helicopter records to determine all of the helicopter models on which the affected yoke has been installed since its production and the hours TIS of each affected yoke.

(b) If an affected part-numbered yoke is installed or has ever been installed on a Model 412CF helicopter or on a Model 412 or 412EP helicopter with a (BHT–412–SI–62) slope landing kit, P/N 412–704–012–101, installed, do the following:

(1) Reidentify the P/N on the existing yoke data plate by using a vibrating stylus and etching two lines through the last three digits of the existing P/N and etching ''137FM'' adjacent to where you etched through the last three digits of the original P/N. This converts each affected yoke P/N to a new yoke P/N 412–010–101–137FM. The serial number remains the same.

Note 1: The ''FM'' P/N suffix denotes a field modified part.

(2) Record the reidentified P/N on the applicable component history card or equivalent record.

(c) If you cannot determine all the model helicopters on which an affected yoke has been installed since its production or whether it has ever been installed on a Model 412 or 412EP helicopter with a (BHT–412–SI–62) slope landing kit, P/N 412–704–012–101, installed, reidentify the yoke P/N as P/N 412–010–101–137FM using a vibrating stylus in accordance with paragraph (b)(1) of this AD. Record the reidentified P/N on the applicable component history card or equivalent record.

(d) For each reidentified yoke, P/N 412–010–101–137FM, reduce the retirement life from 5,000 hours TIS to 4,500 hours TIS. Record the revised life limit on the applicable component history card or equivalent record.

Note 2: Bell Helicopter Textron, Inc. Alert Service Bulletins No. 412–08–128 and No. 412CF–08–35, both dated March 4, 2008, pertain to the subject of this AD.

(e) This AD revises the Airworthiness Limitations section of the applicable maintenance manual or the Instructions for Continued Airworthiness (ICAs) by reducing the retirement life from 5,000 hours TIS to 4,500 hours TIS for each reidentified yoke, P/N 412–010–101–137FM.

(f) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Directorate, FAA, ATTN: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5170, fax (817) 222–5783, for information about previously approved alternative methods of compliance.

(g) Special flight permits will not be issued.

(h) This amendment becomes effective on March 31, 2009.

Issued in Fort Worth, Texas, on February 12, 2009.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–4950 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28689; Directorate Identifier 2006–SW–17–AD; Amendment 39–15832; AD 2009–05–08]

RIN 2120–AA64

Airworthiness Directives; Trimble or FreeFlight Systems 2101 I/O Approach Plus Global Positioning System (GPS) Navigation Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the Trimble or FreeFlight Systems 2101 I/O Approach Plus global positioning system (GPS) navigation system (2101 I/O Approach Plus system) that requires a software upgrade for this system. This amendment is prompted by an incident that led to the discovery of several annunciation errors with the 2101 I/O Approach Plus system. The actions specified by this AD are intended to prevent a pilot from making an unsafe decision based on erroneous information provided by the 2101 I/O Approach Plus system, which could result in loss of control of the aircraft.

DATES: Effective April 20, 2009.

ADDRESSES: You may get the service information identified in this AD from FreeFlight Systems, 3700 IH 35, Waco, Texas, USA, 76706, or by calling (254) 662–0000 or on the Internet at *http://www.freeflightsystems.com.*

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sung-Hui Cavazos, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Special Certification Office, Fort Worth, Texas 76193–0190, telephone (817) 222–5142, fax (817) 222–5785.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified navigation system was published in the **Federal Register** on July 13, 2007 (72 FR 38532). That action proposed to require, within 180 days after the effective date of the AD for aircraft approved for instrument flight rule (IFR) flight, or 270 days after the effective date of the AD for aircraft approved for visual flight rule (VFR) flight, upgrading the 2101 I/O Approach Plus system software to correct several software errors.

Freeflight Systems issued Service Information Letter (SIL) 81440–XX–00–17, dated November 7, 2005, when the manufacturer believed that software version 241H would correct the erroneous information displays. However, version 241H did not correct all the errors. Therefore, FreeFlight Systems issued SIL 81440–XX–00–19, dated May 10, 2006, which describes the release of new operating system software, version 241J, ''that makes communication between the Host and the GPS processors more robust.'' Freeflight Systems subsequently issued Service Bulletin No. SB 81440–XX–00–19, dated December 12, 2006, that contains the instructions for obtaining and upgrading the software to version 241J. Although the proposed AD included a Note referencing SIL 81440–XX–00–17, this AD references the most recently available service information, Service Bulletin No. SB 81440–XX–00–19, dated December 12, 2006.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The commenter, FreeFlight Systems, states that ''the proposed AD specifies 81440–13–XXXX as being applicable for this upgrade. The 81440–13–XXXX is a number assigned for an NVG (night vision goggles) version of the 81440 that was never put into production so no units exist that would require this upgrade. The 81440–13–XXXX was included in error in the AD Worksheet identifying applicable systems provided to the FAA by FreeFlight Systems.'' Therefore, part number (P/N) 81440–13–XXXX (where XXXX is –241E, –241F, or 241G) should be removed from the AD. The FAA concurs and has removed those P/Ns from the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden

on any operator nor increase the scope of the AD.

The FAA estimates that this AD will affect 259 2101 I/O Approach Plus systems installed on aircraft of U.S. registry, and the required actions will take approximately 2 work hours per aircraft to accomplish at an average labor rate of $80 per work hour. Required parts will cost approximately $300 per aircraft. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $72,520, assuming one 2101 I/O Approach Plus system is installed on each aircraft, the manufacturer will provide all $300 in parts at no cost, and the only costs for these parts will be $120 for shipping costs for each unit.

Regulatory Findings

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2009–05–08 Trimble or Freeflight Systems: Amendment 39–15832. Docket No. FAA–2007–28689; Directorate Identifier 2006–SW–17–AD.

Applicability

All aircraft with a Trimble or FreeFlight Systems 2101 I/O Approach Plus global positioning system (GPS) navigation system (2101 I/O Approach Plus system), part number 81440–xx–241E, 81440–xx–241F, or 81440–xx–241G (xx indicates either the numbers 02, 03, or 12), with software revision –241E, –241F, or 241G, installed, certificated in any category.

Compliance

Required within 180 days after the effective date of this AD for aircraft approved for instrument flight rule (IFR) flight, or 270 days after the effective date of this AD for aircraft approved for visual flight rule (VFR) flight, unless accomplished previously.

To prevent a pilot from making an unsafe decision based on erroneous information provided by the 2101 I/O Approach Plus system, which could result in loss of control of the aircraft, accomplish the following:

(a) Upgrade the system software of any Trimble or FreeFlight Systems 2101 I/O Approach Plus GPS navigation system, part number (P/N) 81440–xx–241E, 81440–XX–241F, or 81440–xx–241G (xx indicates the numbers 02, 03, or 12), that currently has software revision –241E, –241F, or –241G, to system software revision, P/N 81440–XX–241J.

Note: Sections II and III of FreeFlight Systems Service Bulletin No. SB 81440–XX–00–19, dated December 12, 2006, pertains to the requirements of this AD.

(b) Upgrading the Trimble or FreeFlight Systems 2101 I/O Approach Plus GPS Navigation System's software, to system software revision, P/N 81440–xx–241J, is considered a terminating action for the requirements of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Special Certification Office, FAA, ATTN: Sung-Hui Cavazos, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Special Certification Office, Fort Worth, Texas 76193–0190, telephone (817) 222–5142, fax (817) 222–5785, for information about previously approved alternative methods of compliance.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished provided that the aircraft is operated under VFR only.

(e) This amendment becomes effective on April 20, 2009.

Issued in Fort Worth, Texas, on February 19, 2009.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–4942 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0195; Directorate Identifier 2007–SW–34–AD; Amendment 39–15837; AD 2009–06–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B and EC155B1 Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model EC 155B and EC155B1 helicopters. This AD results from mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI states that ''the Airworthiness Directive (AD) is prompted by the discovery of a short circuit evidence in hoist connector ''24 Delta'' even though the hoist was removed from the rotorcraft. The short circuit generated sufficient heat to ignite the paint on the cooler support cowling near the hoist cut-off connector ''24 Delta.'' This condition, if not corrected, could result in a fire in this area which could propagate to surrounding zones.'' This AD requires actions that are intended to address this unsafe condition.

DATES: This AD becomes effective on March 31, 2009.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of March 31, 2009.

We must receive comments on this AD by May 15, 2009.

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 your comments electronically.
- *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 W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (972) 641–3460, fax (972) 641–3527, or at *http://www.eurocopter.com.*

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

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5114, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD No. 2007–0159–E, dated June 6, 2007, to correct an unsafe condition for Eurocopter Model EC 155B and EC155B1 helicopters.

This AD requires actions that are intended to detect a short circuit in a hoist connector and prevent a fire in the aircraft. You may obtain further information by examining the MCAI and any related service information in the AD docket.

Related Service Information

Eurocopter has issued Emergency Alert Service Bulletin No. 25A085, dated June 1, 2007. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

This product has been approved by the aviation authority of France, and is approved for operation in the United States. Pursuant to our bilateral agreement with France, their Technical Agent has notified us of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all information provided by EASA on behalf of France and determined the unsafe condition exists and is likely to exist or develop on other helicopters of this same type design.

Differences Between This AD and the MCAI

We have used a compliance time of 1 month rather than 3 months because of the serious consequences of an undetected short circuit and potential aircraft fire.

Costs of Compliance

We estimate that this AD will affect 1 helicopter of U.S. registry. We also estimate that it will take about 3 work-hours to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $500 per helicopter. Based on these figures, we estimate the cost of this AD on U.S. operators will be $740.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. We find that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a wiring short circuit near the hoist cut-off connector caused the paint on the cooler support cowling to catch on fire. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include ''Docket No. FAA–2009–0195; Directorate Identifier 2007–SW–34–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

Therefore, I certify this AD:

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

under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–06–01 Eurocopter France: Amendment 39–15837. Docket No. FAA–2009–0195; Directorate Identifier 2007–SW–34–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on March 31, 2009.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EC 155B and EC155B1 helicopters with a serial number (S/N) less than 6763, and with optional equipment OP 45C07 (OP 45C07), installed, certificated in any category. OP 45C07 is the helicopter provision kit (electrical and structural mount modifications) used to support installation and operation of a hoist.

(1) To determine if your helicopter has OP 45C07 installed, review aircraft documentation, which should state if OP 45C07 equipment is installed, or

(2) Perform a physical inspection for the existence of the 24 Delta hoist electrical female connector (MIL–C–5015 type connector), which is installed, just forward of the right-hand engine cowling and just below the right engine inlet. Figures 1 and 6 of Eurocopter Emergency Alert Service Bulletin No. 25A085, dated June 1, 2007 (ASB), depict where the connector is located.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that ''the Airworthiness Directive (AD) is prompted by the discovery of a short circuit evidence in hoist connector ''24 Delta'' even though the hoist was removed from the rotorcraft. The short circuit generated sufficient heat to ignite the paint on the cooler support cowling near the hoist cut-off connector ''24 Delta.'' This condition, if not corrected, could result in a fire in this area which could propagate to surrounding zones.'' This AD requires actions that are intended to address this unsafe condition.

Actions and Compliance

(e) Within 7 days, unless already accomplished, do the following:

(1) Determine the orientation of the fixed connector ''24 Delta'' and if the large contacts are not oriented ''aft,'' re-orient the fixed connector so that they are facing ''aft'' by following the Accomplishment Instructions, paragraphs 2.B.1. and 2.B.2.a., of the ASB.

(2) Immediately after each hoist removal until the electrical bonding braid for the fixed hoist connector ''24 Delta'' is installed, disconnect the hoist power cable by following the Accomplishment Instructions, paragraph 2.B.2.b., of the ASB.

(f) Within 1 month, install an electrical bonding braid for connector ''24 Delta'' by following the Accomplishment Instructions, paragraph 2.B.2.c., of the ASB.

(g) Factory-implemented modification MOD 0745C82 is acceptable terminating action for the requirements of this AD.

Differences Between This AD and the MCAI

(h) We have used a compliance time of 1 month rather than 3 months because of the serious consequences of an undetected short circuit and potential aircraft fire.

Other Information

(i) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, ATTN: George Schwab, Aerospace Engineer, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5114, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Mandatory Continuing Airworthiness Information (MCAI) Emergency Airworthiness Directive No. 2007–0159–E, dated June 6, 2007, contains related information.

Air Transport Association of America (ATA) Tracking Code

(k) ATA Code 25: 2500–Hoist box; 1420–Hoist cut-off connector.

Material Incorporated by Reference

(l) You must use the specified portions of Eurocopter Emergency Alert Service Bulletin No. 25A085, dated June 1, 2007, to do the actions required.

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

(2) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (972) 641–3460, fax (972) 641–3527, or at *http://www.eurocopter.com.*

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas on February 19, 2009.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–4953 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0215; Directorate Identifier 2007–NM–278–AD; Amendment 39–15850; AD 2009–06–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321–131 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A321–131 airplanes. This AD requires repetitive ultrasonic inspections to detect cracks in the wing inner rear spars at the attachment holes of the Main Landing Gear (MLG) forward pintle fitting, the actuator cylinder anchorage fitting, and rib 5 fitting; and repair of the sealant or repair of any crack. This AD results from a finding that certain A321–131 airplanes may not reach the design life goal due to differences in thickness of the inner rear spars and that fatigue cracks may develop on inner rear spars starting from the fastener holes for the attachment of gear rib 5, the forward pintle fitting, and the actuating cylinder anchorage on these airplanes. We are issuing this AD to detect and correct such fatigue cracks, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective March 31, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 31, 2009.

We must receive comments on this AD by April 15, 2009.

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 W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–4056; telephone 425–227–2141; fax 425–227–1320.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition may exist on certain Airbus Model A321–131 airplanes. EASA advises that two airplanes, manufacturer serial number (MSN) 364 and 385, may not reach the design life goal due to differences in thickness of the inner rear spars and that fatigue cracks may develop on inner rear spars starting from the fastener holes for the attachment of gear rib 5, the forward pintle fitting, and the actuating cylinder anchorage on these airplanes. This condition, if not detected and corrected, could result in reduced structural integrity of the airplane.

Other Relevant Rulemaking

We previously issued airworthiness directive (AD) 2006–04–11 R1, amendment 39–14628 (71 FR 32807, June 7, 2006), applicable to certain Airbus Model A321–111, –112, and –131 airplanes; MSNs 364 and 385 were specifically excluded. That AD requires repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear and the actuating cylinder anchorage fittings on the inner rear spars; and repair, if necessary. That AD also provides for optional terminating action for the repetitive inspections, adds inspections of three additional mounting holes, and revises the inspection thresholds required by an earlier AD.

Relevant Service Information

Airbus has issued Service Bulletin A320–57–1126, dated August 8, 2003. The service bulletin describes procedures for doing repetitive ultrasonic inspections to detect cracks in the wing inner rear spars at the attachment holes of the MLG forward pintle fitting, the actuator cylinder anchorage fitting, and rib 5 fitting; and repairing of the sealant if no cracks are found or contacting Airbus for repair instructions if any cracks are found.

The EASA mandated the service information and issued airworthiness directive 2007–0162, dated June 12, 2007 (referred to after this as ''the MCAI''), to ensure the continued airworthiness of these airplanes in the European Union. The EASA airworthiness directive also includes requirements for other Model A321 airplanes; however, FAA AD 2006–04–11 R1, described previously, adequately addresses these other requirements (as specified in paragraph 1 of the MCAI).

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are 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.

Therefore, we are issuing this AD to detect and correct fatigue cracks on the wing inner rear spars. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the AD and Service Bulletin.''

Difference Between the AD and Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this AD requires repairing those conditions using a method approved by the FAA or EASA (or its delegated agent). In light of the type of repair that is required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair approved by the FAA or EASA (or its delegated agent) would be acceptable for compliance with this AD.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

The following table provides the estimated costs to comply with this AD for any affected airplane that might be imported and placed on the U.S. Register in the future.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per airplane
Inspection, per inspection cycle	46	$80	None	$3,680 per inspection cycle.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0215; Directorate Identifier 2007–NM–278–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–06–13 Airbus: Amendment 39–15850. Docket No. FAA–2009–0215; Directorate Identifier 2007–NM–278–AD.

Effective Date

(a) This AD becomes effective March 31, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A321–131 airplanes, certificated in any category, manufacturer serial numbers (MSNs) 364 and 385.

Subject

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

Unsafe Condition

(e) This AD results from a finding that certain A321–131 airplanes may not reach the design life goal due to differences in thickness of the inner rear spars and that fatigue cracks may develop on inner rear spars starting from the fastener holes for the attachment of gear rib 5, the forward pintle fitting, and the actuating cylinder anchorage on these airplanes. We are issuing this AD to detect and correct fatigue cracks on the wing inner rear spars, which could result in reduced structural integrity of the airplane.

Compliance

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

Repetitive Inspections

(g) At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD, do an ultrasonic inspection to detect cracks of the left-hand and right-hand wing inner rear spars at the attachment holes of the main landing gear (MLG) forward pintle fitting, the actuator cylinder anchorage fitting, and gear rib 5 fitting, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1126, dated August 8, 2003. Repeat the inspection thereafter at intervals not to exceed 3,600 flight cycles or 5,600 flight hours, whichever occurs first.

(1) Before the accumulation of 24,000 total flight cycles or 39,400 total flight hours from first flight, whichever occurs first.

(2) Within 6 months after the effective date of this AD.

Repair

(h) If no crack is detected during any inspection required by paragraph (g) of this AD, before further flight, repair the sealant in the inspected areas in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1126, dated August 8, 2003.

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

Alternative Methods of Compliance (AMOCs)

(j) The Manager, 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–4056; telephone 425–227–2141; fax 425–227–1320. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(k) EASA airworthiness directive 2007–0162, dated June 12, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Airbus Service Bulletin A320–57–1126, dated August 8, 2003, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5009 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0170; Directorate Identifier 2008–SW–45–AD; Amendment 39–15843; AD 2009–06–07]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model AB139 and AW139 Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta S.p.A. Model AB139 and AW139 helicopters. This AD results from mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI states: ''Operators had reported a number of occurrences of in-flight losses of cockpit door windows, both left and right side. This condition, if not corrected, could result in damage to critical components.'' The actions specified by this AD are intended to require that cockpit door windows (windows) be replaced with re-designed windows to prevent a window from separating from the helicopter, contacting the tailboom or tail rotor, resulting in loss of control of the helicopter.

DATES: This AD becomes effective on March 31, 2009.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of March 31, 2009.

We must receive comments on this AD by May 15, 2009.

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 your comments electronically.
- *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 W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Agusta, Product Support Italy, Via per Tornavento, 15 21019 Somma Lombardo, Varese Italy, telephone 39 (0331) 711111, fax 39 (0331) 711397, or at *http://customersupport.agusta.com/technical_advice.php.*

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

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2008–0108, dated June 5, 2008, to correct an unsafe condition for Model AB139 and AW139 helicopters. Previously, EASA issued AD 2007–0142, which required a dimensional check and, if necessary, repairing the cockpit door installation and replacing the window seal. After the issuance of AD 2007–0142, cases of cracks on windows leading to loss of part of the window were reported on cockpit doors on which actions required by AD 2007–0142 were applied. Therefore, EASA issued AD 2008–0011, which superseded AD 2007–0142 and included the same requirements, but also required reinforcing the windows in the area where cracks had reportedly developed. Additional cases of in-flight breakage of windows have been reported concerning cockpit doors on which the actions required by AD 2008–0011 were applied. Further investigation showed that cracks had originated in a different area of the windows than with the previous cases, suggesting a different route to failure.

You may obtain further information by examining the MCAI and any related service information in the AD docket.

Related Service Information

Agusta S.p.A. has issued Bollettino Tecnico No. 139–129, dated June 3, 2008 (BT 139–129), which describes replacing the left-hand side window with a window, part number (P/N) 3P5211A10152A1, and right-hand side window with a window, P/N 3P5211A48131A1, as well as installing an additional strap to allow immediate jettison in an emergency and installing a new external emergency exit placard, P/N 212–072–636–109. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

These helicopters have been approved by the aviation authority of Italy, and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, their Technical Agent, EASA, has notified us of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Differences Between This AD and the MCAI

The MCAI requires compliance within 200 flight hours or 6 months and uses the term ''flight hours.'' This AD uses the term ''hours time-in-service'' (TIS) rather than ''flight hours,'' and requires compliance within 30 hours TIS or 30 days. Also, this AD references specific steps in BT 139–129 to use in complying with the AD. Finally, this AD does not require you to contact Agusta S.p.A. AW139 Customer Support Engineering.

Costs of Compliance

We estimate that this AD will affect about 26 helicopters of U.S. registry. We also estimate that it will take about 4 work-hours per helicopter to replace both the left-hand side and right-hand side window and install a strap and external emergency exit placard on each door. The average labor rate is $80 per work-hour. The service information states that required parts will be provided by the manufacturer at no cost, however we estimate the cost of parts not covered by warranty to be $8,300 per helicopter. Based on these figures, we estimate the cost of this AD on U.S. operators will be $8,620 per helicopter, or $224,120 for the entire fleet.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. We find that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a window separating from the helicopter could contact the tailboom or tail rotor, resulting in loss of control of the helicopter, and compliance with this AD is required within a short time period. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include ''Docket No. FAA–2009–0170; Directorate Identifier 2008–SW–45–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

Therefore, I certify this AD:

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–06–07 Agusta S.p.A.: Amendment 39–15843. Docket No. FAA–2009–0170; Directorate Identifier 2008–SW–45–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on March 31, 2009.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AB139 and AW139 helicopters, serial numbers (S/N) 31005 through 31131 (except 31007, 31094, and 31124), S/N 31201 through 31209, and S/N 41001 through 41013 (except 41012), certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states: ''Operators had reported a number of occurrences of in-flight losses of cockpit door windows, both left and right side. This condition, if not corrected, could result in damage to critical components. As this unsafe condition was likely to occur in other helicopters of the same type design, EASA Airworthiness Directive (AD) 2007–0142 required a dimensional check and, if necessary, the repair of the cockpit door installation and the replacement of the window seal. After the issuance of AD 2007–0142 cases of cracks on sliding windows leading to loss of part of the window have been reported on cockpit doors to which actions required by this AD were applied. Therefore the AD 2008–0011 superseded AD 2007–0142 taking over its requirements and mandated, as an additional action, a reinforcement of the sliding windows in the area where cracks had developed. Additional cases of in flight breakage of cockpit door windows have been reported in service for cockpit doors to which the AD 2008–0011 was applied. Further investigation showed that cracks had originated in a different area of the windows with respect to the previous cases, suggesting a different route to failure.'' Therefore, EASA issued AD 2008–0108, which supersedes AD 2008–0011. We are issuing this AD to require the same actions as the EASA AD to correct the unsafe condition created by the old-designed cockpit door windows.

Actions and Compliance

(e) Within 30 hours time-in-service (TIS) or 30 days, whichever occurs first, unless already accomplished, do the following:

(f) Remove the left-hand and right-hand side cockpit door windows and replace them with airworthy cockpit door windows, part number (P/N) 3P5211A10152A1 (left-hand side window) and P/N 3P5211A48131A1 (right-hand side window). Install an emergency jettison strap, P/N 3G5610A04751, with each cockpit door window, and install an external emergency exit placard, P/N 212–072–636–109, on each cockpit door external side in accordance with steps 1. through 11. of the Compliance Instructions in Bollettino Tecnico No. 139–129, dated June 3, 2008, except you are not required to contact the manufacturer.

Differences Between This AD and the MCAI

(g) The MCAI requires compliance within 200 flight hours or 6 months and uses the term ''flight hours.'' This AD uses the term ''hours TIS'' rather than ''flight hours,'' and requires compliance within 30 hours TIS or 30 days, whichever occurs first. Also, this AD references specific steps in BT 139–129 to use in complying with the AD. Finally, this AD does not require you to contact Agusta S.p.A. AW139 Customer Support Engineering.

Other Information

(h) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, 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: Sharon Miles, Aerospace Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5122; fax (817) 222–5961.

Related Information

(i) European Aviation Safety Agency MCAI Airworthiness Directive No. 2008–0108, dated June 5, 2008, contains related information.

Air Transport Association of America (ATA) Tracking Code

(j) ATA Code 5610: Flight Compartment Windows.

Material Incorporated by Reference

(k) You must use the specified portions of Bollettino Tecnico No. 139–129, dated June 3, 2008, to do the actions required.

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

(2) For service information identified in this AD, contact Agusta, Product Support Italy, Via per Tornavento, 15 21019 Somma Lombardo, Varese Italy, telephone 39 (0331) 711111, fax 39 (0331) 711397, or at *http://customersupport.agusta.com/technical_advice.php*.

(3) You may review copies at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Fort Worth, Texas on February 12, 2009.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–4941 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1330; Directorate Identifier 2008–NM–138–AD; Amendment 39–15839; AD 2009–06–03]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited Model DHC–7 Airplanes

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

ACTION: Final rule.

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

> Transport Canada has received numerous service difficulty reports concerning Viking DHC–7 and Bombardier DHC–8 aircraft fluorescent lamp holder damage due to overheating. It has been determined that lamp holder overheating is a result of arcing between the fluorescent tube pins and the lamp holder contacts when the tube is not properly seated during installation. Overheating of lamp holders, if not corrected, could generate fumes and smoke * * *.
>
> * * * * *

The unsafe condition could result in an in-flight fire. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 20, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 20, 2009.

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

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 23, 2008 (73 FR 78673). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Transport Canada has received numerous service difficulty reports concerning Viking DHC–7 and Bombardier DHC–8 aircraft fluorescent lamp holder damage due to overheating. It has been determined that lamp holder overheating is a result of arcing between the fluorescent tube pins and the lamp holder contacts when the tube is not properly seated during installation. Overheating of lamp holders, if not corrected, could generate fumes and smoke, causing concern to passengers and crew.
>
> This directive mandates repetitive inspection[s] for proper installation [and functioning] of fluorescent tubes and prohibits installation of non-arc-protected replacement fluorescent lamp ballasts.

The unsafe condition could result in an in-flight fire. The corrective actions include replacing any lamps that are not properly seated in the lamp holder, and replacing any broken, non-functioning lamp holders. Replacing all affected fluorescent lamp ballasts would terminate the repetitive inspections. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use

different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD will affect 21 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,680, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–06–03 Viking Air Limited (Formerly Bombardier, Inc.): Amendment 39–15839. Docket No. FAA–2008–1330; Directorate Identifier 2008–NM–138–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 20, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Viking Air Limited Model DHC–7–1, DHC–7–100, DHC–7–101, DHC–7–102, and DHC–7–103 airplanes, certificated in any category; serial numbers 1 through 113 inclusive, with Modifications 7/2444 and 7/2445 incorporated.

Subject

(d) Air Transport Association (ATA) of America Code 33: Lights.

Reason

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

''Transport Canada has received numerous service difficulty reports concerning Viking DHC–7 and Bombardier DHC–8 aircraft fluorescent lamp holder damage due to overheating. It has been determined that lamp holder overheating is a result of arcing between the fluorescent tube pins and the lamp holder contacts when the tube is not properly seated during installation. Overheating of lamp holders, if not corrected, could generate fumes and smoke, causing concern to passengers and crew.

This directive mandates repetitive inspection[s] for proper installation [and functioning] of fluorescent tubes and prohibits installation of non-arc-protected replacement fluorescent lamp ballasts.''

The unsafe condition could result in an in-flight fire. The corrective actions include replacing any lamps that are not properly seated in the lamp holder, and replacing any broken, non-functioning lamp holders. Replacing all affected fluorescent lamp ballasts would terminate the repetitive inspections.

Actions and Compliance

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

(1) Within 1,000 flight hours after the effective date of this AD: Perform a visual inspection to ensure proper installation and functioning of the fluorescent tubes in the lamp holders, and perform all applicable corrective actions before further flight, in accordance with the Accomplishment Instructions of Viking Service Bulletin V7–33–01, dated February 28, 2008. Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(2) Replacing all fluorescent lamp ballasts having part number (P/N) BAO8006–1 and BA[O]8006–28–1 with new fluorescent lamp ballasts having P/N BR9000–21, in accordance with the Accomplishment Instructions of Viking Service Bulletin V7–33–01, dated February 28, 2008, terminates the repetitive inspections required by paragraph (f)(1) of this AD.

FAA AD Differences

Note 1: 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, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531. 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 Canadian Airworthiness Directive CF–2008–27, dated July 4, 2008; and Viking Service Bulletin V7–33–01, dated February 28, 2008; for related information.

Material Incorporated by Reference

(i) You must use Viking Service Bulletin V7–33–01, dated February 28, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Viking Air Limited, 9574 Hampden Road, Sidney, British Columbia V8L 8V5, Canada; telephone 250–656–7227; fax 250–656–0673; e-mail *technical.publications@vikingair.com;* Internet *http://www.vikingair.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–4970 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1072; Directorate Identifier 2008–NM–109–AD; Amendment 39–15838; AD 2009–06–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes. This AD requires inspecting for skin cracks at the shear tie end fastener locations of the fuselage frames, and repairing cracks if necessary. This AD results from a widespread fatigue damage assessment of Model 747 airplanes. We are issuing this AD to detect and correct cracks in the fuselage skin that can propagate and grow, resulting in a loss of structural integrity and a sudden decompression of the airplane during flight.

DATES: This AD is effective *April 20, 2009.*

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 20, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes. That NPRM was published in the **Federal Register** on October 8, 2008 (73 FR 58901). That NPRM proposed to require inspecting for skin cracks at the shear tie end fastener locations of the fuselage frames, and repairing cracks if necessary.

Comments

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

Conclusion

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

Costs of Compliance

We estimate that this AD affects 147 airplanes of U.S. registry. We also estimate that it takes 30 work-hours for the detailed inspection, or 49 work hours for the HFEC inspection, per product, to comply with this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $352,800 or $576,240, or $2,400 or $3,920 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations

for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–06–02 Boeing: Amendment 39–15838. Docket No. FAA–2008–1072; Directorate Identifier 2008–NM–109–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 20, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2682, dated May 8, 2008.

Unsafe Condition

(d) This AD results from a wide-spread fatigue damage assessment of Model 747 airplanes. We are issuing this AD to detect and correct cracks in the fuselage skin that can propagate and grow, resulting in a loss of structural integrity and sudden decompression of the airplane during flight.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Inspections/Repair

(f) Except as provided by paragraphs (g) and (h) of this AD: At the applicable compliance times specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2682, dated May 8, 2008 (''the service bulletin''), do an external detailed inspection or external high frequency eddy current inspection for skin cracks at the shear tie end fastener locations of the fuselage frames, and repair any skin cracks before further flight, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of the service bulletin. Repeat the applicable inspection thereafter at the applicable interval specified in paragraph 1.E. of the service bulletin.

Exceptions to the Service Bulletin

(g) Where paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2682, dated May 8, 2008, specifies counting the compliance time from ''* * * the date on this service bulletin,'' this AD requires counting the compliance time from the effective date of this AD.

(h) If any crack is found in a structural repair manual skin repair during any inspection required by paragraph (f) of this AD, and Boeing Alert Service Bulletin 747–53A2682, dated May 8, 2008, specifies to contact Boeing for repair: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 747–53A2682, dated May 8, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–4973 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0214; Directorate Identifier 2007–NM–343–AD; Amendment 39–15851; AD 2009–06–14]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.27 Mark 050 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Fokker Model F.27 Mark 050 airplanes. This AD requires measuring the length of the extended portion of the sliding member of the main landing gear, performing an inspection for the presence of lockwiring, and doing corrective actions if necessary. This AD results from a report that the sliding member of the main landing gear has been overextended after landing. We are issuing this AD to detect and correct improper installation of the lockwire on the two lockbolts that hold the sliding member end stop, which could result in structural damage of the main gear and loss of control of the airplane during the landing roll, due to main landing gear overextension.

DATES: This AD becomes effective March 31, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 31, 2009.

We must receive comments on this AD by April 15, 2009.

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 W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; Telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices @stork.com;* Internet *http://www.myfokkerfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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:

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition might exist on certain Fokker Model F.27 Mark 050 airplanes. The CAA–NL advises that there has been a report that the sliding member of the main landing gear has been overextended after landing. During subsequent investigation, it was found that an end stop had unscrewed itself to a certain extent, and that there was no lockwiring present on the two lockbolts that hold the end stop. The unscrewed end stop caused the gear torque links of the main landing gear to come into an overextended position against the sliding member. This condition, if not corrected, could result in structural damage of the main gear and loss of control of the airplane during the landing roll, due to main landing gear overextension.

Relevant Service Information

Fokker has issued Service Bulletin SBF50–32–039, dated July 2, 2007, which describes procedures for measuring the length of the extended portion of the sliding member of the main landing gear, and performing an inspection for the presence of lockwiring on the lock bolts of the two end stops, and doing corrective actions if necessary. Corrective actions include applying lockwiring if not installed or installed incorrectly.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive NL–2007–002, dated October 31, 2007 (referred to after this as ''the MCAI''), to ensure the continued airworthiness of these airplanes in the Netherlands.

Fokker Service Bulletin SBF50–32–039, dated July 2, 2007, refers to Messier-Dowty Service Bulletin F50–32–62, dated January 17, 2007, as an additional source of service information for measuring the length of the extended portion of the sliding member of the main landing gear, performing an inspection for the presence of lockwiring on the lock bolts of the two end stops, and installing new lockwiring when lockwiring is missing or installed incorrectly.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are 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.

Therefore, we are issuing this AD to detect and correct improper installation of the lockwire on the two lockbolts that hold the sliding member end stop, which could result in structural damage of the main gear and loss of control of the airplane during the landing roll, due to main landing gear overextension. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and the MCAI.''

Differences Between the AD and the MCAI

The MCAI specifies only to inspect for the presence of lockwiring if overextension is found. However, Messier-Dowty Service Bulletin F50–32–62, dated January 17, 2007, also specifies to inspect if the measurement has increased between inspections. This AD requires inspection for the presence of lockwiring if overextension is found or the measurement of the repeat inspection has increased by 1.0 mm compared to a previous inspection. We have coordinated this difference with CAA–NL.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 8 work hours per airplane, at an average

labor rate of $80 per work hour. Required parts would cost about $1,082 per airplane. Based on these figures, the estimated cost of the AD would be $1,722 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0214; Directorate Identifier 2007–NM–343–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–06–14 Fokker Services B.V.: Amendment 39–15851. Docket No. FAA–2009–0214; Directorate Identifier 2007–NM–343–AD.

Effective Date

(a) This AD becomes effective March 31, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.27 Mark 050 airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from a report that the sliding member of the main landing gear has been overextended after landing. We are issuing this AD to detect and correct improper installation of the lockwire on the two lockbolts that hold the sliding member end stop, which could result in structural damage of the main gear and loss of control of the airplane during the landing roll, due to main landing gear overextension.

Compliance

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

Measurement, Inspection, and Corrective Actions

(g) Within 500 flight cycles after the effective date of this AD, measure the length of the extended portion of the sliding member of the main landing gear in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–32–039, dated July 2, 2007. Repeat the measurement at intervals not to exceed 500 flight cycles until the requirements of paragraph (g) have been completed.

(h) At the applicable time in paragraph (h)(1) or (h)(2) of this AD, perform an inspection for the presence and correct installation of lockwiring on the two end stop lock bolts of the main landing gear, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–32–039, dated July 2, 2007. If lockwiring is not present or is not installed correctly, install lockwiring before further flight in accordance with Fokker Service Bulletin SBF50–32–039, dated July 2, 2007.

(1) During any measurement required by paragraph (g) of this AD, if overextension is found, or the measurement has increased by 1.0 millimeter (mm) or more compared to the previous measurement, inspect before further flight.

(2) If no overextension is found and the measurement has not increased by 1.0 mm or more between measurements during the measurements required by paragraph (g) of this AD, inspect within 4,000 flight hours after the effective date of this AD.

Note 1: Fokker Service Bulletin SBF50–32–039, dated July 2, 2007, refers to Messier-Dowty Service Bulletin F50–32–62, dated January 17, 2007, as an additional source of service information for measuring the length of the extended portion of the sliding member of the main landing gear, performing an inspection for the presence of lockwiring on the lock bolts of the two end stops, and installing new lockwiring.

(i) If, during any measurement required by paragraph (g) of this AD, overextension is found or the measurement has increased by 1.0 mm or more compared to the previous measurement; or if, during any inspection required by paragraph (h) of the AD, lockwiring is not present or is not installed correctly; submit a report to Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; facsimile (31) 252–627–211; e-mail *technicalservices.fokkerservices@stork.com,*

at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include any finding of overextension or incorrect lockwiring to Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; facsimile (31) 252–627–211. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection or measurement was done on or after the effective date of this AD: Submit the report within 30 days after the inspection or measurement, as applicable.

(2) If the inspection or measurement was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(j) As of 5 months after the effective date of this AD: No person may install a main landing gear on any airplane unless Part B of Messier-Dowty Service Bulletin F50–32–62, dated January 17, 2007, has been accomplished for that part.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(l) Civil Aviation Authority—The Netherlands (CAA–NL) Airworthiness Directive NL–2007–002, dated October 31, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use Fokker Service Bulletin SBF50–32–039, dated July 2, 2007; and Messier-Dowty Service Bulletin F50–32–62, dated January 17, 2007; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For Fokker service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; Telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.*

(3) For Messier-Dowty service information identified in this AD, Messier-Dowty Limited, Cheltenham Road, Gloucester, GL2 9QH, England; Telephone +44 (0) 1452 711732; fax +44 (0) 1452 713821.

(4) You may review copies of this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5007 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 950

[Docket No: 090113018–9019–01]

RIN 0648–AX74

Schedule of Fees for Access to NOAA Environmental Data, Information, and Related Products and Services

AGENCY: National Environmental Satellite, Data and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, NESDIS establishes a new schedule of fees for the sale of its data, information, and related products and services to users. NESDIS is revising the fee schedule to ensure that the fees accurately reflect the costs of providing access to the environmental data, information, and related products and services. NESDIS is authorized under 15 U.S.C. 1534 to assess fees, up to fair market value, for access to environmental data, information, and products derived from, collected, and/or archived by NOAA. Other than depreciation, costs to upgrade computer hardware and software systems will not be included in the fees charged to users.

DATES: *Effective Date:* May 1, 2009.

FOR FURTHER INFORMATION CONTACT: Linda Neely (301) 713–3305.

SUPPLEMENTARY INFORMATION:

Background

NESDIS operates NOAA's National Data Centers for Climate, Geophysics, Oceans, and Coasts. Through these Data Centers, NESDIS provides and ensures timely access to global environmental data from satellites and other sources, provides information services, and develops science products.

NESDIS maintains some 1,300 data bases containing over 2,400 environmental variables at three National Data Centers and seven World Data Centers. These centers respond to over 2,000,000 requests for these data and products annually from over 70 countries. This collection of environmental data and products is growing exponentially, both in size and sophistication.

Users have the ability to access the data offline, online and through the NESDIS e-Commerce System (NeS) online store. Our ability to provide these data, information, products and services depends on user fees.

New Fee Schedule

The new fee schedule lists both the current fee charged for each item and the new fee to be charged to users that will take effect beginning May 1, 2009. The schedule applies to the listed services provided by NESDIS on or after this date, except for products and services covered by a subscription agreement in effect as of this date that extends beyond this date. In those cases, the increased fees will apply upon renewal of the subscription agreement or at the earliest amendment date provided by the agreement.

NESDIS will continue to review the user fees periodically, and will revise such fees as necessary. Any future changes in the user fees and their effective date will be announced through notice in the **Federal Register**.

Classification

This rule has been determined to be not significant for purposes of E.O. 12866. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable because this rule falls within the proprietary exception of subparagraph (a)(2) of section 553. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the requirements of

the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 950

Organization and functions (Government agencies).

Charles S. Baker,

Deputy Assistant Administrator for Satellite and Information Services.

■ For the reasons set forth above, 15 CFR Part 950 is amended as follows:

PART 950—ENVIRONMENTAL DATA AND INFORMATION

■ 1. The authority citation for part 950 continues to read as follows:

Authority: (5 U.S.C. 552, 553). Reorganization Plan No. 4 of 1970.

2. Appendix A to Part 950 is revised to read as follows:

Appendix A to Part 950—Schedule of User Fees for Access to NOAA Environmental Data

Name of product/data/publication/information/service	Current fee	New fee
NOAA National Data Centers Standard User Fees:		
Department of Commerce Certification	$91.00	$85.00
General Certification	60.00	68.00
Paper Copy	2.00	2.00
Online In-Situ Digital Data	10.00	6.00
Data Poster	18.00	18.00
Shipping Service:		
For orders totaling less than $50.00	5.00	3.00
For orders totaling $50.00 or more	11.00	3.00
Rush Order Fee	60.00	60.00
Super Rush Order Fee	100.00	100.00
Foreign Shipping Service:		
For orders totaling less than $100.00	10.00	22.00
For orders totaling $100.00 or more	20.00	22.00
Additional National Climatic Data Center (NCDC) User Fees:		
NEXRAD Doppler Radar Color Prints	19.00	18.00
Paper Copy from Electronic Media	6.00	6.00
Offline In-Situ Digital Data	156.00	164.00
Microfilm Copy (roll to paper) per frame from existing film	13.00	13.00
Satellite Image Product	80.00	82.00
Offline Satellite Digital Data (average unit size is 1.2 gigabytes)	115.00	.....
Offline Radar Digital Data (Level II) (average unit size is 4 gigabytes)	145.00	.....
Offline Satellite, Radar, and Model Digital Data (average unit size is 1 terabyte)	.....	996.00
Conventional CD–ROM/DVD	99.00	74.00
Specialized CD–ROM/DVD	.....	165.00
CD–ROM/DVD Copy, Offline	40.00	35.00
CD–ROM/DVD Copy, Online Store	22.00	17.00
Facsimile Service	65.00	80.00
Additional National Oceanographic Data Center (NODC) User Fees:		
World Ocean Circulation Experiment 2002 version 3.0 DVD	8.00	*
World Ocean Database 2001; World Ocean Atlas 2001; International Atlases	19.00	*
NODC Non-Standard Data, Select to FTP	198.00	*
NODC Non-Standard Data, 1–1 Copy to FTP	165.00	*
World Ocean Atlas Figures (DVD)	39.00	*
International Atlas 10: Climatic Atlas of the Sea of Azov 2006 (CD–ROM)	53.00	*
World Ocean Database 2005 (DVD)	12.00	*
World Ocean Atlas 2005; World Ocean Atlas Figures 2005 (DVD)	7.00	*
International Atlas 11: Barents Sea 1998 Climatic Atlas; International Atlas 2: Biological Atlas of the Arctic Seas 2000; World Ocean Database 98	55.00	*
International Atlas 9: Climatic Atlas of the Arctic Seas 2004 (DVD)	35.00	*
NODC Non-Standard Data, Select to CD or DVD, Specialized	203.00	*
NODC Non-Standard Data, 1–1 Copy to CD or DVD, Specialized	170.00	*
Conventional CD–ROM/DVD	75.00	*
NODC Non-Serial Publications	15.00	20.00
NODC Non-Standard Data; Select/Copy to CD, DVD or Electronic Transfer, Specialized, Offline	.....	42.00
NODC Non-Standard Data; 1–1 Direct Copy to CD, DVD, or Electronic Transfer, Specialized, Offline	.....	19.00
NODC Digital and Non-Digital Off-the-Shelf Products, Online	.....	4.00
NODC Digital and Non-Digital Off-the-Shelf Products, Offline	.....	6.00
Additional National Geophysical Data Center (NGDC) User Fees:		
Mini Poster	1.00	1.00
Icosahedron Globe	0.50	3.00
Convert Data to Standard Image	5.00	5.00
Single Orbit OLS	15.00	16.00
Single Orbit OLS, Additional Orbits	5.00	5.00
Single Orbit OLS—Subset	15.00	16.00
Single Orbit OLS, Subset-Additional Orbits	5.00	5.00
Geolocated Data	40.00	43.00
Subset of Pre-existing Geolocated Data	25.00	26.00
Global DMSP–OLS Nighttime Lights Annual Composite from One Satellite	61,582.00	70,140.00
Most Recent DMSP–OLS Thermal Band/Cloud Cover Mosaics from Multiple Satellites	215.00	238.00

Name of product/data/publication/information/service	Current fee	New fee
Nightly DMSP–OLS Mosaics, Visible and Thermal Band Data from One Satellite	201.00	223.00
Global DMSP–OLS Nighttime Lights Lunar Cycle Composite from One Satellite	5,624.00	6,020.00
Radiance Calibrated Global DMSP-OLS Nighttime Lights Annual Composite from One Satellite	67,922.00	77,177.00
Research Data Series CD–ROM/DVD	25.00	25.00
Custom Analog Plotter Prints	49.00	60.00
NOS Bathymetric Maps and Miscellaneous Archived Publication Inventory	6.00	7.00
Global DMSP–OLS Annual Composite of Persistent Nighttime Lights on Monthly Increments from One Satellite	.....	7,665.00

* New prices for these products are not included since these products are now available under a different category of NODC products.

[FR Doc. E9–5590 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2007–F–0274] (formerly Docket No. 2007F–0355)

Food Additives Permitted for Direct Addition to Food for Human Consumption; Vitamin D_2

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of vitamin D_2 as a nutrient supplement in soy-based food products. This action is in response to a petition filed by Dean Foods Co. (Dean Foods).

DATES: This rule is effective March 16, 2009. Submit written or electronic objections and requests for a hearing by April 15, 2009. See section VII of this document for information on filing objections. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of March 16, 2009.

ADDRESSES: You may submit written or electronic objections and requests for a hearing, identified by Docket No. FDA–2007–F–0274 (formerly Docket No. 2007F–0355), by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of objections, FDA is no longer accepting objections submitted to the agency by e-mail. FDA encourages you to continue to submit electronic objections by using the Federal eRulemaking Portal, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All objections received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Judith Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1071.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of October 4, 2007 (72 FR 56768), FDA announced that a food additive petition (FAP 7A4769) had been filed by Dean Foods Co., c/o Hogan and Hartson LLP, 555 13th St., NW., Washington, DC 20004–1109. The petition proposed to amend the food additive regulations in part 172 (21 CFR part 172) *Food Additives Permitted for Direct Addition to Food for Human Consumption* to provide for the safe use of vitamin D_2 as a nutrient supplement in soy-based food products. The petition pertains only to the use of crystalline vitamin D_2 and not the resin form of the vitamin. Foods identified in the petition are soy beverages, soy beverage products, soy-based butter substitute spreads, soy-based cheese substitutes, and soy-based cheese substitute products. The petitioner requested that part 172 be amended to permit the use of crystalline vitamin D_2 as a nutrient supplement at levels not to exceed 50 International Units (IU) per 100 grams (g) of soy beverages, 89 IU per 100 g of soy beverage products, 330 IU per 100 g of soy-based butter substitute spreads, and 270 IU per 100 g of soy-based cheese substitutes and soy-based cheese substitute products.

Vitamin D[1], including vitamin D_2, is affirmed as generally recognized as safe (GRAS) for use in food under 21 CFR 184.1950 (§ 184.1950) with the following specific limitations:

Category of Food	Maximum Levels in Food (as Served)
Breakfast cereals	350 International Units (IU)/100 grams (g)

[1] Vitamin D comprises a group of fat-soluble secosterols and comes in many forms. The two major physiologically relevant forms are vitamin D_2 and vitamin D_3. Vitamin D without a subscript represents either D_2 or D_3. Section 184.1950 includes crystalline vitamin D_2, crystalline vitamin D_3, vitamin D_2 resin, and vitamin D_3 resin. Section 172.379, which is established by this rule, includes only crystalline vitamin D_2.

Category of Food	Maximum Levels in Food (as Served)
Grain products and pasta	90 IU/100 g
Milk	42 IU/100 g
Milk products	89 IU/100 g

Additionally, under § 184.1950(c)(2) and (c)(3), vitamin D is affirmed as GRAS for use in infant formulas and margarine, respectively. Under § 172.380, vitamin D_3 also is approved for use as a nutrient supplement in calcium-fortified fruit juices and fruit juice drinks; meal replacement and other type bars, soy protein-based meal replacement beverages represented for special dietary use in reducing or maintaining body weight; and cheese and cheese products as defined therein.

Vitamin D_2, also known as ergocalciferol, is the chemical 9,10-seco(5Z,7E,22E)-5,7,10(19),22-ergostatetraen-3-ol. The additive that is the subject of this petition is vitamin D_2 that is produced by ultraviolet irradiation of ergosterol isolated from yeast and is purified by crystallization. In contrast to the description of vitamin D_2 set forth in § 184.1950, this petition does not cover vitamin D_2 that may be produced from ergosterol isolated from fungi other than yeast.

Vitamin D is essential for human health. The major function of vitamin D is the maintenance of blood serum concentrations of calcium and phosphorus by enhancing the absorption of these minerals in the small intestine. Vitamin D deficiency can lead to abnormalities in calcium and bone metabolism such as rickets in children or osteomalacia in adults. High levels of vitamin D may be toxic. Excessive intake of vitamin D elevates blood plasma calcium levels by increased intestinal absorption and/or mobilization from the bone.

To ensure that vitamin D is not added to the U.S. food supply at levels that could raise safety concerns, FDA affirmed vitamin D as GRAS with specific limitations as listed in § 184.1950. Under 21 CFR 184.1(b)(2), an ingredient affirmed as GRAS with specific limitations may be used in food only within such limitations, including the category of food, functional use, and level of use. Any addition of vitamin D to food beyond those limitations set out in § 184.1950 requires either a food additive regulation or an amendment of § 184.1950.

To support the safety of the proposed uses of vitamin D_2, Dean Foods submitted dietary intake estimates from current and proposed uses and from naturally-occurring sources of vitamin D, and compared these intake estimates to the Tolerable Upper Intake Level (UL) for vitamin D established by the Institute of Medicine (IOM) of the National Academies. The petitioner also submitted a number of publications pertaining to human clinical studies on vitamin D. Based on this information, which is discussed in section II of this document, the petitioner concluded that the proposed use of vitamin D_2 in soy-based food products is safe.

II. Evaluation of Safety

To establish with reasonable certainty that a food additive is not harmful under its intended conditions of use, FDA considers the projected human dietary intake of the additive, the additive's toxicological data, and other relevant information (such as published literature) available to the agency. FDA compares an individual's estimated daily intake (EDI) of the additive from all food sources to an acceptable intake level established by toxicological data. The EDI is determined by projections based on the amount of the additive proposed for use in particular foods and on data regarding the amount consumed from all food sources of the additive. The agency commonly uses the EDI for the 90th percentile consumer of a food additive as a measure of high chronic dietary intake.

A. Estimated Daily Intake for Vitamin D

The petitioner provided mean and 90th percentile vitamin D intake estimates for consumers of soy beverages, soy beverage products, soy-based butter substitute spreads, soy-based cheese substitutes, and soy-based cheese substitute products from the following: (1) The proposed food uses; (2) current food uses (including regulated uses, naturally-occurring sources of vitamin D, and dietary supplements); and (3) combined current and proposed food uses. The petitioner provided intake estimates for the overall U.S. population and nine population subgroups. For the purpose of the estimate, Dean Foods assumed that current consumers of dairy products would substitute their consumption of milk and dairy products with the corresponding soy beverages and soy-based dairy alternative products. The agency has determined that the methodology used to calculate these estimates is appropriate.

The petitioner's estimates of intake of vitamin D from all food sources include the proposed food uses, currently-regulated uses in conventional foods (under §§ 184.1950 and 172.380), dietary supplements, and naturally-occurring sources of the vitamin. For the overall U.S. population, including consumers of the soy-based food products identified in the petition, the 90th percentile dietary intake of vitamin D was estimated to be 1,012 IU per person per day (IU/p/d). For the population subgroup of infants less than 12 months of age, including consumers of the soy-based food products identified in the petition, the 90th percentile dietary intake of vitamin D was estimated to be 907 IU/p/d. FDA concurs with these intake estimates.

B. Acceptable Intake Level for Vitamin D

In 1997, the Standing Committee on the Scientific Evaluation of Dietary Reference Intakes of the Food and Nutrition Board at IOM conducted an extensive review of toxicology and metabolism studies on vitamin D published through 1996. The IOM published a detailed report that included a UL for vitamin D for infants, children, and adults. The IOM UL for vitamin D for children 1 to 18 years of age and adults is 2,000 IU/p/d. The UL for infants is 1,000 IU/p/d.

The IOM considers the UL as the highest usual intake level of a nutrient that poses no risk of adverse effects when the nutrient is consumed over long periods of time. The UL is determined using a risk assessment model developed specifically for nutrients and considers intake from all sources: food, water, nutrient supplements, and pharmacological agents. The dose-response assessment, which concludes with an estimate of the UL, is built upon three toxicological concepts commonly used in assessing the risk of exposures to chemical

substances: No-observed-adverse-effect level, lowest-observed-effect level, and an uncertainty factor.

C. Safety Assessment

To support the safety of the proposed uses for vitamin D_2, Dean Foods submitted 14 scientific articles published subsequent to the IOM report and issuance of the November 2005 final rule (70 FR 69435) for the use of vitamin D_3 in cheese and cheese products. Dean Foods concluded that these recent publications continue to support vitamin D supplementation in humans. FDA concurs with Dean Foods' conclusions.

FDA considered the ULs established by IOM relative to the intake estimates provided by the petitioner as the primary basis for assessing the safety of petitioned uses of vitamin D. FDA also reviewed the scientific articles submitted by the petitioner. Finally, FDA reviewed studies on vitamin D that have published since the IOM report in the agency's evaluation of three previous food additive petitions for fortifying a variety of foods with vitamin D_3. The most recent petition resulted in FDA's amendment of the food additive regulations in § 172.380 to allow for the safe use of vitamin D_3 as a nutrient supplement in cheese and cheese products at levels above those allowed under § 184.1950 (70 FR 69435). The two earlier food additive petitions also resulted in amendments of the food additive regulations to allow for the safe use of vitamin D_3 as a nutrient supplement in certain foods (70 FR 37255; June 29, 2005, 70 FR 36021; June 22, 2005, and 68 FR 9000; February 27, 2003).

The estimated intake of vitamin D from all food sources, including the proposed uses, at the 90th percentile for the overall U.S. population is 1,012 IU/p/d, which is below the IOM UL of 2,000 IU/p/d. For infants less than 12 months of age, the estimated intake of vitamin D from all food sources, including the proposed uses, at the 90th percentile is 907 IU/p/d, which is below the IOM UL of 1,000 IU/p/d. Because the 90th percentile EDI of vitamin D from all current and proposed food sources is less than the IOM UL in both cases, the agency concludes that dietary intake of vitamin D_2 from its proposed use as a nutrient supplement in soy beverages, soy beverage products, soy-based butter substitute spreads, soy-based cheese substitutes, and soy-based cheese substitute products will not pose a safety concern.

III. Conclusion

Based on all data relevant to vitamin D_2 reviewed by the agency, FDA concludes that there is a reasonable certainty that no harm will result from the use of vitamin D_2 as a nutrient supplement in soy beverages, soy beverage products, soy-based butter substitute spreads, soy-based cheese substitutes, and soy-based cheese substitute products within the limits proposed by the petitioner. Thus, vitamin D_2 is safe for the proposed use and the agency concludes that the food additive regulations should be amended as set forth in this document. To ensure that only food grade crystalline vitamin D_2 is used in food under this rule, the additive must meet the specifications set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition will be made available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Effects

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 7A4769. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Section 301(ll) of the Federal Food, Drug, and Cosmetic Act

FDA's review of this petition was limited to section 409 of the Federal Food, Drug, and Cosmetic Act (the act). This final rule is not a statement regarding compliance with other sections of the act. For example, the Food and Drug Administration Amendments Act of 2007, which was signed into law on September 27, 2007, amended the act to, among other things, add section 301(ll). Section 301(ll) of the act (21 U.S.C. 301(ll)) prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exemptions in section 301(ll)(1) through (4) applies. In our review of this petition, FDA did not consider whether section 301(ll) or any of its exemptions apply to food containing this additive. Accordingly, this final rule should not be construed to be a statement that a food containing this additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll). Furthermore, this language is included in all food additive final rules and therefore should not be construed to be a statement of the likelihood that section 301(ll) applies.

VII. Objections

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Section 172.379 is added to subpart D to read as follows:

§ 172.379 Vitamin D_2.

Vitamin D_2 may be used safely in foods as a nutrient supplement defined under § 170.3(o)(20) of this chapter in accordance with the following prescribed conditions:

(a) Vitamin D_2, also known as ergocalciferol, is the chemical 9,10-seco(5Z,7E,22E)-5,7,10(19),22-ergostatetraen-3-ol. Vitamin D_2 is produced by ultraviolet irradiation of ergosterol isolated from yeast and is purified by crystallization.

(b) Vitamin D_2 meets the specifications of the *Food Chemicals Codex*, 6th ed. (2008), pp. 1013 and 1014, which is incorporated by reference. The Director of the **Federal Register** approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. You may obtain a copy from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address: *http://www.usp.org*). You may inspect a copy at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1071, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(c) The additive may be used as follows:

Category of Food	Maximum Levels in Food (as Served)
Soy beverages	50 International Units (IU)/100 grams (g)
Soy beverage products	89 IU/100 g
Soy-based butter substitute spreads	330 IU/100 g
Soy-based cheese substitutes and soy-based cheese substitute products	270 IU/100 g

Dated: February 23, 2009.

Leslye M. Fraser,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. E9–5549 Filed 3–13–09; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4001, 4010, and 4044

RIN 1212–AB09

Annual Financial and Actuarial Information Reporting; Pension Protection Act of 2006

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is a final rule to amend PBGC's regulation on Annual Financial and Actuarial Information Reporting. The amendments implement the provisions of the Pension Protection Act of 2006, Public Law 109–280 (PPA 2006), which changed the standards for determining which persons are required to report under section 4010 (Authority to Require Certain Information) of the Employee Retirement Income Security Act of 1974 and made other changes to the reporting requirements. In addition to providing guidance on implementing the PPA 2006 changes, the final rule waives reporting in certain cases for controlled groups with aggregate plan underfunding of $15 million or less, modifies the standards for determining which plans are exempt from the actuarial information requirements, revises the actuarial information requirements to conform with other PPA 2006 changes, and provides other clarifications.

DATES: Effective April 15, 2009. (See Applicability in **SUPPLEMENTARY INFORMATION**.)

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative and Regulatory Department; or Catherine B. Klion, Manager, or Grace H. Kraemer, Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension insurance programs under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). In order to give PBGC an opportunity to anticipate and attempt to minimize potential liabilities that may arise from the termination of significantly underfunded plans, ERISA section 4010 requires the reporting of actuarial and financial information by controlled groups with pension plans that have significant underfunding. That information is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and may not be made public, except as may be relevant to any administrative or judicial action or proceeding.

Pursuant to ERISA section 4010, PBGC issued its initial regulation on Annual Financial and Actuarial Information Reporting in 1995 (29 CFR part 4010). The regulation specifies the items of identifying, financial, and actuarial information that filers must submit under ERISA section 4010. PBGC reviews the information that is filed and enters it into an electronic database for more detailed analysis. Computer-assisted analysis of this information helps PBGC to anticipate possible major demands on the pension insurance system and to focus PBGC resources on situations that pose the greatest risks to that system. Because other sources of information are usually

not as current as the ERISA section 4010 information, the ERISA section 4010 filing plays a major role in PBGC's ability to protect participant and premium-payer interests.

In March 2005, PBGC amended part 4010 to require electronic reporting and to make other less significant changes. Reporting is now accomplished through PBGC's secure e-4010 Web-based application.

PPA 2006 Changes

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Public Law 109–280 (PPA 2006), which made numerous changes in the area of pension law, including changes to ERISA section 4010. Before its amendment by PPA 2006, ERISA section 4010(b) required reporting, in general, if: (1) The aggregate unfunded vested benefits of all plans maintained by members of a controlled group exceeded $50 million, disregarding plans with no unfunded vested benefits (the ''$50 Million Gateway Test''); (2) the conditions specified in ERISA section 302(f) and section 412(n) of the Internal Revenue Code (Code) for imposing a lien for missed contributions exceeding $1 million had been met with respect to any plan maintained by any member of the controlled group; or (3) the Internal Revenue Service (IRS) had granted minimum funding waivers in excess of $1 million to any plan maintained by any member of the controlled group, and any portion of the waivers was still outstanding.

Section 505 of PPA 2006 amended ERISA section 4010(b)(1), replacing the $50 Million Gateway Test with a test based on the funding target attainment percentage of each plan in the controlled group. As amended by PPA 2006, ERISA section 4010(b)(1) requires reporting if:

> the funding target attainment percentage (as defined in subsection (d)) at the end of the preceding plan year of a plan maintained by the contributing sponsor or any member of its controlled group is less than 80 percent.[1]

This preamble refers to the new funding target attainment percentage test as the 80% FTAP Gateway Test.

Although PPA 2006 did not alter the substance of the other two gateway tests (found in paragraphs (b)(2) and (b)(3) of ERISA section 4010), it made other changes that affect these provisions. For instance, because PPA 2006 made changes to references in paragraph (b)(2), references in § 4010.4(a) (which describes who must file under part 4010) need to be amended. Similarly, PPA 2006 made changes to the minimum funding waiver provisions, which are referred to in part 4010.

Finally, PPA 2006 added ERISA sections 4010(d)(1) and 4010(e). ERISA section 4010(d)(1) lists three items that must be included in the information filers submit to PBGC.[2] ERISA section 4010(e) requires PBGC to submit to Congress an annual summary report of the information submitted to PBGC pursuant to ERISA section 4010.

On February 20, 2008 (at 73 FR 9243), PBGC published in the **Federal Register** a proposed rule to amend part 4010 of PBGC's regulations to implement the PPA 2006 changes and provide other guidance. PBGC received four public comments on the proposed rule, all from actuarial consulting firms. All of the commenters sought clarification of some of the proposal's provisions and three commenters requested that additional waivers from the section 4010 reporting requirements be granted in the final rule. The comments are discussed below with the topics to which they relate.

Overview of Final Rule

This final rule amends part 4010 of PBGC's regulations to implement the change to ERISA section 4010(b)(1). In particular, this final rule provides guidance on how to determine whether reporting is required based on a plan's funding target attainment percentage. The final rule also makes conforming changes to address the PPA 2006 changes affecting the section 4010 reporting triggers based on the imposition of certain liens or on the granting of certain minimum funding waivers.

In conjunction with these changes, the final rule also: (1) Waives reporting in certain cases for controlled groups with aggregate underfunding of $15 million or less; (2) modifies the standards for determining which plans are exempt from reporting actuarial information; (3) modifies the reporting requirements primarily to implement the PPA 2006 changes; (4) provides guidance on reporting requirements for sponsors of multiple employer plans; and (5) makes other clarifications. The final rule is applicable to information years beginning after 2007.

The final rule is nearly the same as the proposed rule, but there are a few differences. The key changes are that the final rule—

- Clarifies that for purposes of the gateway tests, only plans that are in existence on the last day of the information year and that are sponsored by persons who are members of the contributing sponsor's controlled group on the last day of the information year are counted;
- Clarifies that fair market value of the plan's assets, for purposes of part 4010 excludes contributions receivable (i.e., contributions received by the plan after the end of the plan year);
- Modifies the proposed rule reporting requirements for sponsors of multiple employer plans and provides for an alternative method of compliance for certain contributing sponsors of multiple employer plans; and
- Modifies the plan actuarial reporting requirements to require filers to report certain information regarding liens and outstanding minimum funding waivers.
- Modifies the proposed rule requirements for certain plans to which special funding rules apply.

A detailed discussion of the final rule follows.

Information Year

In the original proposed rule under ERISA section 4010 (60 FR 35308, Jul. 6, 1995), PBGC introduced the concept of ''information year.'' The information year is the fiscal year, except that if two or more members of a controlled group have different fiscal years, the information year is the calendar year (§ 4010.5). In the preamble to that original proposed rule, PBGC explained that ''information year'' serves four purposes:

> First, it will help persons determine which plan years and fiscal years to use to identify Filers. Second, it will help Filers determine whether a pension plan qualifies for a filing exemption. Third, it is used to identify the information to be submitted by a Filer. Fourth, it establishes the due date for submission of required information by a Filer. The regulation does not require a Filer to change its fiscal year or the plan year of any pension plan. Further, the regulation does not require a Filer to report financial information on any accounting period other than an existing fiscal year or to report actuarial information for any period other than the existing plan year of a pension plan. Generally, the Information Year is the fiscal year of the Filer. If all members of a controlled group do not report financial

[1] Filers with pre-PPA 2006 information years are reminded that PBGC regulations provide that if a filer for the immediately preceding information year is not required to file for the current information year, the filer must submit information, in accordance with the instructions on PBGC's Web site, *http://www.pbgc.gov*, demonstrating why a filing is not required for the current information year. This requirement will apply, for example, to a filer that was required to file for the information year ending on December 31, 2007, based on the $50 Million Gateway Test, but that is not required to file for the information year ending on December 31, 2008, based on the new 80% FTAP Gateway Test.

[2] ERISA section 4010(a), which was unaltered by PPA 2006, provides that filers must provide the information specified by PBGC in regulations.

information on the same fiscal year, the Information Year is the calendar year.

''Information year'' has been integral to the process of reporting under ERISA section 4010 and PBGC finds no indication that PPA 2006 alters this. Therefore, under the final rule, reporting will continue to be based on the concept of ''information year.'' The final rule provides guidance for unusual situations, such as where the plan year and the information year differ.

The final rule clarifies how the ERISA section 4010 requirements apply to certain unusual plan year situations, such as when a plan has two plan years that end in the information year or has no plan year that ends in the information year. Under the final rule, the last plan year ending on or before the end of the information year is treated as the plan year that ends within the information year.

The final rule also clarifies that the gateway tests apply only to plans maintained as of the end of the information year and hence exclude plans no longer maintained by the controlled group as of the end of the information year. In addition, the final rule clarifies that when two or more members of a controlled group have different fiscal years, the determination of whether an entity is exempt from the ERISA section 4010 reporting requirements is made on the basis of a calendar year information year.

One commenter requested guidance on applying the information year rules to certain spinoffs, citing as an example the application of the 80% FTAP Gateway Test both to a plan created by a midyear spinoff from a pre-existing plan within the controlled group, and to the pre-existing plan, where the assets and liabilities at the pre-existing plan's valuation date include the assets and liabilities of the spunoff plan. Because section 4010 issues involving midyear spinoffs are infrequent and factually specific, PBGC believes they are better addressed on a case-by-case basis. Filers can obtain guidance on such issues by contacting PBGC's Department of Insurance Supervision and Compliance.

Funding Target Attainment Percentage

As discussed above, ERISA section 4010(b)(1), as amended by PPA 2006, requires reporting if the funding target attainment percentage at the end of the preceding plan year of a plan maintained by the contributing sponsor or any member of its controlled group is less than 80 percent. ERISA section 303(d)(2) and Code section 430(d)(2) provide that the ''funding target attainment percentage'' of a plan for a plan year is the ratio (expressed as a percentage) which—

(A) The value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to

(B) The funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

In accordance with ERISA section 303(g)(1) and Code section 430(g)(1), the value of plan assets and the funding target of a plan for a plan year are determined as of the valuation date of the plan for the plan year. Under ERISA section 303(g)(2) and Code section 430(g)(2), the valuation date for nearly all plans subject to ERISA section 4010 reporting will be the beginning of the plan year.[3] Thus, while ERISA section 4010(b)(1) refers to the funding target attainment percentage at the end of the preceding plan year, in nearly all cases both elements of the funding target attainment percentage must be calculated as of the beginning of the plan year. This creates an ambiguity with regard to the date as of which the funding target attainment percentage is to be calculated for purposes of ERISA section 4010(b)(1).

The final rule resolves this ambiguity by providing that the funding target attainment percentage (for purposes of the 80% FTAP Gateway Test) is determined as of the valuation date for the plan year ending within the information year—generally, the first day of the plan year that ends within the information year. Because plans will need to determine the funding target attainment percentage as of the valuation date for other purposes, measuring the funding target attainment percentage as of the valuation date for the 80% FTAP Gateway Test will be less burdensome on prospective filers than requiring a separate determination as of the end of the preceding plan year. In addition, using this measurement date will give controlled groups ample time to determine whether reporting is required pursuant to the 80% FTAP Gateway Test and to prepare the ERISA section 4010 filing (if required) by the due date.

ERISA section 303(d)(2) and Code section 430(d)(2) provide that in determining the funding target attainment percentage of a plan for a plan year, plan assets are reduced by the amount of the prefunding balance and the funding standard carryover balance. Plan sponsors are permitted under ERISA section 303(f) and Code section 430(f) to make certain elections to use, increase, or reduce a prefunding balance or a funding standard carryover balance effective at the beginning of the plan year. Under PPA 2006, the Department of the Treasury (Treasury) is to provide guidance on the timing and manner of these elections. On August 31, 2007 (at 72 FR 50544), Treasury published a proposed rule on Benefit Restrictions for Underfunded Pension Plans that would provide such guidance. Treasury's proposed regulation would require that an election that affects the funding target attainment percentage for a plan year be made well before the due date for the ERISA section 4010 filing. If Treasury's final regulation retains this rule, filers will have no difficulty reflecting these elections in determinations of whether reporting is required under ERISA section 4010. However, if the final Treasury regulation allows a plan sponsor to make such an election after the due date for the ERISA section 4010 filing, PBGC would expect controlled groups to anticipate any such election when determining the funding target attainment percentage, regardless of when the election is made.

Certain Plans To Which Special Funding Rules Apply

There are three categories of plans to which special funding rules apply:

- Delayed effective date plans—Sections 104, 105, and 106 of PPA 2006 delay the effective date of the funding amendments for certain plans described in those sections, which in general deal with plans of rural cooperatives, plans affected by settlement agreements with PBGC, and plans of government contractors.
- Frozen airline plans—Section 402(b) of PPA 2006 provides alternate funding rules for frozen plans sponsored by commercial passenger airlines and airline caterers.
- Non-frozen airline plans—Section 402(a)(2) of PPA 2006, as amended by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28, provides funding relief for non frozen plans

[3] ERISA section 303(g)(2) and Code section 430(g)(3) provide that the valuation date of a plan for any plan year is the first day of the plan year, except that certain small plans may designate any date in the plan year to be the valuation date for the plan year and succeeding plan years. For this purpose, small plans are plans with 100 or fewer participants on each day of the plan year, when aggregated with all plans in the controlled group. Because PBGC will exclude controlled groups with under $15 million in underfunding, plans that would be considered small plans for purposes of determining valuation dates would rarely be subject to reporting under part 4010. Therefore, the valuation date for nearly all plans subject to ERISA section 4010 reporting would be the beginning of the plan year.

sponsored by commercial passenger airlines and airline caterers.

The proposed regulation provided that sections 104, 105, 106, and 402 of PPA 2006 were generally to be disregarded for purposes of 4010 reporting. For example, under the proposed rule, the funding target attainment percentage underlying the 80% FTAP gateway test was to be determined as if these plans were not subject to alternate funding rules. The final regulation retains the proposed regulation requirement with respect to frozen airline plans and delayed effective date plans.

Plans subject to section 402(a)(2) of PPA 2006 (certain non-frozen plans of commercial passenger airlines and airline caterers) use a discount rate of 8.25 percent to determine their funding target for purposes of ERISA section 303 and IRC section 430 for ten years. Under the proposed regulation, this provision would not have affected the FTAP calculation for purposes of the 80% FTAP Gateway Test or reporting the FTAP if a filing is required. The final regulation does not address this issue. PBGC will provide additional guidance as appropriate.

With respect to delayed effective plans, the final regulation, like the proposed regulation, does not address the treatment of any credit balance in determining the FTAP for plans subject to those sections, in particular whether the credit balance is treated as if it were a carryover balance and thus subtracted from assets when determining the FTAP. PBGC is examining this issue as well and will provide additional guidance as appropriate.

The preamble to the proposed rule stated that where provisions of PPA sections 104, 105, 106 and 402 affected a required actuarial valuation reporting item, PBGC would expect that filers could, in consultation with PBGC, provide appropriately modified information instead of the information listed in § 4010.8(a)(11). PBGC is providing those modifications in the final regulation. In the case of a plan year for which the application of the new funding rules is deferred under PPA 2006 sections 104, 105, and 106, the requirements in connection with the actuarial valuation report are those that were in effect as of December 31, 2007 (since those requirements are tied to the same pre-PPA funding rules that such plans must use to determine their funding requirements). With respect to the frozen airline plans, which are subject to completely different funding rules, the final regulation provides that the requirements in connection with the actuarial valuation report are included with the 4010 filing instructions on PBGC's Web site, *www.pbgc.gov*. Because the funding relief for non-frozen airline plans follows the basic framework of the PPA 2006 funding rules and there is thus no need for special guidance, § 4010.8(a)(11) applies.

Minimum Funding Waivers

ERISA section 4010(b) requires section 4010 reporting if the IRS has granted minimum funding waivers in excess of $1 million to any plan maintained by any member of the controlled group and as of the end of the plan year ending within the information year there is an outstanding balance on such waivers.

The minimum funding waiver will continue to be included for all five years of the amortization period unless the waiver amortization bases are reduced to zero pursuant to ERISA section 303(e)(5) and Code section 430(e)(5). The final regulation provides that funding waivers granted under ERISA section 302 and Code section 412 for a plan year before ERISA section 303 or Code section 430 became effective count for this purpose. This treatment of pre-PPA 2006 funding waivers is consistent with Treasury's proposed rule on Determination of Minimum Required Pension Contributions, 73 FR 20203 (Apr. 15, 2008) (see § 1.430(a)–1(h)(3)). However, regardless of what the final Treasury regulation provides, pre-PPA 2006 funding waivers will count for purposes of determining whether an ERISA section 4010 filing is required.

To simplify the regulation, the final rule eliminates the provision in the current regulation that provides that a minimum funding waiver is not outstanding under certain circumstances where an agreement requires the maintenance of a specific credit balance. PBGC found that this occurred infrequently. In those cases where it does occur, PBGC will consider waiving the ERISA section 4010 reporting requirement on a case-by-case basis under § 4010.11.

Waiver for Controlled Groups With Aggregate Plan Underfunding not Exceeding $15 Million

The technical explanation of PPA 2006 prepared by the staff of the Joint Committee on Taxation [4] states: ''It is intended that the PBGC may waive the [section 4010 filing] requirement in appropriate circumstances, such as in the case of small plans.'' Similarly, PBGC seeks to balance the benefit it derives from annual reporting of financial and actuarial information with the burden reporting imposes on filers.

Based on its experience, PBGC has determined that controlled groups with aggregate plan underfunding of $15 million or less present a level of risk and exposure to PBGC that is sufficiently low to warrant the waiver of reporting triggered solely by the 80% FTAP Gateway Test. Thus, under the proposed rule, persons that would be required to file solely because one or more plans are less than 80 percent funded would qualify for a waiver of reporting requirements if the aggregate ''4010 funding shortfall'' is less than $15 million (disregarding plans with no 4010 funding shortfall). (This waiver is referred to in this preamble as the ''$15 million waiver.'') The final rule defines a plan's 4010 funding shortfall as the funding shortfall under ERISA section 303(c)(4) and Code section 430(c)(4), but determined without regard to the credit balance reduction under ERISA section 303(f)(4)(B) and Code section 430(f)(4)(B). In developing this waiver, PBGC recognized that PPA 2006 requires PBGC to submit to Congress an annual summary report of ERISA section 4010 information submitted to PBGC and that any waiver would therefore also affect the information provided to Congress.

Three commenters expressed concerns about situations in which reporting would not be waived when the aggregate 4010 funding shortfall exceeds $15 million and the only plans that are less than 80 percent funded are small plans. For example, a small plan that is less than 80 percent funded could trigger a reporting requirement for an entire controlled group even though the other, larger plans are funded well above the 80 percent level. These commenters offered a variety of ways the proposed $15 million waiver could be modified to waive reporting for filers in such situations, including: (1) Excluding plans that are over 90 percent (or 95 percent) funded when determining the aggregate 4010 funding shortfall; (2) increasing the $15 million threshold, and (3) waiving reporting if the 80% FTAP Gateway Test is failed only by one or more plans that meet PBGC's definition of an exempt plan under § 4010.8(c) (generally a plan with fewer than 500 participants) for purposes of reporting actuarial information, regardless of the aggregate 4010 funding shortfall amount. The fourth commenter did not express concern about situations in which reporting would not be waived when

[4] Joint Committee on Taxation, Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006,'' as passed by the House on July 26, 2006, and as considered by the Senate on August 3, 2006 (JCX–38–06), August 3, 2006.

the aggregate 4010 funding shortfall exceeds $15 million and the only plans that are less than 80 percent funded are small plans, but did request that PBGC provide examples to clarify the application of the $15 million waiver to controlled groups with both small and large plans. PBGC believes that this application of the $15 million waiver is clear and that further clarification is unnecessary.

The final rule does not change the proposed $15 million waiver. PBGC is more concerned about the dollar amount of underfunding than the funding percentage. In the case of a large plan, a funding percentage of 90 or 95 percent can represent hundreds of millions of dollars of underfunding. PBGC continues to believe that the $15 million waiver reasonably balances the need for information and the burden of reporting, and that consistent with the technical explanation of PPA 2006 by the staff of the Joint Committee on Taxation, the waiver will generally exempt controlled groups maintaining only small plans from section 4010 reporting. Moreover, PBGC believes that the exemption from reporting actuarial information in § 4010.8(c) will minimize the potential reporting burdens for sponsors of small plans without impairing PBGC's ability to collect information on controlled groups with plans representing a large amount of underfunding and thereby representing significant financial exposure for PBGC.

PBGC believes that, in most of the situations about which the commenters expressed concern, a contributing sponsor could make additional, relatively nominal, contributions to the small plan to increase its funding percentage to 80 percent or merge the small plan into one of the better funded larger plans to avoid the reporting requirement. One commenter expressed concern that if a small plan with a funding percentage below 80 percent becomes part of a controlled group during the information year as a result of a business transaction, there might not be enough time to fund the plan up or merge it with a better funded plan so as to avoid the reporting requirement. This commenter suggested that reporting be waived if the only plan under the 80 percent funding threshold (1) meets PBGC's definition of an exempt plan for purposes of reporting actuarial information and (2) became a member of a controlled group as a result of a recent acquisition. PBGC is not adopting the commenter's suggestion. PBGC believes that situations in which a section 4010 filing is triggered solely by a small plan's becoming a member of a controlled group during the information year will occur infrequently, and further can sometimes be avoided in the normal course of planning corporate transactions. However, filers in such situations may contact PBGC's Department of Insurance Supervision and Compliance to discuss a waiver or extension under PBGC's discretionary authority (see § 4010.11).

As under the proposed rule, the $15 million waiver does not apply if reporting is required for any reason other than having a plan with a funding target attainment percentage below 80 percent.

One commenter requested guidance as to whether an employer may apply the separate lines of business rules under the Code for purposes of determining whether this employer must file under section 4010. The separate lines of business rules under Code section 414(r), allow an employer to be treated as operating separate lines of business for purposes of meeting the minimum coverage requirements under Code section 410(b), if certain requirements are met. There is no nexus between the filing requirements under ERISA section 4010 and the nondiscrimination requirements under Code section 410(b). Accordingly, the separate lines of business rules under Code section 414 (r) have no bearing on the filing requirements of ERISA section 4010.

Actuarial Information Reporting Requirements

In addition to the requirements described in ERISA section 4010(a), which provides that filers must submit certain financial and actuarial information as prescribed by PBGC in regulations, ERISA section 4010(d), as amended by PPA 2006, specifies three items of actuarial information that are required to be filed with PBGC. That section provides that information filed under ERISA section 4010 must include:

(A) The amount of benefit liabilities under the plan determined using the assumptions used by the corporation [PBGC] in determining liabilities;

(B) The funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years; and

(C) The funding target attainment percentage of the plan.

The final rule provides detailed guidance on how to determine benefit liabilities for ongoing plans using the assumptions used by PBGC in determining liabilities. This determination is similar to that set forth in the current regulation under § 4010.8(d)(2). As with the current regulation, the final rule requires filers to use the assumptions prescribed by §§ 4044.51 through 4044.57 of PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). However, as explained below, in two respects the final regulation modifies or expands previous guidance (including informal guidance) given by PBGC or PBGC staff relating to certain assumptions not specified in §§ 4044.51 through 4044.57.

First, the final regulation provides that solely for purposes of determining the earliest retirement age (ERA) at valuation date and the unreduced retirement age (URA) to be used when determining expected retirement age (XRA), an active participant is to be treated as continuing in service after the end of the plan year. This provision modifies informal guidance provided by PBGC staff that future expected service should be disregarded when determining XRAs for ERISA section 4010 benefit liability calculations.[5] This modification eliminates an inconsistency between how filers compute benefit liabilities for ERISA section 4010 purposes and how PBGC calculates benefit liabilities as part of its plan monitoring functions. The main impact of this change on ERISA section 4010 filers is that they will need to make a one-time modification of their computer programs. The final rule includes examples demonstrating how XRA is calculated and applied in determining benefit liabilities.

Second, the final regulation provides that a filer may reflect pre-retirement decrements[6] other than mortality (such as turnover and disability) when determining benefit liabilities, subject to the following two requirements:

- If any pre-retirement decrements other than mortality are used to calculate benefit liabilities for a plan, all pre-retirement decrements used for minimum funding purposes for that plan must be used. For example, if a plan uses both termination and disability decrements to determine the minimum required contribution, the benefit liability must be determined either including or excluding both the termination and the disability decrements.

[5] Q&A 17 in the 2001 Blue Book and Q&A 19 in the 2002 Blue Book, available on PBGC's Web site, *http://www.pbgc.gov*. Blue Books are summaries of the questions and answers discussed at meetings between PBGC staff and representatives of the Enrolled Actuaries Program Committee in preparation for the annual Enrolled Actuaries Meetings. The summaries reflect the views of individual staff members and do not represent the official position of PBGC.

[6] ''Pre-retirement decrement'' is an actuarial term used to describe possible reasons an active participant might cease to be an active participant before retirement (e.g., termination, disability or death).

• Assumptions about the rate of incidence related to a pre-retirement decrement must be the same as those used to determine the funding target for minimum funding purposes.

This provision expands informal guidance provided by PBGC staff[7] and is consistent with common actuarial practice. Although the rules about pre-retirement decrements have not changed from the proposed regulation, the language describing these rules has been modified to address questions raised by a commenter. For example, the final regulation states the first requirement described above explicitly. In addition, language has been added to explain that different XRAs may apply for different pre-retirement decrements[8] and how the pre-retirement decrement rules apply in situations where there is no clear distinction between termination and retirement decrements, as may be the case with certain hybrid plans.

The final regulation also clarifies that the assumptions used to determine the minimum required contribution for the plan year ending within the filer's information year, other than assumptions for decrements, interest, and expenses, must be used when determining benefit liabilities. The types of assumptions in this category include form of payment, cost-of-living increases, and marital status.

In addition to providing detailed guidance on how to determine benefit liabilities,[9] the final rule reflects new requirements (under PPA 2006) to provide the funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years, and the funding target attainment percentage of the plan. The final rule requires filers to report whether the plan, at any time during the plan year, was subject to any of the limitations described in ERISA section 206(g) (e.g., funding-based limits on benefits and benefit accruals) and, if so, which limitations applied, when such limitations applied, and when such limitations were lifted (if applicable).

The final rule includes two new plan actuarial information reporting requirements that were not included in the proposed rule. Filers must report—

• Whether a required installment or other required payment to the plan was not made and, as a result, a lien described in ERISA section 303(k) and Code section 430(k) was triggered during the information year, and the required installment or other required payment was not made within ten days after its due date; and

• Whether IRS granted one or more minimum funding waivers totaling in excess of $1 million, if any portion thereof is outstanding.

This information, which is readily available, will make it easier for PBGC to quickly determine and track the conditions that trigger ERISA section 4010 filings and easily identify situations involving liens or large waivers.

As with the current regulation, the final rule requires submission of the actuarial valuation report for the plan year ending within the filer's information year and specifies what information must be included in or attached to the report. The required items of information have been modified to better suit the new PPA 2006 funding structure. All of the required actuarial information is information that PBGC expects most actuaries would include in post-PPA 2006 valuation reports (e.g., target normal cost, information on shortfall amortization bases, information on funding assumptions, an age/service scatter). However, because the funding rules have changed so dramatically as a result of PPA 2006, and because Treasury regulations implementing the new funding rules are not yet final, the regulation's list of required items may exclude some relevant actuarial information. To allow PBGC to expand the list of required items as it gains more experience with the new funding requirements under PPA 2006, the final rule provides that the online instructions to PBGC's secure e-4010 Web-based application may require that additional items be included in (or attached to) the valuation report. PBGC expects that any additional items would be items typically required to be reported on the Form 5500 Schedule SB (defined benefit plan actuarial information).

Because some of the actuarial reporting requirements are geared to the new funding rules under PPA 2006, which generally are applicable to plan years beginning after 2007, the final regulation includes special rules for plan years beginning before 2008 in § 4010.8(h).

Exempt Plans

Section 4010.8(c) of PBGC's current regulation provides that actuarial information need not be reported for plans with fewer than 500 participants, as of the end of the plan year ending within the filer's information year. (It also provides an exemption for certain overfunded plans.) One commenter noted that certain actuarial information is more easily obtained on a plan's valuation date, than as of the end of the plan year. In response to that comment, and based on further consideration by PBGC, the final rule allows participants to be counted on either date for this purpose.

Through means other than reporting under part 4010, such as through PBGC's early warning program (see Technical Update 00–3[10]) and reportable events notices, PBGC has discovered that a number of plans with fewer than 500 participants have significant underfunding and thereby represent significant financial exposure for PBGC. In such cases, PBGC needs actuarial information on these plans to properly evaluate its risk and exposure for the entire controlled group.

Therefore, PBGC is modifying the exemption from reporting actuarial information. Under the final rule, actuarial information is not required if (1) the plan has fewer than 500 participants as of the end of the plan year ending within the filer's information year or as of the valuation date for that plan year, and (2) the plan's 4010 funding shortfall does not exceed $15 million. The 4010 funding shortfall is described above in the discussion of the $15 million waiver.

The final rule retains the exemption in the current regulation from providing actuarial information for plans that have no unfunded benefits. For this purpose, unfunded benefits are determined in the same manner as for purposes of ERISA section 4010(d)(1), which requires the reporting of benefit liabilities using the assumptions used by PBGC. The only difference is that the filer will be allowed to use the retirement age assumptions used by the plan for that plan year for purposes of section 303 of ERISA (without regard to the at-risk assumptions of section 303(i) of ERISA) instead of the retirement age assumptions in § 4044.8(d)(2).

As under the current regulation, these exemptions from reporting actuarial information do not apply if the plan has a funding waiver or has been more than 10 days late with minimum funding contributions.

[7] Q&A 25 in the 2000 Blue Book.

[8] When valuing pre-retirement decrements, the XRA represents the assumed age at which benefits will commence.

[9] Although the final rule provides detailed guidance about how benefit liabilities are calculated for section 4010 reporting purposes, there are a few issues that are not addressed (e.g., how to value temporary supplements or lump sums). PBGC will provide additional guidance as appropriate upon request.

[10] Technical Updates are available on PBGC's Web site, *http://www.pbgc.gov.*

Special Rules for Multiple Employer Plans

Although multiple employer plans are uncommon and only a handful have been subject to ERISA section 4010 reporting (a situation that is not expected to change under the new rules), PBGC has received a number of inquiries over the years on how the section 4010 requirements apply to contributing sponsors of multiple employer plans. In response to those inquiries, the proposed rule provided for reduced reporting for certain multiple employer plans and made several clarifications. The proposed rule generally provided that only information on employers that were among the 10 largest employers in terms of participants (for hourly plans) or contributions (for salaried plans) would need to be reported and that filers could provide actuarial information on multiple employer plans by reference if that information (for the same plan year) had been provided by another filer.

A commenter suggested that PBGC waive reporting for a contributing sponsor of a multiple employer plan if the sponsor's portion of the multiple employer plan liability is a *de minimis* amount and all other waiver conditions are met. In response to that comment, and based on further consideration by PBGC, the final rule provisions on multiple employer plans differ from those in the proposed rule.

The final rule provides an alternative method of compliance for certain sponsors of multiple employer plans. An eligible contributing sponsor (defined as a contributing sponsor of a multiple employer plan that would not be subject to reporting if the plan were disregarded in applying the gateway tests) satisfies the section 4010 requirements if any contributing sponsor of the plan provides a timely filing for an information year that coincides with or overlaps with the eligible contributing sponsor's information year. PBGC may request some or all of the information that would otherwise be required from the eligible contributing sponsor; PBGC will make such a request no earlier than the date the information would otherwise have been due. The eligible contributing sponsor must provide the requested information within 45 days after the date of the request.

For most multiple employer plans, the alternative method of compliance will have the effect of a full waiver of reporting for all but one of the contributing sponsors. The alternative method of compliance is simpler than the proposed rule provisions for multiple employer plans and, unlike those provisions, will not require contributing sponsors to share information, much of which is confidential, with other controlled groups.

The final rule, like the proposed rule, clarifies that the entire 4010 funding shortfall of a multiple employer plan is counted when determining whether the $15 million waiver applies to any employer that is a contributing sponsor of the multiple employer plan. However, a sponsor of a multiple employer plan that does not qualify for the $15 million waiver may have its reporting requirement effectively waived under the alternative method of compliance discussed above.

The final rule requires any filer that is a contributing sponsor of a multiple employer plan to provide a list of all contributing sponsors to that plan. The final rule clarifies that with the exception of that list, a filer is not required to provide additional identifying or financial information for another contributing sponsor of the multiple employer plan if that other contributing sponsor is not a member of the filer's controlled group.

Other Changes

The final rule includes an automatic one-day extension of the ERISA section 4010 reporting deadline for controlled groups whose 105-day reporting period includes February 29. This provision codifies a ''leap year extension'' of the ERISA section 4010 reporting deadline exemplified by Technical Updates 04–1 and 08–1.

The final rule also incorporates the provisions of Technical Update 96–3 that are still relevant in light of PPA 2006. Thus, Technical Update 96–3 is superseded with respect to information years beginning after 2007.

The final rule makes other clarifying, conforming, or editorial changes. Except as specifically discussed in this preamble, no substantive change is intended or should be inferred.

Transition Rules

Under the final rule, the funding target attainment percentage (used for the 80% FTAP Gateway Test and reporting under § 4010.8) and the 4010 funding shortfall (used for the $15 million waiver and the definition of exempt plans) are determined as of the valuation date for the plan year ending within the information year. These measurements are tied to provisions of PPA 2006 that apply only to plan years beginning after 2007. Thus, for plan years beginning in 2007 but ending in information years that begin after 2007, these terms are not defined by statute. To address this situation, the proposed rule required that employers use surrogates for determining the funding target attainment percentage and the 4010 funding shortfall for plan years beginning before 2008. The surrogates provided under the proposed rule are as follows:

- The funding target attainment percentage surrogate is the ratio (expressed as a percentage) of the actuarial value of assets (reduced by any credit balance) to the current liability (determined using the highest permissible interest rate) for the 2007 plan year.[11] (A special rule applies in situations where a carryover balance is reduced in accordance with ERISA section 303(f) and Code section 430(f) as of the beginning of the 2008 plan year.)
- The 4010 funding shortfall surrogate is the excess, if any, of the plan's current liability (determined using the highest permissible interest rate) over the actuarial value of assets for the 2007 plan year.

One commenter suggested that in determining the funding target attainment percentage surrogate, that under certain circumstances, the actuarial value of assets not be reduced by the credit balance. The commenter requested that for plan years beginning in 2007, the funding target attainment percentage (FTAP) transition rule provide that assets not be reduced by the credit balance if the ratio of unreduced assets to liability is at least 90 percent. This would make the 4010 FTAP transition rule consistent with the transition rule in Treasury's proposed regulations under Code section 436.[12] IRC section 436(j)(3) provides a permanent exemption to the rule requiring assets be reduced by carryover and prefunding balances. The proposed Treasury regulations under Code section 436 incorporate this statutory exemption in its transition rule for plan years beginning in 2007. ERISA section 4010, however, does not provide any exception to the rule requiring that assets be reduced by carryover and prefunding balances. Accordingly, the final rule does not adopt the commenter's suggestion and PBGC's final rule retains the surrogates provided under the proposed rule:

[11] This surrogate is similar to a surrogate in Treasury's proposed rule on Benefit Restrictions for Underfunded Pension Plans, 72 FR 50544 (Aug. 31, 2007) and in Treasury's proposed rule on Determination of Minimum Required Pension Contributions, 73 FR 20203 (Apr. 15, 2008).

[12] Treasury's proposed rule on Benefit Restrictions for Underfunded Pension Plans, 72 FR 50544 (Aug. 31, 2007).

Although the surrogates described above have not changed from those in the proposed rule, PBGC has modified the regulatory language to describe the methodology explicitly rather than by reference to Treasury rules.

Applicability

Section 505(e) of PPA 2006 provides that the amendments made by section 505 apply with respect to ''years beginning after 2007.'' This applicability provision of PPA 2006 uses the term ''year'' rather than ''plan year,'' although the term ''plan year'' appears in other applicability provisions in PPA 2006. PBGC interprets this section of PPA 2006 to mean that the amendments apply to any information year beginning after 2007. Therefore, these rules apply to information years beginning after 2007.

Technical Update 07–2 provides guidance regarding the application of these rules for information years beginning in 2007. In the rare case of a short information year beginning in 2008 (for example, an information year beginning on January 1, 2008, and ending on March 31, 2008), the filer should contact PBGC to obtain a reporting extension.

Compliance With Rulemaking Guidelines

Executive Order 12866

PBGC has determined, in consultation with the Office of Management and Budget, that this final rule is a ''significant regulatory action'' under Executive Order 12866, as amended. The Office of Management and Budget has therefore reviewed the final rule under Executive Order 12866.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this final rule will not have a significant economic impact on a substantial number of small entities. This final rule implements statutory changes made by Congress. It provides guidance on how to determine whether reporting under ERISA section 4010 is required and what to report. Furthermore, PBGC is providing an exemption for controlled groups that have total plan underfunding of $15 million or less. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

Paperwork Reduction Act

The information requirements relating to reporting under ERISA section 4010 have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212–0049, expires March 31, 2012).

List of Subjects

29 CFR Part 4001

Pensions.

29 CFR Part 4010

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Pension insurance, Pensions.

■ For the reasons given above, PBGC is amending 29 CFR parts 4001, 4010, and 4044 as follows.

PART 4001—TERMINOLOGY

■ 1. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

■ 2. In § 4001.2, three new definitions are added in alphabetical order, to read as follows:

§ 4001.2 Definitions.

* * * * *

Earliest retirement age at valuation date means the later of: a participant's age on his or her birthday nearest to the valuation date, or the participant's attained age as of his or her Earliest PBGC Retirement Date (as determined under § 4022.10 of this chapter).

* * * * *

Expected retirement age (XRA) means the age, determined in accordance with §§ 4044.55 through 4044.57 of this chapter, at which a participant is expected to begin receiving benefits when the participant has not elected, before the allocation date, an annuity starting date. This is the age to which a participant's benefit payment is assumed to be deferred for valuation purposes. An XRA is equal to or greater than the participant's earliest retirement age at valuation date but less than his or her normal retirement age.

* * * * *

Unreduced retirement age (URA) means the earlier of the normal retirement age specified in the plan or the age at which an unreduced benefit is first payable.

* * * * *

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

■ 3. The authority citation for part 4010 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

§ 4010.1 [Amended]

■ 4. Section 4010.1 is amended by removing the words ''the PBGC under section 4010 of ERISA'' and adding in their place the words ''PBGC under ERISA section 4010''; and by removing the last sentence of the section.

■ 5. In § 4010.2:

■ a. In the introductory text, the words ''controlled group, ERISA, fair market value'' are removed and the words ''controlled group, earliest retirement age at valuation date, ERISA, expected retirement age (XRA), fair market value'' are added in their place, and the words ''and plan year'' are removed and the words ''plan year, and unreduced retirement age (URA)'' are added in their place.

■ b. The definitions of ''exempt entity,'' ''exempt plan,'' ''filer,'' and ''information year'' are amended by removing the words ''of this part'' where they appear once in each definition.

■ c. The definition of ''exempt entity'' is amended by removing the word ''who'' and adding in its place the word ''that''; by removing the word ''whom'' and adding in its place the word ''which''; and by removing the figures ''4010.4(d)'' and adding in their place the figures ''4010.4(c)''.

■ d. The definition of ''information year'' is amended by removing the words ''the year'' and adding in their place the words ''the information year''.

■ e. Four new definitions are added in alphabetical order, to read as follows:

§ 4010.2 Definitions.

* * * * *

At-risk status means, with respect to a plan for a plan year, at-risk status as defined in ERISA section 303(i)(4) and Code section 430(i)(4).

* * * * *

Funding target means, with respect to a plan for a plan year, the funding target as provided under ERISA section 303(d)(1) and Code section 430(d)(1) determined as of the valuation date for the plan year.

Funding target attainment percentage means, with respect to a plan for a plan year, the funding target attainment percentage as determined under § 4010.4(b) for the plan year.

* * * * *

Valuation date means, with respect to a plan for a plan year, the valuation date as determined under ERISA section 303(g)(2) and Code section 430(g)(2).

■ 6. In § 4010.3, paragraph (a) is revised to read as follows:

§ 4010.3 Filing requirement.

(a) *General.* Except as provided in § 4010.8(c) (relating to exempt plans)

and except where one or more waivers under § 4010.11 apply, each filer must submit to PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of the filer's controlled group. Under § 4000.3(b) of this chapter, except as otherwise provided by PBGC, the information must be submitted electronically in accordance with the instructions on PBGC's Web site, *http://www.pbgc.gov.*

* * * * *

■ 7. Section 4010.4 is amended to read as follows:

§ 4010.4 Filers.

(a) *General.* A contributing sponsor of a plan and each member of the contributing sponsor's controlled group on the last day of the information year is a filer with respect to an information year (unless exempted under paragraph (c) of this section) if—

(1) For any plan (including an exempt plan) maintained by the members of the contributing sponsor's controlled group on the last day of the information year, the funding target attainment percentage for the plan year ending within the information year is less than 80 percent;

(2) Any member of the controlled group fails to make a required installment or other required payment to a plan and, as a result, the conditions for imposition of a lien described in ERISA section 303(k) and Code section 430(k) have been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) Any plan maintained by a member of the controlled group has been granted one or more minimum funding waivers under ERISA section 302(c) and Code section 412(c) totaling in excess of $1 million, and as of the end of the plan year ending within the information year, any portion thereof is still outstanding.

(b) *Funding target attainment percentage*—(1) *General.* Except as provided in paragraph (b)(3) of this section, the funding target attainment percentage for a plan for a plan year equals the funding target attainment percentage as provided under ERISA section 303(d)(2) and Code section 430(d)(2) determined as of the valuation date for the plan year.

(2) *Prefunding balance and funding standard carryover balance elections.* For purposes of determining the funding target attainment percentage for a plan for the plan year, prefunding balances and funding standard carryover balances must reflect any elections (or deemed elections) under ERISA section 303(f) and Code section 430(f) that affect the value of such balances as of the beginning of the plan year, regardless of when the elections (or deemed elections) are made.

(3) *Transition rule for plan years beginning before 2008.* For plan years beginning before 2008, the funding target attainment percentage for a plan for the plan year is determined as the fraction (expressed as a percentage), the numerator of which is the net transition plan assets determined under paragraph (b)(4) of this section, and the denominator of which is the plan's current liability determined using the highest rate of interest allowable under Code section 412(l)(7) as of the valuation date for the 2007 plan year.

(4) *Net transition plan assets*—(i) *In general.* Net transition plan assets for purposes of paragraph (b)(3) of this section are equal to plan assets as determined under paragraph (b)(4)(ii) of this section reduced by any credit balance in accordance with paragraph (b)(4)(iii) of this section.

(ii) *Determination of assets.* Plan assets under this paragraph (b)(4)(ii) are determined under Code Section 412(c)(2) as in effect for the plan year beginning in 2007, except that the value of plan assets before subtracting the plan's funding standard account credit balance described in paragraph (b)(4)(iii) of this section can neither be less than 90 percent of the fair market value of plan assets nor greater than 110 percent of the fair market value of plan assets on the valuation date for that plan year.

(iii) *Subtraction of credit balance.* If a plan has a funding standard account credit balance as of the valuation date for the plan year beginning in 2007, that balance is subtracted from the asset value described in paragraph (b)(4)(ii) of this section as of that valuation date.

(iv) *Effect of funding standard carryover balance reduction for 2008 plan year.* Notwithstanding paragraph (b)(4)(iii) of this section, if, for the plan year beginning in 2008, the employer has made an election to reduce some or all of the funding standard carryover balance as of the first day of that year in accordance with ERISA section 303(f) and Code section 430(f), then the present value (determined as of the valuation date for the plan year beginning in 2007 using the valuation interest rate for that plan year) of the amount so reduced is not treated as part of the funding standard account credit balance when that balance is subtracted from the asset value under paragraph (b)(4)(iii) of this section.

(c) *Exempt entities.* A person is an exempt entity for an information year if the conditions of paragraphs (c)(1) through (4) of this section are satisfied.

(1) The person is not a contributing sponsor of a plan (other than an exempt plan) as of the last day of the information year.

(2) The person has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the revenue of the person's controlled group for the fiscal year(s) ending within the information year.

(3) The person has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's annual operating income for the fiscal year(s) ending within the information year, or

(ii) $5 million.

(4) The person has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) $5 million.

(d) *Transition rule; failure to make required contribution; minimum funding waiver.* For plan years beginning before 2008, where the reference is made in paragraph (a)(2) of this section to ''ERISA section 303(k) and Code section 430(k)'' a reference to ''ERISA section 302(f)(1)(A) and (B) and Code section 412(n)(1)(A) and (B)'' shall apply in its place, and where the reference is made in paragraph (a)(3) of this section to ''ERISA section 302(c) and Code section 412(c)'' a reference to ''ERISA section 303 and Code section 412(d)'' shall apply in its place as those provisions are in effect for plan years beginning before 2008.

(e) *Minimum funding waiver*—(1) *General.* For purposes of § 4010.4(a)(3), a portion of the minimum funding waiver for a plan is considered outstanding unless prior to the plan year ending within the information year the statutory amortization period has ended, or, as of the valuation date for the plan year ending within the information year, the amortization bases are deemed to be reduced to zero pursuant to ERISA section 303(e)(5) and Code section 430(e)(5).

(2) *Example.* Company A sponsors Plan X, which received a minimum funding waiver of $700,000 for the plan year ending December 31, 2004, and another waiver of $500,000 for the plan year ending December 31, 2008. Assume

that the amortization bases of the waivers are not reduced to zero pursuant to ERISA section 303(e)(5) and Code section 430(e)(5), and the waivers are therefore outstanding for the full five-year statutory amortization period. Also, assume Company A has a calendar information year. For the 2009 information year, Company A must report under ERISA section 4010. However, for the 2010 information year, Company A, assuming no other obligation to report under ERISA section 4010, is not required to report.

(f) *Certain plans to which special funding rules apply.* The provisions of sections 104, 105, 106, and 402(b) of the Pension Protection Act of 2006, Public Law 109–280 (dealing with plans of certain rural cooperatives, certain plans affected by settlement agreements with PBGC, certain plans of government contractors, and certain frozen plans of commercial passenger airlines and airline caterers), are disregarded for purposes of this part, except that these provisions are taken into account in determining the information to be submitted under § 4010.8(i) of this part (in connection with the actuarial valuation report).

■ 8. In § 4010.5:

■ a. Paragraph (b) is amended by removing the words ''shall be'' and adding in their place the word ''is''.

■ b. The heading of paragraph (c)(1) is removed and paragraph (c)(1) is redesignated as paragraph (c) with the heading *''Controlled group members with different fiscal years.''*.

■ c. Redesignated paragraph (c) is amended by removing the words ''shall be'' and adding in their place the word ''is'' and by adding to the end of the paragraph the following new sentence: ''(If any two members of the controlled group report financial information on the basis of different fiscal years, the determination of whether an entity is an exempt entity is based on a calendar year information year for purposes of this paragraph (c) and § 4010.4(c).)''.

■ d. Paragraph (c)(2) is removed.

■ e. New paragraphs (d) and (e) are added to read as follows:

§ 4010.5 Information year.

* * * * *

(d) *Examples.* The following examples illustrate the rule in paragraph (c) of this section.

(1) *Example 1.* Companies A and B are the only members of the same controlled group, and both are contributing sponsors to nonexempt plans. Company A has a July 1 fiscal year, and Company B has an October 1 fiscal year. The information year is the calendar year. Company A's financial information with respect to its fiscal year ending June 30, 2009, and Company B's financial information with respect to its fiscal year ending September 30, 2009, must be submitted to the PBGC following the end of the 2009 calendar year information year.

(2) *Example 2.* The facts are the same as in Example 1 except that Company B is not a contributing sponsor of a plan and would be an exempt entity using the calendar year as the information year. Because Company B is an exempt entity based on a calendar year information year, it is excluded when determining the information year. Thus, the information year is the July 1 fiscal year. Note that Company B is an exempt entity even if it would not be exempt based on the July information year.

(3) *Example 3.* The facts are the same as in Example 2 except that Company B would not be an exempt entity using the calendar year information year but would be exempt based on an information year that is the July 1 fiscal year. Since Company B is not exempt based on a calendar year information year, it may not be excluded when determining the information year. Therefore, the information year is the calendar year and Company B is not an exempt entity.

(e) *Special rules for certain plan years.* If a plan maintained by the members of the contributing sponsor's controlled group has two plan years that end in the information year or has no plan year that ends in the information year, the last plan year ending on or immediately before the end of information year is deemed to be the plan year ending within the information year.

■ 9. In § 4010.6:

■ a. Paragraph (a)(1) is amended by removing the words ''the controlled group'' and adding in their place the words ''the filer's controlled group''.

■ b. Paragraphs (a)(1) and (a)(2) are amended by removing the words ''the PBGC's website'' (which appear once in each paragraph) and adding in their place the words ''PBGC's Web site, *http://www.pbgc.gov*''.

■ c. Paragraphs (b) and (c) are amended by removing the words ''the PBGC'' (which appear once in each paragraph) and adding in their place the word ''PBGC''.

■ 10. In § 4010.7:

■ a. Paragraphs (a) introductory text and (b) introductory text are amended by removing the words ''the PBGC's website'' (which appear once in each paragraph) and adding in their place the words ''PBGC's Web site, *http://www.pbgc.gov*''; and by removing the words ''controlled group'' (which appear once in each paragraph) and adding in their place the words ''filer's controlled group''.

■ b. Paragraph (a)(1)(ii) is amended by adding the word ''and'' after the semicolon at the end of the paragraph.

■ c. Paragraph (a)(2) is amended by removing the words ''date immediately preceding the date'' and adding in their place the words ''day before''.

■ d. Paragraph (b)(1)(iii) is amended by removing the words ''since the beginning of the filer's information year'' and adding in their place the words ''during the filer's information year''.

■ e. Paragraph (b)(1)(iv) is amended by removing the words ''had not been maintained'' and adding in their place the words ''was not maintained''; and by removing the word ''and'' after the semicolon at the end of the paragraph.

■ f. Paragraph (b)(1)(v) is amended by adding the word ''and'' after the semicolon at the end of the paragraph.

■ g. Paragraph (b)(2) is amended by removing the words ''maintaining the plan'' and adding in their place the words ''maintaining the plan (if applicable)''; and by removing the words ''paragraph (b)(1) as of the date immediately preceding that date'' and adding in their place the words ''paragraph (b)(1) of this section as of the day before that date''.

■ h. New paragraph (b)(1)(vi) is added to read as follows:

§ 4010.7 Identifying information.

* * * * *

(b) * * *

(1) * * *

(vi) In the case of a multiple employer plan, a list of the contributing sponsors as of the end of the plan year ending within the filer's information year, including the name, employer identification number, contact information, fiscal year, and a statement as to whether each contributing sponsor is a publicly-traded company; and

* * * * *

■ 11. Section 4010.8 is revised to read as follows:

§ 4010.8 Plan actuarial information.

(a) *Required information.* Except as provided elsewhere in this part, for each plan (other than an exempt plan) maintained by any member of the filer's controlled group, each filer is required to provide, in accordance with the instructions on PBGC's Web site, *http://www.pbgc.gov,* the following actuarial information determined (except as specified below) as of the end of plan year ending within the filer's information year—

(1) The number of—

(i) Retired participants and beneficiaries receiving payments,

(ii) Terminated vested participants, and

(iii) Active participants;

(2) The fair market value of the plan's assets (excluding any contributions received after year-end);

(3) The amount of benefit liabilities under the plan, setting forth separately the amount of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants, determined, for this purpose in accordance with paragraph (d) of this section;

(4) A description of the actuarial assumptions used to determine the benefit liabilities in paragraph (a)(3) of this section;

(5) The funding target (as of the valuation date) for the plan year ending within the information year determined in accordance with ERISA section 303(i) and Code section 430(i) as if the plan had been in at-risk status for a consecutive period of at least five plan years;

(6) The funding target attainment percentage (as of the valuation date) for the plan year ending within the information year;

(7) The adjusted funding target attainment percentage as defined in ERISA section 206(g)(9)(B) and Code section 436(j)(2) for the plan year ending within the information year;

(8) Whether the plan, at any time during the plan year, was subject to any of the limitations described in ERISA section 206(g) and Code section 436, and, if so, which limitations applied, when such limitations applied, and when (if applicable) they were lifted;

(9) Whether a required installment or other required payment to the plan was not made, and, as a result, a lien described in ERISA section 303(k) and Code section 430(k) was triggered during the information year, and the required installment or other required payment was not made within ten days after its due date;

(10) Whether any portion of the total minimum funding waiver(s) in excess of $1 million granted with respect to such plan is outstanding;

(11) A copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information for that plan year—

(i) The funding target calculated pursuant to ERISA section 303 without regard to subsection 303(i)(1) (and Code section 430 without regard to subsection 430(i)(1)), setting forth separately the value of the liabilities attributable to retirees and beneficiaries receiving payment, terminated vested participants, and active participants (showing vested and nonvested benefits separately);

(ii) A summary of the actuarial assumptions and methods used for purposes of ERISA section 303 and Code section 430, including the form of payment and benefit commencement date assumptions for all active and deferred vested participants not yet receiving benefits, information on how lump sums are valued (for plans that provide lump sums other than *de minimis* lump sums), and any changes in those assumptions and methods since the previous valuation and the justifications for such changes.

(iii) The effective interest rate (as defined in ERISA section 303(h)(2)(A) and Code section 430(h)(2)(A));

(iv) The target normal cost calculated pursuant to ERISA section 303 without regard to subsection 303(i)(2) (and Code section 430 without regard to subsection 430(i)(2));

(v) For the plan year and each of the four preceding plan years, a statement as to whether the plan was in at-risk status for that plan year;

(vi) In the case of a plan that is in at-risk status, the target normal cost calculated pursuant to ERISA section 303 and Code section 430 as if the plan has been in at-risk status for five consecutive years;

(vii) The value of the plan's assets (reflecting any averaging method) as of the valuation date and the fair market value of the plan's assets as of the valuation date;

(viii) The funding standard carryover balance and the prefunding balance (maintained pursuant to ERISA section 303(f)(1) and Code section 430(f)(1)) as of the beginning of the plan year and a summary of any changes in such balances in the past year (e.g., amounts used to offset the minimum funding requirement, amounts reduced in accordance with any elections under ERISA section 303(f)(5) and Code section 430(f)(5), interest credited to such balances, and excess contributions used to increase such balances);

(ix) A list of amortization bases (shortfall and waiver) under ERISA section 303 and Code section 430, including the year each base was established, the original amount, the installment amount, and the remaining balance at the beginning of the plan year;

(x) An age/service scatter for active participants including average compensation information for pay-related plans and average account balance information for hybrid plans presented in a format similar to that described in the instructions to Schedule SB of the Form 5500;

(xi) Expected disbursements (benefit payments and expenses) during the plan year;

(xii) A summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during the plan year, and the plan's early retirement factors; in the case of a plan that provides lump sums, other than de minimis lump sums, the summary must include information on how annuity benefits are converted to lump sum amounts (e.g., whether early retirement subsidies are reflected); and

(xiii) Any other similar information as specified in instructions on PBGC's Web site, *http://www.pbgc.gov;* and

(12) A written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR 301.6059–1(d).

(b) *Alternative compliance for plan valuation report.* If any of the information specified in paragraph (a)(11) of this section is not available by the date specified in § 4010.10(a), a filer may satisfy the requirement to provide such information by—

(1) Including a statement, with the material that is submitted to PBGC, that the filer will file the unavailable information by the alternative due date specified in § 4010.11(b), and

(2) Filing such information (along with a certification by an enrolled actuary under paragraph (a)(12) of this section) with PBGC by that alternative due date.

(c) *Exempt plan.* The actuarial information specified in this section is not required with respect to a plan if the plan satisfies the conditions in paragraph (c)(1) through (3).

(1) The plan—

(i) Has fewer than 500 participants as of the end of the plan year ending within the information year or as of the valuation date for that plan year and has a 4010 funding shortfall (as defined in § 4010.11(c)) for the plan year ending within the information year that is not in excess of $15 million, or

(ii) Has benefit liabilities as of the end of the plan year ending within the filer's

information year, (determined in accordance with paragraph (d) of this section) equal to or less than the fair market value of the plan's assets.

(2) The plan has received, by or within ten days after the due dates, all required installments or other payments required to be made during the information year under ERISA sections 302 and 303 and Code sections 412 and 430.

(3) The plan has no outstanding minimum funding waivers (as described in § 4010.4(a)(3)) as of the end of the plan year ending within the information year.

(d) *Value of benefit liabilities.* The value of a plan's benefit liabilities at the end of a plan year must be determined using the plan census data described in paragraph (d)(1) of this section and the actuarial assumptions and methods described in paragraph (d)(2) or, where applicable, (d)(3) of this section.

(1) *Census data*—(i) *Census data period.* Plan census data must be determined (for all plans for any information year) either as of the end of the plan year or as of the beginning of the next plan year.

(ii) *Projected census data.* If actual plan census data are not available, a plan may use a projection of plan census data from a date within the plan year. The projection must be consistent with projections used to measure pension obligations of the plan for financial statement purposes and must give a result appropriate for the end of the plan year for these obligations. For example, adjustments to the projection process are required where there has been a significant event (such as a plan amendment or a plant shutdown) that has not been reflected in the projection data.

(2) *Actuarial assumptions and methods.* The value of benefit liabilities must be determined using the following rules in paragraphs (d)(2)(i) through (iv) of this section:

(i) *Assumptions included in §§ 4044.51 through 4044.57.* Interest, expenses, mortality and retirement assumptions must be as prescribed in §§ 4044.51 through 4044.57 of this chapter.

(ii) *Assumptions not included in §§ 4044.51 through 4044.57.* Assumptions for decrements other than mortality and retirement (such as turnover or disability) used to determine the minimum required contribution under ERISA section 303 and Code section 430 for the plan year ending within the filer's information year may be used, but only if all such assumptions are used. For plans where there is no distinction between termination and retirement assumptions, any termination/retirement rates at ages after the Earliest PBGC Retirement Date (as defined in § 4022.10 of this chapter) must be treated as retirement rates and replaced by expected retirement ages; termination/retirement rates at ages below the Earliest PBGC Retirement Date must be treated as pre-retirement decrements. Assumptions used to determine the minimum required contribution for the plan year ending within the filer's information year, other than assumptions for decrements, interest, and expenses (*e.g.*, form of payment, cost-of-living increases, marital status), must be used.

(iii) *Benefits to be valued.* Benefits to be valued include all benefits earned or accrued under the plan as of the end of the plan year ending within the information year and other benefits payable from the plan including, but not limited to, ancillary benefits and retirement supplements, regardless of whether such benefits are protected by the anti-cutback provisions of Code section 411(d)(6).

(iv) *Future service.* Future service expected to be accrued by an active participant in an ongoing plan during future employment (based on the assumptions used to determine benefit liabilities) must be included in determining the earliest and unreduced retirement ages used to determine the expected retirement age and in determining an active participant's entitlement to early retirement subsidies and supplements at the expected retirement age. See the examples in paragraph (e) of this section.

(3) *Special actuarial assumptions for exempt plan determination.* Solely for purposes of determining whether a plan is an exempt plan for an information year, the value of benefit liabilities may be determined by substituting for the retirement age assumptions in paragraph (d)(2) of this section the retirement age assumptions used by the plan for the plan year ending within the information year for purposes of section 303 of ERISA without regard to the at-risk assumption of subsection 303(i) of ERISA and Code section 430 without regard to the at-risk assumption of subsection 430(i).

(e) *Examples.* The following examples demonstrate how XRA is determined and applied for purposes of determining benefit liabilities under paragraph (d) of this section:

(1) *Example 1.* (i) *Facts.* Plan X has a normal retirement age of 65, but allows benefits to commence as early as age 55 for participants who complete at least 10 years of service before termination. Early retirement benefits are reduced for participants with fewer than 25 years of service. Employee A is an active participant who is age 40 and has completed 5 years of service. Assume the ''medium'' XRA look-up table applies, and that for purposes of § 4010.8(d), the filer has decided not to take pre-retirement decrements other than mortality table into account as permitted under § 4010.8(d)(2)(i).

(ii) *Determination of XRA.* If A continues working, the earliest age A could start receiving benefit is age 55. Therefore, A's earliest retirement age at valuation (ERA) is 55. Because the earliest that A can receive an unreduced benefit is when A completed 25 years of service (at age 60), A's URA is age 60. Under the medium XRA look-up table, A's XRA is 58.

(iii) *Determination of Benefit Liabilities.* The benefit liability is the present value of A's benefit accrued as of the measurement date assuming A retires at age 58 and elects to have benefits commence immediately. Since A will not be eligible to receive unreduced benefits at that time, the accrued benefit is reduced in accordance with the plan's early retirement reduction provisions, including any subsidies to which A will be entitled under the assumption that A works until age 58.

(2) *Example 2.* Employee B is also an active participant in plan X and is age 40 with 15 years of service. B will complete 25 years of service at age 50. However, because the plan does not allow for benefit commencement before age 55, B's ERA, URA and thus, XRA are all age 55. The benefit liability is the present value of B's benefit accrued as of the measurement date assuming B retires at age 55 and elects to commence benefits immediately. Since B will be eligible to receive an unreduced benefit at that time, the full unreduced benefit amount is valued.

(3) *Example 3*—(i) *Facts.* Assume the same facts as in Example 1, except that for purposes of § 4010.8(d), the filer has decided to take pre-retirement decrements other than mortality into account as permitted under § 4010.8(d)(2)(i). Assume the only pre-retirement decrement other than mortality is turnover. The plan's turnover rates go from age 21 to age 54, and the retirement rates go from age 55 to age 65.

(ii) *Determination of XRA.* If A terminates employment at or before age 45, A will not be eligible to receive benefits until age 65. Therefore, the portion of Employee A that is assumed to terminate before age 45 has an ERA, URA, and XRA of age 65. The portion

of A that remains in service to age 45, after the application of the applicable turnover decrements, and then terminates at or after age 45, but before age 55, will be entitled to receive a reduced benefit as early as 55. Therefore, the portion of A that is assumed to terminate during this period has an ERA of 55, a URA of 65 and an XRA of 60. Since the turnover rates stop at age 55, the portion of A that remains in service to age 55 is assumed to remain in service until the XRA for that portion of A. For that portion of A, the ERA is 55, the URA is 60 and the XRA is 58. (For purposes of § 4010.8(d), the plan's assumed retirement rates are replaced by XRAs.)

(iii) *Determination of benefit liabilities.* The benefit liability of A is the sum of the present value of A's full accrued benefit at age 65 for the portion of A that terminates between age 40 and age 45, the present value of A's accrued benefit reduced for commencement at age 60 for the portion of A that terminates between age 45 and age 54, and the present value of A's accrued benefit reduced for commencement at age 58 for the portion of A that remains employed until age 55.

(4) *Example 4.* Assume the same facts as in Example 3, except that Employee B, the sole active participant, is age 40 with 15 years of service. The portion of B that is assumed to terminate before age 50 would be entitled to receive a reduced benefit as early as age 55 or an unreduced benefit at age 65. That portion of B has an ERA of 55, a URA of 65, and an XRA of 60. The benefit liability for that portion of B is the present value of B's benefit accrued as of the measurement date assuming B commences a reduced benefit at age 60. The portion of B that survives to age 50 would be entitled to receive an unreduced benefit as early as age 55. That portion of B has an ERA, URA and XRA of 55. The benefit liability for this portion of B is the present value of B's benefit accrued as of the measurement date assuming B retires and commences unreduced payments at age 55.

(f) *Multiple employer plans.* If, with respect to a multiple employer plan, the actuarial information required under this section 4010 for the plan year ending within the filer's information year has been filed under part 4010 by another filer, the filer may include this actuarial information by reference. The filer must report the name, EIN and plan number of the multiple employer plan and the name of the other filer that submitted this information.

(g) *Previous filing for plan year.* If the actuarial information for the plan year as required under this § 4010.8 has been submitted by the filer in a previous 4010 submission, the filing may include that actuarial information by reference to the previous submission.

(h) *Special rules for plan years beginning before 2008.* For plan years beginning before 2008:

(1) The requirements of paragraphs (a)(5) through (8) of this section do not apply.

(2) The references in paragraph (a)(9) of this section to ERISA section 303(k) and Code section 430(k) are replaced with references to sections of ERISA and the Code, as in effect before amendment by the Pension Protection Act of 2006, Public Law 109–280.

(3) Instead of the requirement of paragraph (a)(11) of this section, the actuarial valuation report requirements in § 4010.8(a)(5) in effect as of December 31, 2007, apply.

(i) *Plans subject to special funding rules under sections 104, 105, 106 and 402(b) of the Pension Protection Act of 2006.* Instead of the requirements of paragraph (a)(11) of this section:

(1) In the case of a plan year for which the application of new funding rules is deferred for a plan under sections 104, 105, and 106 of the Pension Protection Act of 2006, Pub. L. 109–280 (dealing with plans of certain rural cooperatives, certain plans affected by settlement agreement with PBGC, and certain plans of government contractors), the requirements in § 4010.8(a)(5) (in connection with the actuarial valuation report) in effect as of December 31, 2007, apply to the plan.

(2) In the case of a plan year for which a plan is subject to section 402(b) of the Pension Protection Act of 2006, Public Law 109–280 (dealing with certain frozen plans of commercial passenger airlines and airline caterers), the plan must meet the requirements in connection with the actuarial valuation report in accordance with instructions on PBGC's Web site, *http://www.pbgc.gov.*

§ 4010.9 [Amended]

■ 12. In § 4010.9:

■ a. Paragraph (a) is amended by removing the words ''the PBGC's Web site'' and adding in their place the word ''PBGC's Web site, *http://www.pbgc.gov*''; and by removing the words ''controlled group member'' and adding in their place the words ''member of the filer's controlled group''.

■ b. Paragraph (c) is amended by removing the words ''within 15 days after they are prepared'' adding in their place the words ''within 15 days after they are prepared, if they are prepared'' and by removing the words ''audited and unaudited financial statements'' and adding in their place the words ''audited and unaudited financial statements, if prepared''.

■ c. Paragraph (d) is amended by removing the words ''the PBGC'' where they appear three times and adding in their place each time the word ''PBGC''.

§ 4010.10 [Amended]

■ 13. In § 4010.10:

■ a. Paragraphs (a), (b), (c), and (d) are amended by removing the words ''the PBGC'' wherever they appear and adding in their place the word ''PBGC''.

■ b. Paragraphs (c), (d), and (e) are amended by removing the words ''The PBGC'' wherever they appear and adding in their place the word ''PBGC''.

■ c. Paragraph (a) is amended by removing the word ''shall'' and adding in place the word ''must''; and by adding the following new sentence at the end of the paragraph: ''The filing deadline is extended to the 106th date after the close of the filer's information year if the 105-day reporting period includes February 29.''

■ 14. Section 4010.11 is revised to read as follows:

§ 4010.11 Waivers and extensions.

(a) *Aggregate funding not in excess of $15 million.* Unless reporting is required by § 4010.4(a)(2) or (a)(3), reporting is waived for a person (that would be a filer if not for the waiver) for an information year if, for the plan year ending within the information year, the aggregate 4010 funding shortfall for all plans (including any exempt plans) maintained by the person's controlled group (disregarding those plans with no 4010 funding shortfall) does not exceed $15 million.

(b) *Other waiver authority.* PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 4010.10 of this part. PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with PBGC at the address provided in § 4010.10(c) no later than 15 days before the applicable due date specified in § 4010.10 of this part, and must state the facts and circumstances on which the request is based.

(c) *4010 funding shortfall for waivers and exemptions*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a plan's 4010 funding shortfall for a plan year equals the funding shortfall as provided under ERISA

section 303(c)(4) and Code section 430(c)(4) determined as of the valuation date for the plan year, except that the value of plan assets is determined without regard to the reduction under ERISA section 303(f)(4)(B) and Code section 430(f)(4)(B) (dealing with reduction of assets by the amount of prefunding and funding standard carryover balances).

(2) *Transition rule for plan years beginning before 2008.* For plan years beginning before 2008, a plan's 4010 funding shortfall for a plan year equals the excess, if any, of the plan's current liability over the value of plan assets. For this purpose, both current liability and plan assets are determined in the manner provided in § 4010.4(b)(3), except that assets are not reduced by the credit balance in the funding standard account.

(3) *Multiple employer plans.* For purposes of § 4010.8(c) and paragraph (a) of this section, the entire 4010 funding shortfall of any multiple employer plan of which the filer or any member of the filer's controlled group is a contributing sponsor is included.

■ 15. Sections 4010.12, 4010.13, and 4010.14 are redesignated as §§ 4010.13, 4010.14, and 4010.15.

■ 16. New § 4010.12 is added to read as follows:

§ 4010.12 Alternative method of compliance for certain sponsors of multiple employer plans.

(a) *In general.* Subject to paragraph (b) of this section, an eligible contributing sponsor (as defined in paragraph (c) of this section) of a multiple employer plan satisfies the requirements of this part for an information year if any contributing sponsor of the multiple employer plan provides a timely filing under this part for an information year that coincides with or overlaps with the eligible contributing sponsor's information year.

(b) *PBGC request for additional information.* PBGC may request some or all of the information that would otherwise be required under this part from an eligible contributing sponsor that uses the alternative method of compliance in this section. PBGC will make such a request no earlier than the date the information would otherwise have been due. The eligible contributing sponsor must provide the requested information no later than 30 days after PBGC makes the request. The requested information need not be submitted electronically.

(c) *Eligible contributing sponsor.* For purposes of this section, an eligible contributing sponsor of a multiple employer plan is a contributing sponsor that would not be subject to reporting if the plan were disregarded in applying the gateway tests in § 4010.4(a).

§ 4010.13 [Amended]

■ 17. Redesignated § 4010.13 is amended by removing the words ''section 4010(c) of ERISA'' and adding in their place the words ''ERISA section 4010(c)''; by removing the words ''the PBGC'' and adding in their place the word ''PBGC''; and by removing the word ''shall'' and adding in its place the word ''will''.

§ 4010.14 [Amended]

■ 18. Redesignated § 4010.14 is amended by removing the words ''section 4071 of ERISA'' and adding in their place the words ''ERISA section 4071''; by removing the words ''the PBGC'' and adding in their place the word ''PBGC''; and by removing the words ''The PBGC'' and adding in their place the word ''PBGC''.

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 19. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

§ 4044.2 [Amended]

■ 20. In § 4044.2:

■ a. In the introductory text, the words ''distribution date, ERISA, fair market value'' are removed and the words ''distribution date, earliest retirement age at valuation date, ERISA, expected retirement age (XRA), fair market value'' are added in their place and the words ''termination date, and'' are removed and the words ''termination date, unreduced retirement age (URA), and'' are added in their place.

■ b. The definitions of ''earliest retirement age at valuation date'', ''expected retirement age (XRA)'', and ''unreduced retirement age (URA)'' are removed.

Issued in Washington, DC, this 12th day of March 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing publication of this final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. E9–5741 Filed 3–13–09; 8:45 am]

BILLING CODE 7709–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulations on Allocation of Assets in Single-Employer Plans and Benefits Payable in Terminated Single-Employer Plans prescribe interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the asset allocation regulation to adopt interest assumptions for plans with valuation dates in the second quarter of 2009 and amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in April 2009. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: the regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) and the regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the assumptions under the asset allocation regulation for the second quarter (April through June) of 2009 and updates the

assumptions under the benefit payments regulation for April 2009.

The interest assumptions prescribed under the asset allocation regulation (found in Appendix B to Part 4044) are used for the valuation of benefits for allocation purposes under ERISA section 4044. Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) Adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during the second quarter (April through June) of 2009, (2) adds to Appendix B to Part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during April 2009, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during April 2009.

The interest assumptions that PBGC will use for valuing benefits for allocation purposes (set forth in Appendix B to part 4044) will be 5.50 percent for the first 20 years following the valuation date and 5.02 percent thereafter. These interest assumptions represent a decrease (from those in effect for the first quarter of 2009) of 0.52 percent for the first 20 years following the valuation date and 0.46 percent for all years thereafter.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for March 2009) of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during April 2009, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 186, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
186	4–1–09	5–1–09	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 186, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
186	4–1–09	5–1–09	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for April–June 2009, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the months—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*		*
April–June 2009	0.0550	1–20	0.0502	>20	N/A	N/A

Issued in Washington, DC, on this 11th day of March 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–5656 Filed 3–13–09; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AM62

Accreditation of Agents and Attorneys; Agents and Attorney Fees; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendments.

SUMMARY: This document corrects a Department of Veterans Affairs (VA) final rule that governs the representation of claimants for VA benefits. This correction removes obsolete regulations without making any substantive change to the content of the final rule.

DATES: *Effective Date:* This correction is effective March 16, 2009.

FOR FURTHER INFORMATION CONTACT: Christa A. Childers, Staff Attorney (022N), Office of the General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7699.

SUPPLEMENTARY INFORMATION: VA published a final rule in the **Federal Register** on May 22, 2008 (73 FR 29852) that, among other things, transferred jurisdiction over agents' and attorneys' fees from the Board of Veterans' Appeals (Board) to the Office of the General Counsel consistent with amendments to 38 U.S.C. chapter 59. In that document, VA also prescribed that, with the exceptions of 38 CFR 20.600 regarding right to representation before the Board and 38 CFR 20.608 regarding withdrawal from representation before the Board, representation before VA is governed exclusively by 38 CFR 14.626 through 14.637. Except as noted above regarding §§ 20.600 and 20.608, the final rule superseded all of the Board's Rules of Practice in 38 CFR part 20, subpart G. However, in the final rule, VA inadvertently failed to remove obsolete §§ 20.601 through 20.607. This document corrects that error by removing and reserving §§ 20.601 through 20.607 and adding a note to advise that former §§ 20.601 through 20.607 have been superseded by the representation provisions in 38 CFR part 14.

List of Subjects in 38 CFR Part 20

Administrative practices and procedure, Claims, Veterans.

Approved: March 10, 2009.

William F. Russo,

Director of Regulations Management.

■ For the reasons set out in the preamble, VA corrects 38 CFR part 20, subpart G, as follows.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart G—Representation

■ 2. Remove the cross-reference immediately following the subpart heading.

§§ 20.601 through 20.607 [Removed and Reserved]

■ 3. Remove and reserve §§ 20.601 through 20.607.

■ 4. Immediately following §§ 20.612–20.699 [Reserved], add a Note at the end of subpart G to read as follows:

Note to subpart G: The representation provisions in §§ 14.626 through 14.637 of this title replace former §§ 20.601 through 20.607 concerning representation before the Board of Veterans' Appeals.

[FR Doc. E9–5547 Filed 3–13–09; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0884; FRL–8771–1]

Approval and Promulgation of Implementation Plans; Hawaii; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Under the Clean Air Act, EPA is correcting errors in certain final rules approving or compiling the Hawaii state implementation plan. These errors relate to the title of the plan, removal of variance provisions, and compilations of federally-enforceable regulations. The intended effect is to ensure that the Hawaii state implementation plan is correctly identified in the applicable part of the Code of Federal Regulations.

DATES: This rule is effective on May 15, 2009 without further notice, unless EPA receives adverse comments by April 15, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–088F, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail:vagenas.ginger@epa.gov.*
3. *Mail or deliver:* Ginger Vagenas (AIR–2), 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 *http://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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* portal 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 *http://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: Ginger Vagenas, Plannning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3964, *vagenas.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Background
II. Error Correction
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I. Background

Under the Clean Air Act (CAA or ''Act''), each state is required to have a state implementation plan (SIP) which contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each state after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

The SIP is a living document which can be revised by the state as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions which may contain new and/or revised regulations as being part of the SIP. On May 31, 1972 (37 FR 10842), EPA approved, with certain exceptions, the initial SIPs for 50 states, four territories and the District of Columbia. Since 1972, each state and territory has submitted numerous SIP revisions, either on their own initiative, or because they were required to as a result of various amendments to the CAA. EPA codifies its approvals and disapprovals of SIPs and SIP revisions in 40 CFR part 52 (''Approval and promulgation of implementation plans'').

The Hawaii SIP is identified in subpart M (''Hawaii'') of part 52. As with other State SIPs, EPA has taken a number of actions since 1972 with respect to the Hawaii SIP. In 1997, under CAA section 110(k)(6), we deleted certain variance-related provisions from the Hawaii SIP that we determined had been erroneously approved by us in the past. See 62 FR 34641 (June 27, 1997). In so doing, we mistakenly identified the variance-related provision erroneously approved on May 31, 1972 as ''Chapter 43, Section 7.'' See 62 FR 34641, at 34648. The variance-related provision is found in section 20 of chapter 43 (Air Pollution Control Regulations) rather than section 7. In addition, we inadvertently neglected to remove various other variance-related rules and statutory provisions from the Hawaii SIP, including Air Pollution Control Law, Hawaii Revised Statutes, chapter 322, part V, section 322–68, approved on May 31, 1972 (37 FR 10842); S.B. No. 1382–72, Act 100, section 7, approved on November 8, 1973 (38 FR 30876); chapter 43, section 20, approved on May 14, 1973 (38 FR 12711); and Hawaii Statute on Environmental Quality, Hawaii Revised Statutes, chapter 342, section 342–7 (48 FR 37402), approved on August 18, 1983 (48 FR 37402).

In 2005, we revised the format of subpart M (''Hawaii'') in 40 CFR part 52 for materials submitted by the State of Hawaii that are incorporated by reference into the Hawaii SIP. See 70 FR 44852 (August 4, 2005). In so doing, we mistakenly identified the original plan as ''Implementation Plan for Compliance With the Ambient Air Quality Standards for the State of Hawaii.'' Actually, the title of the original plan is ''State of Hawaii Air Pollution Control Implementation Plan.'' Also, in our 2005 final rule, we listed all of the rules that we believed to be federally enforceable but neglected to list certain rules that had been approved in the early 1970s and that have never been withdrawn or replaced. These include the following sections of chapter 43, Air Pollution Control Regulations: section 22 (''Hearings and Appeals'') and section 23 (''Application''). These rules were submitted by the State of Hawaii on November 21, 1972 and January 28, 1972, respectively, and were approved by EPA on May 14, 1973 (38 FR 12711) and May 31, 1972 (37 FR 10842), respectively.

II. Error Correction

Section 110(k)(6) of the Clean Air Act, as amended in 1990, provides, ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.''

We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction that (1) we clearly erred in failing to consider or in inappropriately considering information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 57 FR 56762, at 56763 (November 30, 1992).

In this instance, we find clear errors in our 1997 final rule removing certain variance-related provisions from the Hawaii SIP. The first error involved identification of the wrong section number, and the second error involved the failure to list the other variance-related provisions in the Hawaii SIP. As discussed in our June 27, 1997 final rule (see at 62 FR 34641, at 34642), variance provisions were rendered without legal effect by amendments to the CAA enacted by Congress in 1977 and the

presence of these provisions in the SIPs is potentially confusing, and thus, harmful to the regulated community, the states and EPA. For a more detailed discussion of our rationale for removing variance provisions from SIPs, see 61 FR 38664, at 38665 (July 25, 1996). To correct these errors, we are correcting the section number (for the variance provision in chapter 43 as approved in May 1972) and deleting the additional variance-related provisions approved on May 31, 1972, May 14, 1973, November 8, 1973, and August 18, 1983.

Second, we find clear errors in our 2005 final rule re-formatting our approvals of submittals of the Hawaii SIP and SIP revisions. We erred first by incorrectly identifying the title of the original Hawaii plan and then by failing to list two additional rules approved by EPA as part of the Hawaii SIP that were never withdrawn or replaced. To correct these errors, we are correcting the title of the original Hawaii SIP in 40 CFR 52.622(a) and adding the entries for the two additional rules into the table of EPA-approved regulations in 40 CFR 52.620(c).

III. Public Comment and Final Action

As authorized in section 110(k)(6) of the Act, and for the reasons set forth above, EPA is correcting errors in certain final rules approving or compiling the Hawaii state implementation plan. Specifically, we are correcting the section number (for the variance provision in chapter 43 as approved in May 1972) and deleting the additional variance-related provisions approved on May 31, 1972, May 14, 1973, November 8, 1973, and August 18, 1983. We are also revising the title of the original Hawaii SIP in 40 CFR 52.622(a) and adding the entries for the two additional rules (chapter 43, sections 22 and 23) as approved on May 14, 1973 and May 31, 1972, respectively, into the table of EPA-approved regulations in 40 CFR 52.620(c).

We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same action. If we receive adverse comments by April 15, 2009, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 15, 2009.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely corrects previous actions approving state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 15, 2009. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 25, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart M—Hawaii

■ 2. In § 52.620, the table in paragraph (c) is amended by revising the table heading and adding the entries to the beginning of the table for ''Department of Health, Public Health Regulations, chapter 43, Air Pollution Control Regulations,'' sections 22 and 23 to read as follows:

§ 52.620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED STATE OF HAWAII REGULATIONS

State citation	Title/subject	Effective date	EPA approval date	Explanation
Department of Health, Public Health Regulations, chapter 43, Air Pollution Control Regulations:				
Section 22	Hearings and Appeals	12/26/1972	05/14/1973	38 FR 12711
Section 23	Application	03/28/1972	05/31/1972	37 FR 10842
*	*	*	*	*

* * * * *

■ 3. Section 52.622 is amended as follows:

■ a. By revising paragraph (a).

■ b. By revising paragraph (b)(1).

■ c. By adding paragraph (c)(4)(i) and adding and reserving paragraph (c)(4)(ii).

■ d. By adding paragraph (c)(5)(i), and adding and reserving paragraph (c)(5)(ii).

■ e. By adding paragraph (c)(15)(i) and adding and reserving paragraph (c)(15)(ii). The amendments are as follows:

§ 52.622 Original identification of plan.

(a) This section identified the original ''State of Hawaii Air Pollution Control Implementation Plan'' and all revisions submitted by the State of Hawaii that were federally approved prior to June 1, 2005.

(b) * * *

(1) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted from the SIP without replacement Air Pollution Control Law, Hawaii Revised Statutes, chapter 322, part V, section 322–68 and Public Health Regulations, chapter 43, section 20.

(c) * * *

(4) * * *

(i) Previously approved on November 8, 1973 in paragraph (c)(4) of this section and now deleted from the SIP without replacement S.B. No. 1382–72, Act 100, section 7.

(ii) [Reserved]

(5) * * *

(i) Previously approved on May 14, 1973 in paragraph (c)(5) of this section and now deleted from the SIP without replacement chapter 43, section 20.

(ii) [Reserved]

* * * * *

(15) * * *

(i) Previously approved on August 18, 1983 in paragraph (c)(15) of this section and now deleted from the SIP without replacement Hawaii Statute on Environmental Quality, Hawaii Revised Statutes, chapter 342, section 342–7.

(ii) [Reserved]

* * * * *

[FR Doc. E9–4802 Filed 3–13–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XN84

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2009 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 11, 2009, through 1200 hrs, A.l.t., August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The B season allowance of the 2009 TAC of pollock in Statistical Area 630 of the GOA is 1,455 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2009 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,400 mt, and is setting aside the remaining 55 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in

Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 10, 2009.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 10, 2009.

Alan D. Risenhoover

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

[FR Doc. E9–5632 Filed 3–11–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XL23

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; 2009 and 2010 Final Harvest Specifications for Groundfish

Correction

In rule document E9–3295 beginning on page 7333 in the issue of Tuesday, February 17, 2009 make the following corrections:

1. On page 7344, Table 11 should read as set forth below:

TABLE 11—FINAL 2009 AND 2010 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

Trawl gear		Hook-and-line gear [1]			
		Other than DSR		DSR	
Season	Amount	Season	Amount	Season	Amount
January 20–April 1	550 (27.5%)	January 1–June 10	250 (86%)	January 1–December 31	10 (100%)
April 1–July 1	400 (20%)	June 10–September 1	5 (2%)		
July 1–September 1	600 (30%)	September 1–December 31.	35 (12%)		
September 1–October 1	150 (7.5%)	n/a	n/a		
October 1–December 31	300 (15%)	n/a	n/a		
Total	2,000 (100%)	n/a	290 (100%)		10 (100%)

[1] The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits.

2. On page 7347, in Table 14, in the second column, in the sixth entry, ''Atka mackere'' should read ''Atka mackerel''.

3. On the same page, in the same table, in the third column, in the sixth entry, ''l60'' should read ''60''.

4. On page 7350, Table 17 should read as set forth below:

TABLE 17—FINAL 2009 AND 2010 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[Values are in metric tons]

Seasonal allowance	Season	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2009 and 2010 PSC limit	2009 and 2010 non-exempt AFA CV PSC limit
1	January 20–April 1	shallow-water	0.340	450	153
		deep-water	0.070	100	7
2	April 1–July 1	shallow-water	0.340	100	34
		deep-water	0.070	300	21
3	July 1–September 1	shallow-water	0.340	200	68
		deep-water	0.070	400	28
4	September 1–October 1	shallow-water	0.340	150	51
		deep-water [1]	0.070	0	0
5	October 1–December 31	all targets	0.205	300	61

[1] There is no apportionment of halibut PSC to the deep-water targets in September. However any unused apportionment to the deep-water targets from earlier in the fishing year may be used to support the deep-water targets in September.

5. On page 7355, Table 23 is corrected in part as set forth below:

TABLE 23—FINAL 2009 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of amendment 80 program sector vessels 1998–2004 catch to TAC	2009 TAC (mt)	2009 amendment 80 program vessel sideboard limits (mt)
*	* *	*	*	*	*
Northern rockfish	Annual	W	1.000	2,054	2,054
Pelagic shelf rockfish	Annual	W	0.764	819	626
		WYK	0.896	234	210

[FR Doc. Z9–3295 Filed 3–13–09; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 74, No. 49
Monday, March 16, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0018; Directorate Identifier 2009–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for General Electric Company (GE) CF6–80C2 series turbofan engines with certain thrust reverser ballscrew gearbox assembly adjustable-length end actuators installed. This proposed AD would require initial visual inspections and repetitive replacements of the ⅜-inch rod-ends installed on the thrust reverser ballscrew gearbox assembly adjustable-length end actuators, along with optional terminating action to those repetitive replacements. This proposed AD would also require initial visual inspections and replacements, if necessary, of the other hardware connecting the thrust reverser transcowls to the engine. This proposed AD results from reports of four failures of rod-ends on certain thrust reverser ballscrew gearbox assembly adjustable-length end actuators, leading to partial or complete separation of the transcowl from the engine and airplane during thrust reversal. We are proposing this AD to prevent loss of thrust control, asymmetric thrust, increased stopping distance, and possibly hazardous debris on the runway, which could result in unsafe landings.

DATES: We must receive any comments on this proposed AD by May 15, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Christopher J. Richards, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: christopher.j.richards@faa.gov; telephone (781) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2009–0018; Directorate Identifier 2009–NE–01–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

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 the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

Since January 2007, we received reports of four GE CF6–80C2 series turbofan engine thrust reverser transcowls separating from the engine and airplane during thrust reverser deployment while landing. Investigation has revealed that the ⅜-inch adjustable rod-ends on the adjustable-length end actuators can fail in fatigue. When a rod-end fails, additional load is put on the thrust reverser system center drive unit (CDU). This additional load can cause the CDU clevis bracket fasteners to fail or the CDU clevis pin to lose its retaining capability, both causing separation of the transcowl from the engine and airplane. This condition, if not corrected, could result in loss of thrust control, asymmetric thrust, increased stopping distance, and possibly hazardous debris on the runway, which could result in unsafe landings.

Relevant Service Information

We have reviewed and approved the technical contents of Middle River Aircraft Systems Alert Service Bulletin (ASB) No. CF6–80C2 S/B 78A1162, Revision 1, dated February 13, 2009. That ASB describes procedures for inspecting ballscrew gearbox assembly adjustable-length end actuator ⅜-inch rod-ends and torsion arms, clevis fasteners, clevis pins, and clevis pin retaining clips. That ASB also describes procedures for replacing broken rod-ends, worn, damaged, or deformed torsion arms, loose clevis fasteners, clevis pins that do not meet wear limits, and loose clip retainer nuts and bolts.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require initial and repetitive replacements of the ⅜-inch rod-ends installed on the thrust reverser ballscrew gearbox assembly adjustable-length end actuators, along with optional terminating action to those repetitive replacements. The proposed AD would also require an initial visual inspection and replacement if necessary, of the other hardware that connects the thrust reverser transcowl to the engine. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 750 GE CF6–80C2 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 1.5 work-hours per engine to perform the proposed inspection, 0.8 work-hour per engine to perform the proposed rod-end replacement, and 24 work-hours per engine to perform the proposed clevis bracket replacement. The average labor rate is $80 per work-hour. Required rod-ends would cost about $168 per engine. We estimate that 75 engines would require clevis bracket replacement. Required replacement clevis brackets and associated labor would cost about $826,500. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,090,500.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 that the proposed AD:

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

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

3. Would 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. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2009–0018; Directorate Identifier 2009–NE–01–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 15, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–80C2 series turbofan engines with thrust reverser ballscrew gearbox assembly adjustable-length end actuators having ⅜-inch rod-end, part number (P/N) KBE6–59, MS21242S06, M81935/1–6, B15946–13, or 15946000–13, installed. These engines are installed on, but not limited to, Airbus A300–600/R/F and A310–200/300, and Boeing 747–200B/300/400/400D/400F, 767–200/300/300F/400ER, and MD–11 airplanes.

Exemption

(d) GE CF6–80C2 series turbofan engines that have completed the initial compliance actions in Middle River Aircraft Systems (MRAS) Alert Service Bulletin (ASB) No. CF6–80C2 S/B 78A1162, dated December 30, 2008, or ASB No. CF6–80C2 S/B 78A1162, Revision 1, dated February 13, 2009:

(1) Are allowed to take credit for accomplishing paragraphs (g) and (h) of this AD; however

(2) All ⅜-inch rod-ends, including those on engines which satisfy paragraph (d) of this AD, are subject to the replacement requirements in paragraph (i) of this AD.

Unsafe Condition

(e) This AD results from reports of four failures of rod-ends on certain thrust reverser ballscrew gearbox assembly adjustable-length end actuators, leading to partial or complete separation of the transcowl from the engine and airplane during thrust reversal. We are issuing this AD to prevent loss of thrust control, asymmetric thrust, increased stopping distance, and possibly hazardous debris on the runway, which could result in unsafe landings.

Compliance

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

Visual Inspection and Fastening Hardware Replacements

(g) Within 500 flight cycles after the effective date of this AD, do the following:

(1) Inspect all translating cowl clevis pin retaining clips and associated fastening hardware, including those on the center drive unit (CDU), to ensure they are properly assembled and securely fastened in place. If a retaining clip is not completely covering the clevis pin and firmly attached to the clevis, remove and replace the fastening hardware. Use paragraphs 3.B.(2)(b) and 3.B.(2)(c) of MRAS ASB No. CF6–80C2 S/B 78A1162, Revision 1, dated February 13, 2009, to do the inspections.

(2) Remove and inspect all clevis pins for physical damage or significant corrosion. Use paragraphs 3.C.(1) through 3.C.(3) of MRAS ASB No. CF6–80C2 S/B 78A1162, Revision 1, dated February 13, 2009, to do the removals, inspections, and part disposition as necessary.

(3) Inspect the clevis brackets and four clevis fasteners at each of the clevis brackets (upper, center, and lower) for structural integrity. Use paragraphs 3.F.(1)(a) and 3.F.(1)(b) of MRAS ASB No. CF6–80C2 S/B 78A1162, Revision 1, dated February 13, 2009, to do the inspections.

(4) If loose or missing clevis fasteners are found, remove and replace the clevis

fasteners. Use paragraphs 3.F.(2)(a) through 3.F(2)(c) of MRAS ASB No. CF6–80C2 S/B 78A1162, Revision 1, dated February 13, 2009, to do the replacements.

Initial Rod-End Replacements

(h) For all ⅜-inch translating cowl adjustable-length actuator rod-ends, P/N KBE6–59, MS21242S06, B15946–13, 15946000–13, or M81935/1–6 having more than 600 flight cycles-since-new on the effective date of this AD, replace them with P/N M81935/1–6, zero time rod-ends within 500 flight cycles after the effective date of this AD. Use paragraphs 3.E.(2) through 3.E.(7) of MRAS ASB No. CF6–80C2 S/B 78A1162, Revision 1, dated February 13, 2009, to do the replacements.

Repetitive ⅜-inch Rod-End Replacements

(i) Repetitively replace ⅜-inch translating cowl adjustable-length actuator rod-ends, P/N M81935/1–6, that were installed as specified in paragraph (h) of this AD, before they accumulate 11,000 flight cycles, with a zero time ⅜-inch adjustable-length rod-end, P/N M81935/1–6. Use paragraphs 3.E.(2) through 3.E.(7) of MRAS ASB No. CF6–80C2 S/B 78A1162, Revision 1, dated February 13, 2009, to do the replacements.

Optional Terminating Action

(j) As an optional terminating action to the repetitive ⅜-inch rod-end replacements required by this AD, replace the ⅜-inch adjustable rod-ends with either a fixed length rod-end, P/N 3238726–1, –2, or MS9560–08, or a 7/16-inch adjustable rod-end, P/N 3238729–1. Use paragraph 3.E.(1) of MRAS ASB No. CF6–80C2 S/B 78A1162, Revision 1, dated February 13, 2009, to do the replacements.

Installation Prohibition

(k) Rod-ends removed to comply with this AD are not eligible for installation on any aircraft.

Previous Credit

(l) Inspections and replacements and optional terminating action performed before the effective date of this AD using MRAS ASB No. CF6–80C2 S/B 78A1162, dated December 30, 2008, satisfy the required initial actions and optional terminating action of this AD.

Alternative Methods of Compliance

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

Related Information

(n) Contact Christopher J. Richards, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.j.richards@faa.gov*; telephone (781) 238–7133; fax (781) 238–7199, for more information about this AD.

(o) Contact Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD 21220, attn: Warranty Support; telephone (410) 682–0094; fax (410) 682–0100, for a copy of the service information identified in this AD.

Issued in Burlington, Massachusetts, on March 9, 2009.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–5575 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084–AB03]

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 325 of the Energy Independence and Security Act of 2007 provides the Commission with authority to promulgate energy labeling rules for consumer electronics, including televisions. The Commission is seeking comment on whether it should require labels for televisions and other consumer electronic products.

DATES: Comments must be received by May 14, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Consumer Electronics Labeling, Project No. P094201'' to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*)—and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential . . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-electronicslabeling*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-electronicslabeling*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp,*) you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Consumer Electronics Labeling, Project No. P094201'' 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 H-135 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC requests 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.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). 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* FTC Rule 4.9(c), 16 CFR 4.9(c).

website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm.*) As a matter of discretion, the Commission 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.shtm.*)

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326-2889, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 325 of the Energy Independence and Security Act of 2007 (EISA or the Act) (Pub. L. 110-140) gives the Commission authority to require energy labeling for five categories of consumer electronic products. In accordance with that Act, the Commission is seeking comment on labeling for such products. This Notice provides information about current energy labeling requirements, the FTC's new authority for consumer electronics labeling, background on previous FTC labeling activities related to these products, potential television labeling, potential labeling for other consumer electronics, and a series of questions for commenters.

I. Current Energy Labeling Requirements

Section 324 of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6294) requires the FTC to prescribe labeling rules for the disclosure of estimated annual energy costs or alternative energy consumption information for a variety of products covered by the statute, including home appliances (*e.g.*, refrigerators, clothes washers, and dishwashers), lighting, and plumbing products.[2] For most covered products, labels must disclose energy information derived from Department of Energy (DOE) test procedures.[3] The Commission may also require sellers, including retailers, to disclose energy information found on the label in any printed material displayed or distributed at the point of sale. In addition, the Commission may direct manufacturers to provide energy-related disclosures including instructions for the maintenance, use, or repair of the covered product.[4]

The Commission implements EPCA's directive through the Appliance Labeling Rule (16 CFR Part 305). Under the Rule, appliance manufacturers must disclose specific energy use information at the point of sale in the form of a yellow ''EnergyGuide'' label affixed to each unit. This information also must appear in catalogs and on Internet sites from which covered products can be ordered. Labels for most appliances must provide the product's estimated annual operating cost as the primary disclosure. To calculate these operating cost estimates, manufacturers must use national average cost figures for energy (*e.g.*, electricity, natural gas, etc.) determined by DOE. The Rule also allows manufacturers to place the U.S. Government ENERGY STAR logo on labels for products that qualify for that program.[5] Required labels for appliances must include a ''range of comparability'' (published by the Commission) that shows, for most products, the highest and lowest operating cost of all similar appliance models. These ranges help consumers compare similar models.

The Commission's Rule also requires manufacturers of most covered products to file data reports with the FTC. These reports must contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures (16 CFR 305.8(b)).[6]

II. FTC's New Authority for Consumer Electronics Labeling

Section 325 of EISA amends EPCA to direct the Commission to prescribe labeling for televisions, personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, and personal computer monitors.[7] The Act also specifically provides the Commission with discretion to consider other types of energy disclosures for consumers in lieu of traditional product labeling for these consumer electronics.[8] The Commission must issue such requirements no later than 18 months after DOE publishes applicable test procedures for such products. In the absence of such test procedures, the Commission has discretion to require labeling if it identifies adequate non-DOE testing procedures, and determines that disclosure requirements for those products are likely to assist consumers in making purchasing decisions.[9] EISA also gives the Commission discretion to require comparative information on the label or in other disclosures. Finally, the amendments provide the Commission with authority to require labeling or other disclosures for any other consumer product if the FTC determines such labeling is likely to assist consumers in making purchasing decisions.[10]

A. Television Labeling

The Commission is seeking comment on possible energy labeling or similar disclosures for televisions. As discussed in more detail below, the Commission did not require television labeling in its original 1979 Rule. In 2007, the Commission revisited this issue but declined to require television labeling because the existing DOE test procedure was inapplicable to modern televisions. Because EISA now allows the FTC to use non-DOE test procedures for television labeling requirements, we are seeking comment on whether to require labeling based on a new test procedure recently adopted by EPA's ENERGY

[2] For most appliances, the Commission must prescribe labeling rules unless it determines that labeling is not technologically or economically feasible (42 U.S.C. 6294(a)(1)). For central air conditioners, heat pumps, furnaces, and clothes washers, the statute requires labeling unless the Commission finds that labeling is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions (42 U.S.C. 6294(a)(2)(A)). Pursuant to Section 6294(a)(1), the Commission determined not to require labeling for television sets, kitchen ranges, ovens, clothes dryers, humidifiers, dehumidifiers, and certain home heating equipment other than furnaces. *See* 44 FR 66466, 66468-66469 (Nov. 19, 1979).

[3] Section 323 of EPCA (42 U.S.C. 6293) directs DOE to develop test procedures for major household appliances. Manufacturers must follow these test procedures to determine their products' compliance with DOE's energy conservation standards (required by Section 325 of EPCA), and to derive the energy consumption or efficiency values to put on required labels.

[4] 42 U.S.C. 6294(c).

[5] ENERGY STAR is a voluntary labeling program that identifies high efficiency products. The Environmental Protection Agency (EPA) and DOE administer the ENERGY STAR program. *See http://www.energystar.gov.*

[6] *See* 42 U.S.C. 6296(b)(2)&(4).

[7] However, the Act states that the requirements would not apply in any case in which the Commission determines that the rules would not be technologically or economically feasible or would not be likely to assist consumers in making purchasing decisions. *See* EISA, Section 325 (42 U.S.C. 6294(a)).

[8] The Act directs the Commission to ''prescribe labeling or other disclosure requirements for the energy use of'' the covered consumer electronic products. 42 U.S.C. 6294(a)(2)(I)(i).

[9] Any FTC labeling requirements must become effective 18 months after they are issued. 42 U.S.C. 6294(a)(2)(I)(iii).

[10] Under EPCA, a ''consumer product'' means any article which consumes, or is designed to consume energy and which, to any significant extent, is distributed in commerce for personal use or consumption by individuals. 42 U.S.C. 6291(1). As with the five consumer electronic categories specifically listed in the EISA amendments, the FTC may identify a non-DOE test procedure for labeling such additional consumer products (in the absence of a DOE test procedure) and has discretion to require comparative information on the label.

STAR program. We also seek comment on whether there are other test procedures we should consider.

Televisions have been covered products under EPCA since the 1970's. In 1979, the Commission determined not to require labeling because there was little variation in the annual energy costs of competing television models and such costs were a small fraction of the purchase price. The Commission, therefore, believed it was unlikely that labels for televisions would promote industry efforts to increase energy efficiency, or provide benefits to consumers.[11]

In 2007, the FTC revisited the issue and sought comment on whether the Rule should require television labeling.[12] Several commenters urged the Commission to require labeling. The comments suggested that many modern televisions use as much, or more, electricity than products currently labeled under the Rule. In addition, comments indicated that there is a significant range of energy use among similar products on the market.[13] The energy consumption characteristics of televisions, therefore, appear to be significantly different than when the Commission decided to forgo labeling in the 1970's. After considering these comments, the Commission concluded that energy labeling for televisions may assist consumers in making purchasing decisions.[14] At the same time, however, the record indicated that current DOE test procedures were inadequate to test most televisions on the market. Because the law at that time required the use of DOE test procedures, the Commission decided not to proceed further until the DOE test procedure was revised.[15]

The most recent EPCA amendments allow the Commission to consider non-DOE test procedures for television labeling. EPA's ENERGY STAR program has adopted criteria for televisions based on specific international test procedures (Section 11 of ''IEC 62087, Ed. 2.0: Methods of Measurement for the Power Consumption of Audio, Video and Related Equipment'' and ''IEC 62301, Ed. 1.0: Household Electrical Appliances - Measurement of Standby Power'').[16] The procedures require manufacturers to measure the power consumed by televisions when the products are on and in standby mode. Given these existing ENERGY STAR procedures and the comments received in response to the 2007 proceeding, the Commission is considering television labeling again and seeks comment on adoption of the IEC procedures (and any other appropriate procedures) for labeling purposes.

The Commission also is seeking comment on the appropriate format for television energy use disclosures. The Appliance Labeling Rule follows a consistent approach for labeling most large covered products displayed in showrooms. In particular, the Rule requires manufacturers to affix a yellow EnergyGuide label that displays yearly operating cost as the primary energy disclosure for the product. The Commission is seeking comment on whether such an approach is appropriate for televisions or whether there are alternative formats and locations for the disclosure of energy information.[17] Although televisions routinely appear in showrooms, the configuration of these products may raise placement issues not present with appliances such as refrigerators or clothes washers. For example, it may be difficult to affix labels on the products themselves in a location that is visible to consumers without blocking the television screen. As detailed in Section III of this Notice, the Commission is seeking input on a variety of issues related to television disclosures, including the need for such disclosures, the format and placement of information, comparative information, usage assumptions, and test procedures.

B. Other Consumer Electronic Products

The Commission is also seeking information about potential labeling requirements for personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, personal computer monitors, and other consumer electronic products. Although currently there are no DOE tests for these products, EISA gives the Commission the discretion to require energy disclosures for them using non-DOE test procedures. Therefore, the Commission is seeking comment on the need for such disclosures, any appropriate test procedures, the format of labels or disclosures, and the placement of labels on the products. We are also seeking comment on a series of questions about potential labeling detailed in Section III of this Notice.

III. Request for Comment

The Commission seeks written comments on a series of questions related to labeling for televisions and other consumer electronic products. We invite interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the FTC's labeling requirements. The Commission encourages commenters to respond to the specific questions. However, commenters do not need to respond to all questions. Please provide explanations for your answers and supporting evidence where appropriate. After examining the comments, the Commission will determine whether to propose any specific amendments.

A. Televisions

To facilitate the Commission's efforts to consider energy disclosures for televisions, we request that commenters consider the following questions and issues:

1. *Need for Labeling*:

a. Would labeling or other energy disclosures for televisions ''assist consumers in making purchasing decisions''? Why or why not?

b. Is there any evidence that labeling or energy disclosures for televisions would ''not be technologically or economically feasible''? If so, please provide such information.

c. What benefits, if any, would labeling or other energy disclosures provide for consumers and businesses (including small businesses)? What costs, if any, would such labeling or other energy disclosures impose on consumers and businesses (including small businesses)?

2. *Energy Use Data*: Is there data regarding energy use of televisions in the market? Is there data that shows a significant difference in the energy use of other models? What are the typical annual energy costs of each product?

3. *Reports, Studies, or Research*: Do any recent reports, studies, or research

[11] 44 FR 66466, 66468 (Nov. 19, 1979).

[12] 72 FR 6836, 6857 (Feb. 13, 2007).

[13] According to the Natural Resources Defense Council (NRDC), there are now many ''large-screen'' digital televisions on the market that use 500 or more kilowatt-hours per year, as much energy as many new refrigerators. NRDC (#519870-00025). At an FTC public workshop held during the 2007 proceeding, one participant suggested that the average 42-inch plasma television draws 334 watts, with models ranging from 201 watts to 520 watts. Workshop Tr. at 198 (http://www.ftc.gov/os/comments/energylabeling-workshop/060503wrkshoptrnscript.pdf).

[14] *See* 72 FR 49948, 49962 (Aug. 29, 2007).

[15] 72 FR at 6858 (Feb. 13, 2007).

[16] *See* International Electrotechnical Commission (http://www.iec.ch/); and ''ENERGY STAR Program Requirements for Televisions Eligibility Criteria (Version 3.0)'' (http://www.energystar.gov/ia/partners/product_specs/eligibility/tv_vcr_elig.pdf).

[17] The current EnergyGuide label is the product of a two-year rulemaking effort concluded in 2007. During that proceeding, the Commission solicited comment about various label designs including energy use or efficiency disclosures, annual operating cost disclosures, and a five-star rating system (*i.e.*, a ''categorical'' label). Based on consumer research and the comments received during that proceeding, the Commission revised the EnergyGuide label to feature prominently annual operating costs on the label. Because this research on showroom products was so recent, we do not plan to duplicate that labeling research for televisions. *See* 72 FR 49948 (Aug. 29, 2007).

provide data relevant to energy use, operating costs, and labeling for televisions in the United States or other countries?[18] If so, please provide such reports, studies, or research.

4. *Test Procedures*: If the Commission were to require labeling, should the Commission require the use of Section 11 of ''IEC 62087, Ed. 2.0: Methods of Measurement for the Power Consumption of Audio, Video and Related Equipment'' and ''IEC 62301, Ed. 1.0: Household Electrical Appliances - Measurement of Standby Power'' as adopted by ENERGY STAR for television labeling purposes? What are the advantages and disadvantages to adopting the ENERGY STAR procedures?

a. *Usage Rates*: To derive annual operating cost figures for potential disclosures, the Rule must require standard usage assumptions for televisions (*e.g.*, 5 hours per day). EPA's Eligibility Criteria (Section 3) uses annual power consumption estimates on a daily usage pattern of 5 hours in ''On Mode'' and 19 hours in ''standby.'' If the FTC were to require labeling or other energy disclosures, should the FTC adopt EPA's usage patterns? What are the advantages and disadvantages to adopting such usage patterns?

b. *Other Test Procedure Issues*: Are there any issues not addressed by Section 11 of IEC 62087 that the Commission should address in a potential Rule? Are there any aspects of the ENERGY STAR criteria (not otherwise contained in IEC 62087 or IEC 62301) that the Commission should incorporate into its labeling requirements? In particular, ENERGY STAR (Section 4.E.2.) has specifications that go beyond the IEC test procedure regarding input signal levels, broadcast test materials, true power factor, testing at default factory settings, and automatic brightness control. Should the FTC adopt any of these particular EPA specifications in its requirements? If so, which ones and why? If not, which ones and why not?

c. *Alternative Test Procedures*: Are there any other test procedures the Commission should adopt in lieu of the ENERGY STAR procedure? If so, please explain why the Commission should adopt such procedures. What are the advantages and disadvantages to adopting such alternative procedures?

5. *Format, Content, and Placement*: If the Commission were to require labeling or other energy disclosures, how should it require manufacturers or other sellers to disclose such information? Should television labels follow the same ''EnergyGuide'' format, content, and placement requirements applicable to other covered showroom products such as refrigerators? What form should the label take (*e.g.*, hang tag, adhesive label, static cling label)?

a. *Retailer Role*: What role should retailers have, if any, in providing these disclosures?[19] Should retailers have a responsibility for the placement of disclosures in brick and mortar stores? If so, what should this responsibility be?

b. *Internet Disclosures*: Should the Commission consider energy disclosure options that do not provide consumer information at the point of purchase in the form of a label or other in-store disclosures (*e.g.*, Internet-only disclosures with no labeling on the product or product package)? If so, what should be the format, content, and placement of such disclosures? Should such Internet disclosures (and other catalog disclosures) be any different than those for other covered products under the Rule (such as refrigerators)?

6. *Comparative Information*: What comparative information, if any, should the Rule require on labels or in other disclosures about the energy use of televisions?

a. Should the Commission require disclosure of a range of comparability similar to EnergyGuide labels for other covered products? If not, why not? If so, how should such comparative information be organized? Should the comparisons be made across model types or technologies (*e.g.*, LCD, plasma, screen resolutions, etc.)? Should the Commission limit comparative information to screen size (*e.g.*, 1′ to 20′, 21′ to 29′, 30′ to 39′, 40′ to 49′, 50′ to 59′, and 60′ or more)? Should the Commission use some other approach for establishing such categories? If so, what approach? What would be the advantages and disadvantages to such an approach?

b. Is there information available from which to develop approximate ranges for labeling purposes or should the Commission wait for manufacturers to test all their products and submit such data to the Commission?

7. *Reporting Requirements*: What data, if any, should the Rule require manufacturers to submit to the FTC?[20] Should the Commission use the data in developing ranges of comparability (*e.g.*, ranges organized by screen size)?

B. Other Consumer Electronics

To facilitate the Commission's consideration of energy disclosures for personal computers, personal computer monitors, cable or satellite set-top boxes, stand-alone digital video recorder boxes, and other consumer electronic products, we request that commenters respond to the following questions and issues:

1. *Need for Energy Disclosures*:

a. Should the Commission require labeling or other energy disclosures for personal computers, personal computer monitors, cable or satellite set-top boxes, and stand-alone digital video recorder boxes? Would labeling or other energy disclosures ''assist consumers in making purchasing decisions''? Is there any evidence that labeling or other energy disclosures for these products would ''not be technologically or economically feasible'' or ''not likely to assist consumers in making purchasing decisions''?

b. Are there any other consumer electronic products (*i.e.*, beyond those listed above) that the Commission should consider for labeling or other energy disclosures? If so, which ones? Would labeling or other energy disclosures ''assist consumers in making purchasing decisions''?

c. What benefits, if any, would labeling or other energy disclosures for consumer electronics (*i.e.*, any product identified in response to 1.a. or 1.b. immediately above) provide for consumers and businesses (including small businesses)? What costs would such labeling or other energy disclosures impose on consumers and businesses (including small businesses)?

2. *Energy Use Data*: Is there data regarding energy use of consumer electronic products (*i.e.*, any product identified in response to 1.a. or 1.b. above) in the market? If so, is there data that shows a significant difference in the energy use of other models? What are

[18] When statistical or scientific data is presented, the Commission requests enough detail about data, study design, statistical analysis, and findings to enable it to understand the methodology that was used to conduct the analysis.

[19] Section 324(c)(4) of EPCA (42 U.S.C. 6294(c)(4)) states: ''A rule under this section applicable to a covered product may require disclosure, in any printed matter displayed or distributed at the point of sale of such product, of any information which may be required under this section to be disclosed on the label of such product.''

[20] Under 42 U.S.C. 6296(b)(2), ''[i]f requested by the Secretary or Commission, the manufacturer of a covered product to which a rule under section 6294 of this title applies shall provide, within 30 days of the date of the request, the data from which the information included on the label and required by the rule was derived.'' In addition, 42 U.S.C. 6296(b)(4) states, ''[e]ach manufacturer of a covered product to which a rule under section 6294 of this title applies shall annually, at a time specified by the Commission, supply to the Commission relevant data respecting energy consumption or water use developed in accordance with the test procedures applicable to such product under section 6293 of this title.''

the annual energy costs of these products?

3. *Reports, Studies, or Research*: Do any recent reports, studies, or research provide data relevant to potential energy disclosures for consumer electronics products in the United States or other countries?[21]

4. *Test Procedures*: Are there existing adequate test procedures for consumer electronic products that could yield annual energy consumption estimates? If so, are such test procedures currently used by industry or in any government standards program? Would such test procedures be appropriate for the Commission to adopt for labeling purposes? Why or why not?

5. *Format, Content, and Placement*: If the Commission considers labeling or other energy disclosures for one or more of these products, what should be the format, content, and placement of such information? How do consumers purchase these products (*e.g.*, in stores, online, etc.)? Should disclosures appear on the products themselves, on packaging, through other point of purchase material, or through some other means?

a. *Retailer Role*: What role, if any, should retailers have in providing these disclosures? Should retailers have a responsibility for the placement of disclosures in brick and mortar stores? If so, what should this responsibility be?

b. *Internet Disclosures*: Should the Commission consider energy disclosure options that do not provide consumer information at the point of purchase in the form of a label or other in-store disclosure (*e.g.*, Internet-only disclosures with no labeling on the product or product package)? Should such Internet disclosures (and other catalog disclosures) be any different than those for other covered products under the Rule (such as refrigerators)?

c. *Content*: If labeling or other energy disclosures should be required, what types of information should be included on such labels? Should labeling provide the same information as the EnergyGuide label (*i.e.*, yearly operating costs, energy use, and comparative information)? Or should the label require something different or additional?

6. *Comparative Information*: What, if any, disclosures should the Rule require about other products on the market? If the Commission requires a label, should the label contain a range of comparability like other covered products with the EnergyGuide label? If not, why not? If so, how should such comparative information be organized? Should the comparisons be made across model types and technologies? Is there data available from which to develop approximate ranges for labeling purposes or should the Commission wait for manufacturers to test all their products and submit such data to the Commission?

7. *Reporting Requirements*: What data, if any, should the Rule require manufacturers to submit to the FTC?

[21] When statistical or scientific data is presented, the Commission requests enough detail about data, study design, statistical analysis, and findings to enable it to understand the methodology that was used to conduct the analysis.

List of Subjects in 16 CFR Part 305

Advertising, Consumer Protection, Energy Conservation, Household Appliances, Labeling, Lamp Products, Penalties, Reporting and Recordkeeping Requirements.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–5560 Filed 3–13–09: 8:45 am]

BILLING CODE 6750–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0884 FRL–8771–2]

Approval and Promulgation of Implementation Plans; Hawaii; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act, EPA is proposing to correct errors in certain final rules approving or compiling the Hawaii state implementation plan. These errors relate to the title of the plan, removal of variance provisions, and compilations of federally enforceable regulations. The intended effect is to ensure that the Hawaii state implementation plan is correctly identified in the applicable part of the Code of Federal Regulations.

DATES: Any comments on this proposal must arrive by *April 15, 2009.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0884, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions.

2. *E-mail: vagenas.ginger@epa.gov.*

3. *Mail or deliver:* Ginger Vagenas (AIR–2), 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. The *www.regulations.gov* portal 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: Ginger Vagenas, Plannning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 942–3964, *vagenas.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses corrections to errors made by EPA in a 1997 final rule removing variance-related provisions from the Hawaii SIP and in a 2005 final rule compiling the Hawaii SIP. In the Rules and Regulations section of this **Federal Register**, we are correcting these errors in a direct final action without prior proposal because we believe these actions are not controversial.

If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as

final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 25, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9–4800 Filed 3–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2007–0531; FRL–8404–6]

RIN 2070–AD16

Testing of Certain High Production Volume Chemicals; Second Group of Chemicals; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public meeting.

SUMMARY: EPA will hold a public meeting to give members of the public an opportunity to comment on a proposed rule under section 4(a)(1)(B) of the Toxic Substances Control Act (TSCA) to require manufacturers, importers, and processors of certain high production volume (HPV) chemical substances to conduct testing to obtain screening level data for health and environmental effects and chemical fate. Opportunity to present oral comment was provided in the proposed rule, and in response to that opportunity, two requests to present oral comments were received.

DATES: The meeting will be held on Tuesday, March 31, 2009, from 8 a.m. to noon.

Requests to participate in the meeting must be received on or before March 31, 2009.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, 1201 Constitution Ave., NW., Rm. 1153, Washington, DC 20460–0001.

Requests to participate in the meeting, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0531, may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul Campanella or John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone numbers: (202) 564–8091 or (202) 564–8173; e-mail addresses: *campanella.paul@epa.gov* or *schaeffer.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statue to include import) or process any of the chemical substances that are listed in § 799.5087(j) of the proposed regulatory text of the HPV2 proposed rule. Any use of the term ''manufacture'' in this document will encompass ''import,'' unless otherwise stated. In addition, once the Agency issues a final rule any person who exports, or intends to export, any of the chemical substances included in the final rule will be subject to the export notification requirements in TSCA section 12(b)(1) and 40 CFR part 707, subpart D. Potentially affected entities may include, but are not limited to:

- Manufacturers (defined by statute to include importers) of one or more of the 19 subject chemical substances listed in the HPV2 proposed rule (NAIC codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.
- Processors of one or more of the 19 subject chemical substances listed in the HPV2 proposed rule (NAIC codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPPT–2007–0531. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr*.

II. Background

In the **Federal Register** issue of July 24, 2008 (73 FR 43314) (FRL–8373–9), EPA published a proposed rule under TSCA section 4(a)(1)(B) to require manufacturers, importers, and processors of certain HPV chemical substances to conduct testing to obtain screening level data for health and environmental effects and chemical fate. EPA has preliminarily determined that: Each of the 19 chemical substances included in that proposed rule is produced in substantial quantities and that there is or may be substantial human exposure to each of them; there are insufficient data to reasonably

determine or predict the effects on health or the environment of the manufacture, distribution in commerce, processing, use, or disposal of the chemicals, or of any combination of these activities; and the testing program proposed is necessary to develop such data. Data developed under the proposed rule will provide critical information about the environmental fate and potential hazards associated with the subject chemical which, when combined with information about exposure and uses will allow the Agency and others to evaluate potential health and environmental risks and to take appropriate follow-up actions.

In response to the proposed rule, EPA received two requests to present oral comment pertaining to specific chemical substances and also the testing program and testing methodologies proposed. One request to present oral comment came from Chlorinated Paraffins Industry Association (CPIA). A second request to present oral comment came from People for the Ethical Treatment of Animals (PETA), on behalf of themselves; the Physicians Committee for Responsible Medicine (PCRM); the Alternatives Research Development Foundation; and the America Anti-Vivisection Society. Written comments provided during the comment period for the proposed rule, including those of requesting an opportunity for oral comment, are available and can be viewed in the docket under docket ID number EPA–HQ–OPPT–2007–0531.

III. How Can I Request To Participate in This Meeting?

You may submit a request to participate in this meeting to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPPT–2008–0531, must be received on or before March 31, 2009.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

Dated: March 10, 2009.

James Jones,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E9–5628 Filed 3–13–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–552; MB Docket No. 09–22; RM–11516]

Television Broadcasting Services; Des Moines, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by KDMI License, LLC (''KDMI License''), the permittee of KDMI–DT, post-transition DTV channel 31, Des Moines, Iowa. KDMI License requests the substitution of DTV channel 19 for post-transition DTV channel 31 at Des Moines.

DATES: Comments must be filed on or before March 31, 2009, and reply comments on or before April 10, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Kathleen Victory, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–22, adopted March 4, 2009, and released March 5, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Iowa, is amended by adding DTV channel 19 and removing DTV channel 31 at Des Moines.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–5637 Filed 3–13–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

RIN 0648–AX10

Taking and Importing Marine Mammals; U.S. Navy Training in the Cherry Point Range Complex

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to training activities conducted within the Cherry Point Range Complex for the period of May 2009 through May 2014. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requesting information, suggestions, and comments on these proposed regulations.

DATES: Comments and information must be received no later than April 6, 2009.

ADDRESSES: You may submit comments, identified by 0648–AX10, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Hand delivery or mailing of paper, disk, or CD–ROM comments should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter NA in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext. 137.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application may be obtained by writing to the address specified above (See **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. The Navy's Draft Environmental Impact Statement (DEIS) for the Cherry Point Range Complex was published on September 12, 2008, and may be viewed at *http://www.NavyCherryPointRangeComplexEIS.com*. NMFS participated in the development of the Navy's DEIS as a cooperating agency under the National Environmental Policy Act (NEPA).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The National Defense Authorization Act of 2004 (NDAA) (Public Law 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On June 13, 2008, NMFS received an application from the Navy requesting authorization for the take of Atlantic spotted dolphin incidental to the proposed training activities in the Cherry Point Range Complex over the course of 5 years. These training activities are classified as military readiness activities. The Navy states that these training activities may cause various impacts to marine mammal species in the proposed Cherry Point Range Complex area. The Navy requests an authorization to take two individuals of this species annually by Level B Harassment. Please refer to the take table on page 6 of the Addendum of the LOA application for detailed information of the potential exposures from explosive ordnance (per year) for marine mammals in the Cherry Point Range Complex. However, due to the implementation of the proposed mitigation and monitoring measures, NMFS believes that the actual take would be less than estimated.

Description of the Specified Activities

The Navy Cherry Point Range Complex geographically encompasses offshore and near-shore operating areas (OPAREAs), instrumented ranges, and special use airspace (SUA) located along the southern east coast (North Carolina and South Carolina) of the U.S. Atlantic coast (see Figure 1 of the LOA application). The action area includes the area from the shoreline to the 3 nm (5.6 km) boundary of the OPAREA, as well as the Cherry Point OPAREA. Together, components of the Navy Cherry Point Range Complex encompass:

- 18,966 nm^2 of special use airspace (warning area);
- 18,617 nm^2 of offshore surface and subsurface OPAREA; and
- 12,529 nm^2 of subsurface area greater than 100 fathoms (600 ft) in depth.

In the application submitted to NMFS, the Navy requests an authorization to take marine mammals incidental to conducting training operations within the Cherry Point Range Complex. These training activities consist of surface warfare, mine warfare, amphibious warfare, and vessel movement. A description of each

of these training activities is provided below:

Surface Warfare

Surface Warfare (SUW) supports defense of a geographical area (e.g., a zone or barrier) in cooperation with surface, subsurface, and air forces. SUW operations detect, localize, and track surface targets, primarily ships. Detected ships are monitored visually and with radar. Operations include identifying surface contacts, engaging with weapons, disengaging, evasion, and avoiding attack, including implementation of radio silence and deceptive measures. For the proposed Cherry Point Range Complex training operations, SUW events involving the use of explosive ordnance include air-to-surface Missile Exercises (MISSILEX) that occur at sea.

Air-to-surface missile exercises involve helicopter (AH–1W) crews launching missiles at at-sea surface targets with the goal of destroying or disabling the target. MISSILEX (A–S) training in the Navy Cherry Point Study Area can occur during the day or at night. Table 1 below summarizes the level of MISSILEX planned in the Cherry Point Range Complex for the proposed action.

TABLE 1—LEVEL OF MISSILEX PLANNED IN THE CHERRY POINT RANGE COMPLEX PER YEAR

Operation	Platform	System/ordnance	Number of events	Potential time of day
Missile Exercise (MISSILEX) (Air to Surface).	AH–1W	AGM–114 (Hellfire; 8-pound [lb] Net Explosive Weight [NEW] High Explosive [HE] rounds[1] and Non-Explosive Practice Munitions [NEPM]).	8 sorties (5 HE missiles; 3 NEPM).	Day or Night.
		Tube-launched, Optically tracked, Wire-guided (TOW) Missile (all 15.33 NEW HE rounds)[1].	8 sorties (8 missiles).	

[1] Uses stationary or towed surface targets; 1 missile/sortie.

Mine Warfare/Mine Exercises

Mine Warfare (MIW) includes the strategic, operational, and tactical use of mines and mine countermine measures (MCM). MIW is divided into two basic subdivisions: (a) The laying of mines to degrade the enemy's capabilities to wage land, air, and maritime warfare, and (b) the countering of enemy-laid mines to permit friendly maneuver or use of selected land or sea areas (DoN, 2007d).

MIW consists of two unit level operations: Airborne mine countermeasures (AMCM) and mine neutralization. AMCM or Mine Countermeasures Exercises (MCMEX) train forces to detect, identify, classify, mark, avoid, and disable (or verify destruction of) underwater mines (bottom or moored) using a variety of methods including air, surface, sub-surface, and ground assets. The AMCM systems include mine hunting sonar (AQS–24A), influence mine sweeping systems (MK–105 and MK–104), anti-mine ordnance (Airborne Mine Neutralization System [AMNS]), and moored mine sweep system (MK–103).

Mine Neutralization operations involve the detection, identification, evaluation, rendering safe, and disposal of underwater Unexploded Ordnance (UXO) that constitutes a threat to ships or personnel. Mine hunting techniques involve divers, specialized sonar, and unmanned underwater vehicles (UUVs) to locate and classify the mines and then destroy them using one of two methods: mechanical (explosive cutters) or influence (matching the acoustic, magnetic, or pressure signature of the mine).

In addition to the current mine exercises (AMCM), the Organic Airborne Mine Countermeasures (OAMCM) training exercises will begin in the Navy Cherry Point Operating Area (OPAREA) as these new systems are introduced into the fleet. The OAMCM systems include mine hunting sonar (AQS–20), influence mine sweeping towed arrays (Organic Airborne and Surface Influence Sweep [OASIS]) that emulates the magnetic and acoustic signatures of transit platforms, anti-mine ordnance systems (Rapid Airborne Mine Clearance System [RAMICS] and AMNS), and mine hunting laser (Airborne Laser Mine Detection System [ALMDS]) that uses a light imaging detecting and ranging (LIDAR) to detect, localize, and classify near-surface moored/floating mines.

MIW training using Explosive Ordnance Disposal (EOD) underwater detonations in the Navy Cherry Point Study Area occur only during daylight hours in the locations described in Figure 1 of the LOA application. Table 2 below shows a summarized level of MIW in the Cherry Point Study Area.

TABLE 2—LEVEL OF MINE WARFARE PLANNED IN THE CHERRY POINT RANGE COMPLEX PER YEAR

Operation	Platform	System/ordnance	Number of events per year	Potential time of day	Duration of event
Mine Neutralization	EOD	20 lb NEW charges	20 events	Day	8 hours.

EOD personnel detect, identify, evaluate, and neutralize mines. The EOD mission during training is to locate and neutralize mine shapes after they are initially located by another source, such as an MCM or coastal minehunter MHC class ship or an MH–53 or MH–60 helicopter. For underwater detonations, EOD divers are deployed from a ship or small boat to practice neutralizing a mine shape underwater. The neutralization exercise in the water is normally done with an explosive charge of 20-lbs NEW. The initiation of the charge is controlled remotely by EOD personnel. If the mine shape were an actual mine, it would explode due to the pressure and energy exerted in the water from the smaller EOD explosive charge. This training is conducted only during day light hours in the Cherry Point Area.

Amphibious Warfare

Amphibious Warfare (AMW) involves the utilization of naval firepower and logistics in combination with U.S. Marine Corps (USMC) landing forces to project military power ashore. AMW encompasses a broad spectrum of operations involving maneuver from the sea to objectives ashore, ranging from shore assaults, boat raids, ship-to-shore maneuver, shore bombardment and other naval fire support, and air strike

and close air support training. In the Cherry Point Study Area, AMW training is limited to Firing Exercises (FIREX).

During a FIREX, surface ships use their main battery guns to fire from sea at land targets in support of military forces ashore. On the east coast, the land ranges where FIREX training can take place are limited. Therefore, land masses are simulated during east coast FIREX training using the Integrated Maritime Portable Acoustic Scoring and Simulation System (IMPASS) system, a system of buoys that simulate a land mass. FIREX training using IMPASS in the Cherry Point Study Area would occur only during daylight hours in the locations described in Figure 1 of the LOA application. Table 3 below summarizes the levels of FIREX with IMPASS planned in the Cherry Point Range Complex for the proposed action.

TABLE 3—LEVEL OF FIREX WITH IMPASS PLANNED IN THE CHERRY POINT RANGE COMPLEX PER YEAR

Operation	Platform	System/ordnance	Number of events	Potential time of day	Duration of event
FIREX with IMPASS	CG, DDG	5″ gun (IMPASS)	2 events (78 rounds)	Day	12 hours.

Vessel Movement

Vessel movements are associated with most activities under the training operations in the Navy Cherry Point Study Area. Currently, the number of Navy vessels operating in the Navy Cherry Point Study Area varies based on training schedules and can range from 0 to about 10 vessels at any given time. Ship sizes range from 362 ft for a submarine (SSN) to 1,092 ft for an aircraft carrier (CVN) and speeds generally range from 10 to 14 knots (kt). Operations involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. These operations are widely dispersed throughout the OPAREA, which is a vast area encompassing 18,617 square nautical miles (nm^2) (an area approximately the size of West Virginia). The Navy logs about 950 total vessel days within the Study Area during a typical year. Consequently, the density of ships within the Study Area at any given time is extremely low (i.e., less than 0.005 ships/nm^2).

Description of Marine Mammals in the Area of the Specified Activities

There are 33 cetacean species, 4 pinniped species, and 1 sirenian species that have the potential or are confirmed to occur in the Cherry Point Range Complex (DoN, 2008). However, only 34 of those species are expected to occur regularly in the OPAREA, as indicated in Table 4. The remaining species are considered extralimital in the Study Area; indicating there are one or more records of an animal's presence in the Study Area, but it is considered beyond the normal range of the species. Extralimital species will not be analyzed further in this study.

TABLE 4—MARINE MAMMAL SPECIES FOUND IN THE CHERRY POINT RANGE COMPLEX

Family and scientific name	Common name	Federal status
Order Cetacea Suborder Mysticeti (baleen whales)		
Eubalaena glacialis	North Atlantic right whale	Endangered.
Megaptera novaeangliae	Humpback whale	Endangered.
Balaenoptera acutorostrata	Minke whale.	
B. brydei	Bryde's whale.	
B. borealis	Sei whale	Endangered.
B. physalus	Fin whale	Endangered.
B. musculus	Blue whale	Endangered.
Suborder Odontoceti (toothed whales)		
Physeter macrocephalus	Sperm whale	Endangered.
Kogia breviceps	Pygmy sperm whale.	
K. sima	Dwarf sperm whale.	
Ziphius cavirostris	Cuvier's beaked whale.	
Mesoplodon minus	True's beaked whale.	
M. europaeus	Gervais' beaked whale.	
M. bidens	Sowerby's beaked whale.	
M. densirostris	Blainville's beaked whale.	
Steno bredanensis	Rough-toothed dolphin.	
Tursiops truncatus	Bottlenose dolphin.	
Stenella attenuata	Pantropical spotted dolphin.	
S. frontalis	Atlantic spotted dolphin.	
S. longirostris	Spinner dolphin.	
S. clymene	Clymene dolphin.	
S. coeruleoalba	Striped dolphin.	
Delphinus delphis	Common dolphin.	
Lagenodephis hosei	Fraser's dolphin.	
Grampus griseus	Risso's dolphin.	
Peponocephala electra	Melon-headed whale.	
Feresa attenuata	Pygmy killer whale.	
Pseudorca crassidens	False killer whale.	
Orcinus orca	Killer whale.	

TABLE 4—MARINE MAMMAL SPECIES FOUND IN THE CHERRY POINT RANGE COMPLEX—Continued

Family and scientific name	Common name	Federal status
Globicephala melas	Long-finned pilot whale.	
G. macrorhynchus	Short-finned pilot whale.	
Phocoena phocoena	Harbor porpoise.	
Order Carnivora Suborder Pinnipedia (seals, sea lions, walruses)		
Phoca vitulina	Harbor seal.	
Order Sirenia		
Trichechus manatus	West Indian manatee	Endangered.

The information contained herein relies heavily on the data gathered in the Marine Resource Assessments (MRAs). The Navy MRA Program was implemented by the Commander, Fleet Forces Command, to initiate collection of data and information concerning the protected and commercial marine resources found in the Navy's OPAREAs. Specifically, the goal of the MRA program is to describe and document the marine resources present in each of the Navy's OPAREAs. The MRA for the Cherry Point Study Area was recently updated in 2008 (DoN, 2008).

The MRA data were used to provide a regional context for each species. The MRA represents a compilation and synthesis of available scientific literature (e.g., journals, periodicals, theses, dissertations, project reports, and other technical reports published by government agencies, private businesses, or consulting firms), and NMFS reports including stock assessment reports, recovery plans, and survey reports.

The density estimates that were used in previous Navy environmental documents have been recently updated to provide a compilation of the most recent data and information on the occurrence, distribution, and density of marine mammals. The updated density estimates presented in this assessment are derived from the Navy OPAREA Density Estimates (NODE) for the Southeast OPAREAs report (DoN, 2007). Quantification of marine mammal density and abundance was primarily accomplished by evaluating line-transect survey data which was collected by the NMFS Northeast and Southeast Fisheries Science Centers (NEFSC and SEFSC). The NEFSC and SEFSC are the technical centers within NMFS that are responsible for collecting and analyzing data to assess marine mammal stocks in the U.S. Atlantic Exclusive Economic Zone (EEZ). These data sets were analyzed and evaluated in conjunction with regional subject matter experts, NMFS technical staff, and scientists with the University of St. Andrews, Scotland, Centre for Environmental and Ecological Modelling (CREEM). Methods and results are detailed in NODE Reports covering all U.S. Atlantic coast OPAREAS as well as the Gulf of Mexico.

Density estimates for cetaceans were derived in one of three ways, in order of preference: (1) Through spatial models using line-transect survey data provided by the NMFS (as discussed below); (2) using abundance estimates from Mullin and Fulling (2003); or (3) based on the cetacean abundance estimates found in the NMFS stock assessment reports (SAR; Waring *et al.*, 2007), which can be viewed at *http://www.nmfs.noaa.gov/pr/sars/species.htm*. The following lists how density estimates were derived for each species:

Model-Derived Density Estimates

Fin whale, sperm whale, beaked whales, bottlenose dolphin, Atlantic spotted dolphin, striped dolphin, common dolphin, Risso's dolphin, and pilot whales.

SAR or Literature-Derived Density Estimates

North Atlantic right whale, humpback whale, minke whale, *Kogia* spp., rough-toothed dolphin, pantropical spotted dolphin, and Clymene dolphin.

Species for Which Density Estimates Are Not Available

Blue whale, sei whale, Bryde's whale, killer whale, pygmy killer whale, false killer whale, melon-headed whale, spinner dolphin, Fraser's dolphin, harbor porpoise.

Spatial modeling using Program DISTANCE (RUWPA), a program based on Buckland *et al.* (2001, 2004), is the primary method of density estimation used to produce the updated NODE reports. Together with appropriate line-transect survey data, this method provides the most accurate/up-to-date density information for marine mammals in U.S. Navy OPAREAs. The density estimates in this document were calculated by a team of experts using survey data collected and provided by the NMFS and with expert modeling support provided by CREEM. Researchers at CREEM are recognized as the international authority on density estimation and have been at the forefront in development of new techniques and analysis methods for animal density including spatial modeling techniques. Spatial modeling techniques have an advantage over traditional line-transect/distance sampling techniques in that they can provide relatively fine scale estimates for areas with limited or no available survey effort by creating models based on habitat parameters associated with observations from other surveys with similar spatial or temporal characteristics. Analysis of line-transect data in this manner allows for finer-scale spatial and/or temporal resolution of density estimates, providing indications of regions within the study area where higher and lower concentrations of marine mammals may occur rather than the traditional approach of generating a single estimate covering a broad spatial strata. These generic spatial strata tend to mask the finer scale habitat associations suggested by the specific ecology of an individual species.

For the model-based approach, density estimates were calculated for each species within areas containing survey effort. A relationship between these density estimates and the associated environmental parameters such as depth, slope, distance from the shelf break, sea surface temperature (SST), and chlorophyll *a* concentration was formulated using generalized additive models (GAMs). This relationship was then used to generate a two-dimensional density surface for

the region by predicting densities in areas where no survey data exist. For the Southeast, all analyses for cetaceans were based on sighting data collected through shipboard surveys conducted by the NMFS NEFSC and SEFSC between 1998 and 2005. Species-specific density estimates derived through spatial modeling were compared with abundance estimates found in the SAR (Waring *et al.*, 2007) to ensure consistency and all spatial models and density estimates were reviewed by NMFS technical staff. For a more detailed description of the methodology involved in calculating the density estimates, please refer to the NODE report for the Southeast OPAREAs (DoN, 2007a).

Potential Impacts to Marine Mammal Species

The Navy considers that explosions associated with MISSILEX, FIREX with IMPASS, and MINEX are the activities with the potential to result in Level A or Level B harassment of marine mammals. Vessel strikes were also analyzed for potential effect to marine mammals.

Vessel Strikes

Collisions with commercial and Navy ships can result in serious injury and may occasionally cause fatalities to cetaceans and manatees. Although the most vulnerable marine mammals may be assumed to be slow-moving cetaceans or those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., sperm whale), fin whales are actually struck most frequently (Laist *et al.*, 2001). Manatees are also particularly susceptible to vessel interactions and collisions with watercraft constitute the leading cause of mortality (USFWS, 2007). Smaller marine mammals such as bottlenose and Atlantic spotted dolphins move more quickly throughout the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

After reviewing historical records and computerized stranding databases for evidence of ship strikes involving baleen and sperm whales, Laist *et al.* (2001) found that accounts of large whale ship strikes involving motorized boats in the area date back to at least the late 1800s. Ship collisions remained infrequent until the 1950s, after which point they increased. Laist *et al.* (2001) report that both the number and speed of motorized vessels have increased over time for trans-Atlantic passenger services, which transit through the area. They concluded that most strikes occur over or near the continental shelf, that ship strikes likely have a negligible effect on the status of most whale populations, but that for small populations or segments of populations the impact of ship strikes may be significant.

Although ship strikes may result in the mortality of a limited number of whales within a population or stock, Laist *et al.* (2001) also concluded that, when considered in combination with other human-related mortalities in the area (e.g., entanglement in fishing gear), these ship strikes may present a concern for whale populations.

Of 11 species known to be hit by ships, fin whales are struck most frequently; followed by right whales, humpback whales, sperm whales, and gray whales (Laist *et al.*, 2001). In some areas, one-third of all fin whale and right whale strandings appear to involve ship strikes. Sperm whales spend long periods (typically up to 10 minutes; Jacquet *et al.*, 1996) ''rafting'' at the surface between deep dives. This could make them exceptionally vulnerable to ship strikes. Berzin (1972) noted that there were ''many'' reports of sperm whales of different age classes being struck by vessels, including passenger ships and tug boats. There were also instances in which sperm whales approached vessels too closely and were cut by the propellers (NMFS, 2006).

The east coast is a principal migratory corridor for North Atlantic right whales that travel between the calving/nursery areas in the Southeastern United States and feeding grounds in the northeast U.S. and Canada. Transit to the Study Area from mid-Atlantic ports requires Navy vessels to cross the migratory route of North Atlantic right whales. Southward right whale migration generally occurs from mid- to late November, although some right whales may arrive off the Florida coast in early November and stay into late March (Kraus *et al.*, 1993). The northbound migration generally takes place between January and late March. Data indicate that during the spring and fall migration, right whales typically occur in shallow water immediately adjacent to the coast, with over half the sightings (63 percent) occurring within 18.5 km (10 NM), and 94.1 percent reported within 55 km (30 NM) of the coast. Given the low abundance of North Atlantic right whales relative to other species, the frequency of occurrence of vessel collisions to right whales suggests that the threat of ship strikes is proportionally greater to this species (Jensen and Silber, 2003). Therefore, in 2008, NMFS published a final rule concerning right whale vessel collision reduction strategy and established operational measures for the shipping industry to reduce the potential for large vessel collisions with North Atlantic right whales while transiting to and from mid-Atlantic ports during right whale migratory periods (73 FR 60173; October 10, 2008). Although NMFS' ship strike rule does not apply to the Navy's activities, the Navy developed its own ship strike avoidance measures to reduce the probability of ship strikes. Recent studies of right whales have shown that these whales tend to lack a response to the sounds of oncoming vessels (Nowacek *et al.*, 2004). Although Navy vessel traffic generally represents only 2–3 percent of overall large vessel traffic, based on this biological characteristic and the presence of critical Navy ports along the whales' mid-Atlantic migratory corridor, the Navy was the first federal agency to proactively adopt additional mitigation measures for transits in the vicinity of mid-Atlantic ports during right whale migration.

Accordingly, the Navy has proposed mitigation measures to reduce the potential for collisions with surfaced marine mammals (for more details refer to Proposed Mitigation Measures below). Based on the implementation of Navy mitigation measures, especially during times of anticipated right whale occurrence, and the relatively low density of Navy ships in the Study Area the likelihood that a vessel collision would occur is very low.

Assessment of Marine Mammal Response to Anthropogenic Sound

Marine mammals respond to various types of anthropogenic sounds introduced in the ocean environment. Responses are typically subtle and can include shorter surfacings, shorter dives, fewer blows per surfacing, longer intervals between blows (breaths), ceasing or increasing vocalizations, shortening or lengthening vocalizations, and changing frequency or intensity of vocalizations (NRC, 2005). However, it is not known how these responses relate to significant effects (e.g., long-term effects or population consequences). The following is an assessment of marine mammal responses and disturbances when exposed to anthropogenic sound.

I. Physiology

Potential impacts to the auditory system are assessed by considering the characteristics of the received sound (e.g., amplitude, frequency, duration) and the sensitivity of the exposed

animals. Some of these assessments can be numerically based (e.g., temporary threshold shift [TTS] of hearing sensitivity, permanent threshold shift [PTS] of hearing sensitivity, perception). Others will be necessarily qualitative, due to a lack of information, or will need to be extrapolated from other species for which information exists.

Potential physiological responses to the sound exposure are ranked in descending order, with the most severe impact (auditory trauma) occurring at the top and the least severe impact occurring at the bottom (the sound is not perceived).

Auditory trauma represents direct mechanical injury to hearing related structures, including tympanic membrane rupture, disarticulation of the middle ear ossicles, and trauma to the inner ear structures such as the organ of Corti and the associated hair cells. Auditory trauma is always injurious that could result in PTS. Auditory trauma is always assumed to result in a stress response.

Auditory fatigue refers to a loss of hearing sensitivity after sound stimulation. The loss of sensitivity persists after, sometimes long after, the cessation of the sound. The mechanisms responsible for auditory fatigue differ from auditory trauma and would primarily consist of metabolic exhaustion of the hair cells and cochlear tissues. The features of the exposure (e.g., amplitude, frequency, duration, temporal pattern) and the individual animal's susceptibility would determine the severity of fatigue and whether the effects were temporary (TTS) or permanent (PTS). Auditory fatigue (PTS or TTS) is always assumed to result in a stress response.

Sounds with sufficient amplitude and duration to be detected among the background ambient noise are considered to be perceived. This category includes sounds from the threshold of audibility through the normal dynamic range of hearing (i.e., not capable of producing fatigue).

To determine whether an animal perceives the sound, the received level, frequency, and duration of the sound are compared to what is known of the species' hearing sensitivity.

Since audible sounds may interfere with an animal's ability to detect other sounds at the same time, perceived sounds have the potential to result in auditory masking. Unlike auditory fatigue, which always results in a stress response because the sensory tissues are being stimulated beyond their normal physiological range, masking may or may not result in a stress response, depending on the degree and duration of the masking effect. Masking may also result in a unique circumstance where an animal's ability to detect other sounds is compromised without the animal's knowledge. This could conceivably result in sensory impairment and subsequent behavior change; in this case, the change in behavior is the lack of a response that would normally be made if sensory impairment did not occur. For this reason, masking also may lead directly to behavior change without first causing a stress response.

The features of perceived sound (e.g., amplitude, duration, temporal pattern) are also used to judge whether the sound exposure is capable of producing a stress response. Factors to consider in this decision include the probability of the animal being naïve or experienced with the sound (i.e., what are the known/unknown consequences of the exposure).

If the received level is not of sufficient amplitude, frequency, and duration to be perceptible by the animal, by extension, this does not result in a stress response (not perceived). Potential impacts to tissues other than those related to the auditory system are assessed by considering the characteristics of the sound (e.g., amplitude, frequency, duration) and the known or estimated response characteristics of non-auditory tissues. Some of these assessments can be numerically based (e.g., exposure required for rectified diffusion). Others will be necessarily qualitative, due to lack of information. Each of the potential responses may or may not result in a stress response.

Direct tissue effects—Direct tissue responses to sound stimulation may range from tissue shearing (injury) to mechanical vibration with no resulting injury.

No tissue effects—The received sound is insufficient to cause either direct (mechanical) or indirect effects to tissues. No stress response occurs.

II. The Stress Response

The acoustic source is considered a potential stressor if, by its action on the animal, via auditory or non-auditory means, it may produce a stress response in the animal. The term ''stress'' has taken on an ambiguous meaning in the scientific literature, but with respect to the later discussions of allostasis and allostatic loading, the stress response will refer to an increase in energetic expenditure that results from exposure to the stressor and which is predominantly characterized by either the stimulation of the sympathetic nervous system (SNS) or the hypothalamic-pituitary-adrenal (HPA) axis (Reeder and Kramer, 2005). The SNS response to a stressor is immediate and acute and is characterized by the release of the catecholamine neurohormones norepinephrine and epinephrine (i.e., adrenaline). These hormones produce elevations in the heart and respiration rate, increase awareness, and increase the availability of glucose and lipids for energy. The HPA response is ultimately defined by increases in the secretion of the glucocorticoid steroid hormones, predominantly cortisol in mammals. The amount of increase in circulating glucocorticoids above baseline may be an indicator of the overall severity of a stress response (Hennessy *et al.*, 1979). Each component of the stress response is variable in time; e.g., adrenalines are released nearly immediately and are used or cleared by the system quickly, whereas cortisol levels may take long periods of time to return to baseline.

The presence and magnitude of a stress response in an animal depends on a number of factors. These include the animal's life history stage (e.g., neonate, juvenile, adult), the environmental conditions, reproductive or developmental state, and experience with the stressor. Not only will these factors be subject to individual variation, but they will also vary within an individual over time. In considering potential stress responses of marine mammals to acoustic stressors, each of these should be considered. For example, is the acoustic stressor in an area where animals engage in breeding activity? Are animals in the region resident and likely to have experience with the stressor (i.e., repeated exposures)? Is the region a foraging ground or are the animals passing through as transients? What is the ratio of young (naive) to old (experienced) animals in the population? It is unlikely that all such questions can be answered from empirical data; however, they should be addressed in any qualitative assessment of a potential stress response as based on the available literature.

The stress response may or may not result in a behavioral change, depending on the characteristics of the exposed animal. However, provided a stress response occurs, we assume that some contribution is made to the animal's allostatic load. Allostasis is the ability of an animal to maintain stability through change by adjusting its physiology in response to both predictable and unpredictable events (McEwen and Wingfield, 2003). The same hormones associated with the stress response vary naturally throughout an animal's life, providing support for particular life

history events (e.g., pregnancy) and predictable environmental conditions (e.g., seasonal changes). The allostatic load is the cumulative cost of allostasis incurred by an animal and is generally characterized with respect to an animal's energetic expenditure. Perturbations to an animal that may occur with the presence of a stressor, either biological (e.g., predator) or anthropogenic (e.g., construction), can contribute to the allostatic load (Wingfield, 2003). Additional costs are cumulative and additions to the allostatic load over time may contribute to reductions in the probability of achieving ultimate life history functions (e.g., survival, maturation, reproductive effort and success) by producing pathophysiological states (the conditions of disease or injury). The contribution to the allostatic load from a stressor requires estimating the magnitude and duration of the stress response, as well as any secondary contributions that might result from a change in behavior.

If the acoustic source does not produce tissue effects, is not perceived by the animal, or does not produce a stress response by any other means, we assume that the exposure does not contribute to the allostatic load. Additionally, without a stress response or auditory masking, it is assumed that there can be no behavioral change. Conversely, any immediate effect of exposure that produces an injury is assumed to also produce a stress response and contribute to the allostatic load.

III. Behavior

Changes in marine mammal behavior are expected to result from an acute stress response. This expectation is based on the idea that some sort of physiological trigger must exist to change any behavior that is already being performed. The exception to this rule is the case of auditory masking. The presence of a masking sound may not produce a stress response, but may interfere with the animal's ability to detect and discriminate biologically relevant signals. The inability to detect and discriminate biologically relevant signals hinders the potential for normal behavioral responses to auditory cues and is thus considered a behavioral change.

Impulsive sounds from explosions have very short durations as compared to other sounds like sonar or ship noise, which are more likely to produce auditory masking. Additionally the explosive sources analyzed in this document are used infrequently and the training events are typically of short duration. Therefore, the potential for auditory masking is unlikely.

Numerous behavioral changes can occur as a result of stress response. For each potential behavioral change, the magnitude in the change and the severity of the response needs to be estimated. Certain conditions, such as stampeding (i.e., flight response) or a response to a predator, might have a probability of resulting in injury. For example, a flight response, if significant enough, could produce a stranding event. Each disruption to a natural behavioral pattern (e.g., breeding or nursing) may need to be classified as Level B harassment. All behavioral disruptions have the potential to contribute to the allostatic load. This secondary potential is signified by the feedback from the collective behaviors to allostatic loading.

IV. Life Function

IV.1. Proximate Life Functions

Proximate life history functions are the functions that the animal is engaged in at the time of acoustic exposure. The disruption of these functions, and the magnitude of the disruption, is something that must be considered in determining how the ultimate life history functions are affected. Consideration of the magnitude of the effect to each of the proximate life history functions is dependent upon the life stage of the animal. For example, an animal on a breeding ground which is sexually immature will suffer relatively little consequence to disruption of breeding behavior when compared to an actively displaying adult of prime reproductive age.

IV.2. Ultimate Life Functions

The ultimate life functions are those that enable an animal to contribute to the population (or stock, or species, etc.). The impact to ultimate life functions will depend on the nature and magnitude of the perturbation to proximate life history functions. Depending on the severity of the response to the stressor, acute perturbations may have nominal to profound impacts on ultimate life functions. For example, unit-level use of sonar by a vessel transiting through an area that is utilized for foraging, but not for breeding, may disrupt feeding by exposed animals for a brief period of time. Because of the brevity of the perturbation, the impact to ultimate life functions may be negligible. By contrast, weekly training over a period of years may have a more substantial impact because the stressor is chronic. Assessment of the magnitude of the stress response from the chronic perturbation would require an understanding of how and whether animals acclimate to a specific, repeated stressor and whether chronic elevations in the stress response (e.g., cortisol levels) produce fitness deficits.

The proximate life functions are loosely ordered in decreasing severity of impact. Mortality (survival) has an immediate effect, in that no future reproductive success is feasible and there is no further addition to the population resulting from reproduction. Severe injuries may also lead to reduced survivorship (longevity) and prolonged alterations in behavior. The latter may further affect an animal's overall reproductive success and reproductive effort. Disruptions of breeding have an immediate impact on reproductive effort and may impact reproductive success. The magnitude of the effect will depend on the duration of the disruption and the type of behavior change that was provoked. Disruptions to feeding and migration can affect all of the ultimate life functions; however, the impacts to reproductive effort and success are not likely to be as severe or immediate as those incurred by mortality and breeding disruptions.

Explosive Ordnance Exposure Analysis

The underwater explosion from a weapon would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. The effects of an underwater explosion on a marine mammal depends on many factors, including the size, type, and depth of both the animal and the explosive charge; the depth of the water column; and the standoff distance between the charge and the animal, as well as the sound propagation properties of the environment. Potential impacts can range from brief effects (such as behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to death of the animal (Yelverton *et al.*, 1973; O'Keeffe and Young, 1984; DoN, 2001). Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sublethal injuries (DoN, 2001). Immediate lethal injury would be a result of massive combined trauma to internal organs as a direct result of proximity to the point of detonation (DoN, 2001). Generally, the higher the level of impulse and pressure level

exposure, the more severe the impact to an individual.

Injuries resulting from a shock wave take place at boundaries between tissues of different density. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.*, 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.*, 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten, 2000). Sound-related damage associated with blast noise can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If an animal is able to hear a noise, at some level it can damage its hearing by causing decreased sensitivity (Ketten, 1995) (See *Assessment of Marine Mammal Response to Anthropogenic Sound* Section above). Sound-related trauma can be lethal or sublethal. Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

The exercises that use explosives in this request include: FIREX with IMPASS, MISSILEX, and MINEX. Table 5 summarizes the number of events (per year by season) and specific areas where each occurs for each type of explosive ordnance used. For most of the operations, there is no difference in how many events take place between the different seasons. Fractional values are a result of evenly distributing the annual totals over the four seasons. For example, there are 6 Hellfire events per year that can take place in sub-areas 16 and 17 during any season, so there are 1.5 events modeled for each season.

TABLE 5—NUMBER OF EXPLOSIVE EVENTS WITHIN THE CHERRY POINT RANGE COMPLEX

Sub-area *	Ordnance	Winter	Spring	Summer	Fall	Annual totals
	MISSILEX					22
16 & 17	Hellfire	1.5	1.5	1.5	1.5	
16 & 17	TOW	2	2	2	2	
	FIREX with IMPASS					2
13 & 14	5″ rounds	.25	.25	.25	.25	
4 & 5	5″ rounds	.25	.25	.25	.25	
	MINEX					20
UNDET	20 LB	5	5	5	5	

* See Figure 1 of the LOA application for the location of sub-areas.

Definition of Harassment

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Level B Harassment

Of the potential effects that were described in the *Assessment of Marine Mammal Response to Anthropogenic Sound* and the *Explosive Ordnance Exposure Analysis* sections, the following are the types of effects that fall into the Level B Harassment category:

Behavioral Harassment—Behavioral disturbance that rises to the level described in the definition above, when resulting from exposures to underwater detonations, is considered Level B Harassment. Some of the lower level physiological stress responses discussed in the *Assessment of Marine Mammal Response to Anthropogenic Sound* section will also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When Level B Harassment is predicted based on estimated behavioral responses, those takes may have a stress-related physiological component as well.

Acoustic Masking and Communication Impairment—Acoustic masking is considered Level B Harassment as it can disrupt natural behavioral patterns by interrupting or limiting the marine mammal's receipt or transmittal of important information or environmental cues.

TTS—As discussed previously, TTS can affect how an animal behaves in response to the environment, including conspecifics, predators, and prey. The following physiological mechanisms are thought to play a role in inducing auditory fatigue: effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS, they are within the normal bounds of physiological variability and tolerance

and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to underwater detonations) as Level B Harassment, not Level A Harassment (injury).

Level A Harassment

Of the potential effects that were described in the *Assessment of Marine Mammal Response to Anthropogenic Sound* section, the following are the types of effects that fall into the Level A Harassment category:

PTS—PTS is irreversible and considered to be an injury. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and result in changes in the chemical composition of the inner ear fluids.

Physical Disruption of Tissues Resulting from Explosive Shock Wave—Physical damage of tissues resulting from a shock wave (from an explosive detonation) is classified as an injury. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000) and gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible to damage (Goertner, 1982; Hill 1978; Yelverton *et al.*, 1973). Nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Severe damage (from the shock wave) to the ears can include tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear.

Acoustic Take Criteria

For the purposes of an MMPA incidental take authorization, three types of take are identified: Level B Harassment; Level A Harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into the two harassment categories were described in the previous section.

Because the physiological and behavioral responses of the majority of the marine mammals exposed to underwater detonations cannot be detected or measured, a method is needed to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the proposed action. To this end, NMFS uses an acoustic criteria that estimate at what received level (when exposed to explosive detonations) Level B Harassment, Level A Harassment, and mortality (for explosives) of marine mammals would occur. The acoustic criteria for Underwater Detonations are discussed.

Thresholds and Criteria for Impulsive Sound

Criteria and thresholds for estimating the exposures from a single explosive activity on marine mammals were established for the Seawolf Submarine Shock Test Final Environmental Impact Statement (FEIS) (''Seawolf'') and subsequently used in the USS Winston S. Churchill (DDG–81) Ship Shock FEIS (''Churchill'') (DoN, 1998 and 2001a). NMFS adopted these criteria and thresholds in its final rule on unintentional taking of marine animals occurring incidental to the shock testing (NMFS, 2001a). Since the ship-shock events involve only one large explosive at a time, additional assumptions were made to extend the approach to cover multiple explosions for FIREX (with IMPASS). In addition, this section reflects a revised acoustic criterion for small underwater explosions (i.e., 23 pounds per square inch [psi] instead of previous acoustic criteria of 12 psi for peak pressure over all exposures), which is based on the final rule issued to the Air Force by NMFS (NMFS, 2005c).

I.1. Thresholds and Criteria for Injurious Physiological Impacts

I.1.a. Single Explosion

For injury, NMFS uses dual criteria: eardrum rupture (i.e. tympanic-membrane injury) and onset of slight lung injury. These criteria are considered indicative of the onset of injury. The threshold for tympanic-membrane (TM) rupture corresponds to a 50 percent rate of rupture (i.e. 50 percent of animals exposed to the level are expected to suffer TM rupture). This value is stated in terms of an Energy Flux Density Level (EL) value of 1.17 inch pounds per square inch (in-lb/in2), approximately 205 dB re 1 microPa^2-sec.

The threshold for onset of slight lung injury is calculated for a small animal (a dolphin calf weighing 26.9 lbs), and is given in terms of the ''Goertner modified positive impulse,'' indexed to 13 psi-msec (DoN, 2001). This threshold is conservative since the positive impulse needed to cause injury is proportional to animal mass, and therefore, larger animals require a higher impulse to cause the onset of injury. This analysis assumed the marine species populations were 100 percent small animals. The criterion with the largest potential impact range (most conservative), either TM rupture (energy threshold) or onset of slight lung injury (peak pressure), will be used in the analysis to determine Level A exposures for single explosive events.

For mortality, NMFS uses the criterion corresponding to the onset of extensive lung injury. This is conservative in that it corresponds to a 1 percent chance of mortal injury, and yet any animal experiencing onset severe lung injury is counted as a lethal exposure. For small animals, the threshold is given in terms of the Goertner modified positive impulse, indexed to 30.5 psi-msec. Since the Goertner approach depends on propagation, source/animal depths, and animal mass in a complex way, the actual impulse value corresponding to the 30.5 psi-msec index is a complicated calculation. To be conservative, the analysis used the mass of a calf dolphin (at 26.9 lbs) for 100 percent of the populations.

I.1.b. Multiple Explosions

For this analysis, the use of multiple explosions only applies to FIREX (with IMPASS). Since FIREX require multiple explosions, the Churchill approach had to be extended to cover multiple sound events at the same training site. For multiple exposures, accumulated energy over the entire training time is the natural extension for energy thresholds since energy accumulates with each subsequent shot (detonation); this is consistent with the treatment of multiple arrivals in Churchill. For positive impulse, it is consistent with Churchill to use the maximum value over all impulses received.

I.2. Thresholds and Criteria for Non-Injurious Physiological Effects

The NMFS' criterion for non-injurious harassment is TTS—a slight, recoverable loss of hearing sensitivity (DoN, 2001). For this assessment, there are dual criteria for TTS, an energy threshold and a peak pressure threshold. The criterion with the largest potential impact range (most conservative) either the energy or peak pressure threshold, will be used in the analysis to determine Level B TTS exposures.

I.2.a. Single Explosion—TTS-Energy Threshold

The first threshold is a 182 dB re 1 microPa^2-sec maximum energy flux

density level in any ⅓-octave band at frequencies above 100 Hertz (Hz) for toothed whales and in any ⅓-octave band above 10 Hz for baleen whales. For large explosives, as in the case of the Churchill FEIS, frequency range cutoffs at 10 and 100 Hz make a difference in the range estimates. For small explosives (<1,500 lb NEW), as what was modeled for this analysis, the spectrum of the shot arrival is broad, and there is essentially no difference in impact ranges for toothed whales or baleen whales.

The TTS energy threshold for explosives is derived from the Space and Naval Warfare Systems Center (SSC) pure-tone tests for TTS (Schlundt *et al.*, 2000; Finneran and Schlundt, 2004). The pure-tone threshold (192 dB as the lowest value) is modified for explosives by (a) interpreting it as an energy metric, (b) reducing it by 10 dB to account for the time constant of the mammal ear, and (c) measuring the energy in ⅓-octave bands, the natural filter band of the ear. The resulting threshold is 182 dB re 1 microPa^2-sec in any ⅓-octave band. The energy threshold usually dominates and is used in the analysis to determine potential Level B exposures for single explosion ordnance.

I.2.b. Single Explosion—TTS-Peak Pressure Threshold

The second threshold applies to all species and is stated in terms of peak pressure at 23 psi (about 225 dB re 1 microPa). This criterion was adopted for Precision Strike Weapons (PSW) Testing and Training by Eglin Air Force Base in the Gulf of Mexico (NMFS, 2005b). It is important to note that for small shots near the surface (such as in this analysis), the 23-psi peak pressure threshold generally will produce longer impact ranges than the 182-dB energy metric. Furthermore, it is not unusual for the TTS impact range for the 23-psi pressure metric to actually exceed the without-TTS (behavioral change without onset of TTS) impact range for the 177-dB energy metric.

I.2.c. Multiple Explosions—TTS

For multiple explosions, accumulated energy over the entire training time is the natural extension for energy thresholds since energy accumulates with each subsequent shot/detonation. This is consistent with the energy argument in Churchill. For peak pressure, it is consistent with Churchill to use the maximum value over all impulses received.

I.3. Thresholds and Criteria for Behavioral Effects

I.3.a. Single Explosion

For a single explosion, to be consistent with Churchill, TTS is the criterion for Level B harassment. In other words, because behavioral disturbance for a single explosion is likely to be limited to a short-lived startle reaction, use of the TTS criterion is considered sufficient protection and therefore behavioral effects (Level B behavioral harassment without onset of TTS) are not expected for single explosions.

I.3.b. Multiple Explosions—Without TTS

For this analysis, the use of multiple explosions only applies to FIREX (with IMPASS). Because multiple explosions would occur within a discrete time period, a new acoustic criterion-behavioral disturbance (without TTS)—is used to account for behavioral effects significant enough to be judged as harassment, but occurring at lower noise levels than those that may cause TTS.

The threshold is based on test results published in Schlundt *et al.* (2000), with derivation following the approach of the Churchill FEIS for the energy-based TTS threshold. The original Schlundt *et al.* (2000) data and the report of Finneran and Schlundt (2004) are the basis for thresholds for behavioral disturbance (without TTS). As reported by Schlundt *et al.* (2000), instances of altered behavior generally began at lower exposures than those causing TTS; however, there were many instances when subjects exhibited no altered behavior at levels above the onset-TTS levels. Regardless of reactions at higher or lower levels, all instances of altered behavior were included in the statistical summary.

The behavioral disturbance (without TTS) threshold for tones is derived from the SSC tests, and is found to be 5 dB below the threshold for TTS, or 177 dB re 1 microPa^2-sec maximum energy flux density level in any ⅓-octave band at frequencies above 100 Hz for toothed whales and in any ⅓-octave band above 10 Hz for baleen whales. As stated previously for TTS, for small explosives (<1,500 lb NEW), as what was modeled for this analysis, the spectrum of the shot arrival is broad, and there is essentially no difference in impact ranges for whales. However, the TTS pressure criteria (23 psi) impact range for FIREX with IMPASS can, especially in deeper water, result in a longer impact range than the behavioral disturbance (without TTS) criteria impact range.

II. Summary of Thresholds and Criteria for Impulsive Sounds

Table 6 summarizes the effects, criteria, and thresholds used in the assessment for impulsive sounds. The criteria for behavioral effects without physiological effects used in this analysis are based on use of multiple explosives that only take place during a FIREX (w/IMPASS) event.

TABLE 6—EFFECTS, CRITERIA, AND THRESHOLDS FOR IMPULSIVE SOUNDS

Effect	Criteria	Metric	Threshold	Effect
Mortality	Onset of Extensive Lung Injury.	Goertner modified positive impulse.	indexed to 30.5 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Mortality.
Injurious Physiological	50% Tympanic Membrane Rupture.	Energy flux density	1.17 in-lb/in^2 (about 205 dB re 1 microPa^2-sec).	Level A.
Injurious Physiological	Onset Slight Lung Injury	Goertner modified positive impulse.	indexed to 13 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Level A.
Non-injurious Physiological	TTS	Greatest energy flux density level in any ⅓-octave band (> 100 Hz for toothed whales and > 10 Hz for baleen whales)—for total energy over all exposures.	182 dB re 1 microPa^2-sec	Level B.
Non-injurious Physiological	TTS	Peak pressure over all exposures.	23 psi	Level B.

TABLE 6—EFFECTS, CRITERIA, AND THRESHOLDS FOR IMPULSIVE SOUNDS—Continued

Effect	Criteria	Metric	Threshold	Effect
Non-injurious Behavioral	Multiple Explosions Without TTS.	Greatest energy flux density level in any ⅓-octave (> 100 Hz for toothed whales and > 10 Hz for baleen whales)—for total energy over all exposures (multiple explosions only).	177 dB re 1 microPa^2-sec	Level B.

The criteria for mortality, Level A Harassment, and Level B Harassment resulting from explosive detonations were initially developed for the Navy's Sea Wolf and Churchill ship-shock trials and have not changed since other MMPA authorizations issued for explosive detonations. The criteria, which are applied to cetaceans and pinnipeds are summarized in Table 11. Additional information regarding the derivation of these criteria is available in the Navy's FEIS for the Cherry Point Range Complex and in the Navy's CHURCHILL FEIS (U.S. Department of the Navy, 2001).

Acoustic Environment

Sound propagation (the spreading or attenuation of sound) in the oceans of the world is affected by several environmental factors: water depth, variations in sound speed within the water column, surface roughness, and the geo-acoustic properties of the ocean bottom. These parameters can vary widely with location.

Four types of data are used to define the acoustic environment for each analysis site:

Seasonal Sound Velocity Profiles (SVP)—Plots of propagation speed (velocity) as a function of depth, or SVPs, are a fundamental tool used for predicting how sound will travel. Seasonal SVP averages were obtained for each training area.

Seabed Geo-acoustics—The type of sea floor influences how much sound is absorbed and how much sound is reflected back into the water column.

Wind Speeds—Several environmental inputs, such as wind speed and surface roughness, are necessary to model acoustic propagation in the prospective training areas.

Bathymetry data—Bathymetry data are necessary to model acoustic propagation and were obtained for each of the training areas.

Acoustic Effects Analysis

The acoustic effects analysis presented in the following sections is summarized for each major type of exercise. A more in-depth effects analysis is in Appendix A of the LOA application and the Addendum.

1. FIREX (With IMPASS)

Modeling was completed for a 5-in. round, 8-lb NEW charge exploding at a depth of 1 ft (0.3 m). The analytical approach begins using a high-fidelity acoustic model to estimate energy in each 5-in explosive round. Impact areas are calculated by summing the energy from multiple explosions over a firing exercise (FIREX) mission, and determining the impact area based on the thresholds and criteria. Level B exposures were determined based on the 177 dB re 1 microPa^2-sec (energy) criteria for behavioral disturbance (without TTS) due to the use of multiple explosions.

Impact areas for a full FIREX (with IMPASS) event must account for the time and space distribution of 39 explosions, as well as the movement of animals over the several hours of the exercise. The total impact area for the 39-shot event is calculated as the sum of small impact areas for seven FIREX missions (each with four to six rounds fired) and one pre-FIREX action (with six rounds fired). Table 7 shows the Zone of Influence (ZOI) results of the model estimation.

TABLE 7—ESTIMATED ZOIS (KM^2) FOR A SINGLE FIREX (WITH IMPASS) EVENT

Area *	Estimated ZOI @ 177 dB re 1 μPa^2-sec (multiple detonations only)	Estimated ZOI @ 23 psi	Estimated ZOI @ 205 dB re 1 μPa^2-sec or 13 psi
4 & 5	NA **	3.7387	0.18522
13 & 14	NA **	3.7387	0.18522

* Please see Figure 1 of the LOA application for the locations of these areas.
** In this area, which occurs in deeper water, the 23 psi criteria dominates over the 177 dB re 1 microPa^2-sec behavioral disturbance criteria and therefore was used in the analysis.

The ZOI, when multiplied by the animal densities and the total number of events (Table 5), provides the exposure estimates for that animal species for the nominal exercise case of 39 5-in explosive rounds. The potential effects would occur within a series of small impact areas associated with the pre-calibration rounds and missions spread out over a period of several hours. Additionally, target locations are changed from event to event and because of the time lag between events, it is highly unlikely, even if a marine mammal were present (not accounting for mitigation), that the marine mammal would be within the small exposure zone for more than one event.

FIREX with IMPASS is restricted to two locations in the Cherry Point Range Complex. In addition to other mitigation measures, dedicated lookouts would be onboard the ship monitoring the target area for marine mammals before the exercise, during the deployment of the IMPASS array, and during the return to firing position. Ships will not fire on the target until the area is cleared and will suspend the exercise if any marine mammals enter the buffer area. Due to safety reasons, the buffer zone must remain clear of all types of platforms. During the actual firing of the weapon, the participants involved must be able

to observe the intended ordnance impact area to ensure the area is free of range transients, however, this observation would be conducted from the firing position or other safe distance. Due to the distance between the firing position and the buffer zone, lookouts are only expected to visually detect breaching whales, whale blows, and large pods of dolphins and porpoises. Implementation of mitigation measures like these reduce the likelihood of exposure and potential effects in the ZOI.

2. MINEX

The Comprehensive Acoustic System Simulation/Gaussian Ray Bundle (OAML, 2002) model, modified to account for impulse response, shock-wave waveform, and nonlinear shock-wave effects, was run for acoustic-environmental conditions derived from the Oceanographic and Atmospheric Master Library (OAML) standard databases. The explosive source was modeled with standard similitude formulas, as in the Churchill FEIS. Because all the sites are shallow (less than 50 m), propagation model runs were made for bathymetry in the range from 10 m to 40 m.

Estimated ZOIs varied as much within a single area as from one area to another, which had been the case for the Virtual At Sea Training/IMPASS (DoN, 2003). There was, however, little seasonal dependence. As a result, the ZOIs are stated as mean values with a percentage variation. Generally, in the case of ranges determined from energy metrics, as the depth of water increases, the range shortens. The single explosion TTS-energy criterion (182 dB re 1 microPa^2-sec) was dominant over the pressure criteria and therefore used to determine the ZOI for the Level B exposure analysis. Table 8 shows the ZOI results of the model estimation.

The total ZOI, when multiplied by the animal densities and total number of events (Table 5), provides the exposure estimates for that animal species for each specified charge. Because of the time lag between detonations, it is highly unlikely, even if a marine mammal were present (not accounting for mitigation), that the marine mammal would be within the small exposure zone for more than one detonation. The underwater detonations are restricted to one area (UNDET Area, Onslow Bay) (Figure 1 of the LOA application), observers would survey the target area for marine mammals for 30 minutes prior through 30 minutes post detonation. Detonations will be suspended if a marine mammal enters the Zone of Influence and will only restart after the area has been clear for a full 30 minutes. Implementation of mitigation measures like these reduce the likelihood of exposure and potential effects in the ZOI.

TABLE 8—ESTIMATED ZOIS (KM^2) FOR MINEX

Threshold	ZOIs
	20-lb shot
Level A ZOI @ 13 psi	0.13 km^2 ± 10%
Level B ZOI @ 182 dB re 1 microPa^2-sec.	0.8 km^2 ± 25%

3. MISSILEX (Hellfire and TOW)

Modeling was completed for three explosive missiles involved in MISSILEX: each assumed detonation at 1-m (3.3 ft) depth. The NEW used in simulations of the Hellfire and TOW missiles are 8 lbs and 15.33 lbs, respectively. The single explosion TTS-energy criterion (182 dB re 1 microPa^2-sec) was used to determine the ZOI for the Level B exposure analysis. Table 9 shows the ZOI results of the model estimation. The total ZOI, when multiplied by the animal densities and total number of events (Table 5), provides the exposure estimates for that animal species for each specified missile. Because of the time lag between detonations, it is highly unlikely, even if a marine mammal were present (not accounting for mitigation), that the marine mammal would be within the small exposure zone for more than one detonation. Ships will not fire on the target until the area is clear of marine mammals, and will suspend the exercise if any enter the buffer area. Implementation of mitigation measures like these reduce the likelihood of exposure and potential effects in the ZOI.

TABLE 9—ESTIMATED ZOIS (KM^2) FOR MISSILEX

Area	Ordnance	Estimated ZOI @ 182 dB re 1 microPa2-s or 23 psi				Estimated ZOI @ 205 dB re 1 microPa2-s or 13 psi				Estimated ZOI @ 30.5 psi			
		Win	Spr	Sum	Fall	Win	Spr	Sum	Fall	Win	Spr	Sum	Fall
16 & 17	Hellfire	0.31	0.31	0.31	0.31	0.04	0.04	0.04	0.04	<0.01	<0.01	<0.01	<0.01
16 & 17	TOW	0.39	0.39	0.35	0.39	0.04	0.04	0.04	0.04	<0.01	<0.01	<0.01	<0.01

Summary of Potential Exposures From Explosive Ordnance Use

Explosions that occur in the OPAREA are associated with training exercises that use explosive ordnance, which include missiles (MISSILEX), 5-in. explosive naval gun shells with IMPASS (FIREX), and underwater detonations associated with Mine Neutralization training (MINEX). Explosive ordnance use is limited to specific training areas.

An explosives analysis was conducted to estimate the number of marine mammals that could be exposed to impacts from explosions by the Navy. Table 10 provides a summary of the explosive modeling analysis conducted by the Navy. Fin, humpback whales, and sperm whales will have high detection rates at the surface because of their large body size and pronounced blows. Because of large group sizes, it is likely that lookouts would detect Atlantic spotted dolphins, bottlenose dolphins, Clymene dolphins, common dolphins, pantropical spotted dolphins, Risso's dolphins, rough-toothed dolphins, and striped dolphins.

Exposure estimates could not be calculated for several species (blue whale, sei whale, Bryde's whale, killer whale, pygmy killer whale, false killer whale, melon-headed whale, spinner dolphin, Fraser's dolphin, and harbor porpoise) because density estimates could not be calculated due to the limited available data for these species. Lack of density estimates reflect the paucity of sighting data for these species in the Study Area. It is assumed that fewer or no sightings result from low numbers of animals in the area. Consequently, because these species' presence in the Study Area is rare, NMFS does not expect these animals to be exposed to explosive ordnance. Implementation of mitigation measures will reduce the likelihood of exposure

and potential effects should any of these species occur in the OPAREA.

Although exposure of marine mammals based on the Navy's modeling shows that only two individuals of Atlantic spotted dolphins would be taken by Level B behavioral harassment, because of the relatively high abundance of several other species (Atlantic spotted dolphins, bottlenose dolphins, common dolphins, striped dolphins, and Risso's dolphins) in the proposed action area (Waring *et al.*, 2008) and their aggregation in large groups, NMFS considers that additional takes of these five species by Level B behavioral harassment are possible. Therefore, NMFS proposes to authorize additional takes for these species (see Take Calculations section below).

TABLE 10—SUMMARY OF POTENTIAL EXPOSURES FROM EXPLOSIVE ORDNANCE (PER YEAR) FOR MARINE MAMMALS IN THE CHERRY POINT RANGE COMPLEX BY THE NAVY MODELING

Species/training operation	Potential exposures @ 177 dB re 1 microPa2-s (multiple detonations only)	Potential exposures @ 182 dB re 1 microPa2-s or 23 psi	Potential exposures @ 205 dB re 1 microPa2-s or 13 psi	Potential exposures @ 30.5 psi
Fin whale:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Humpback whale:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
North Atlantic right whale:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Sperm whale:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Atlantic Spotted dolphin:				
MISSILEX training	NA	1	0	0
FIREX training	0	NA	0	0
MINEX training	NA	1	0	0
Total Exposures	0	2	0	0
Beaked whale:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Bottlenose dolphin:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Clymene dolphin:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Common dolphin:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Kogia spp.:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0

TABLE 10—SUMMARY OF POTENTIAL EXPOSURES FROM EXPLOSIVE ORDNANCE (PER YEAR) FOR MARINE MAMMALS IN THE CHERRY POINT RANGE COMPLEX BY THE NAVY MODELING—Continued

Species/training operation	Potential exposures @ 177 dB re 1 microPa2-s (multiple detonations only)	Potential exposures @ 182 dB re 1 microPa2-s or 23 psi	Potential exposures @ 205 dB re 1 microPa2-s or 13 psi	Potential exposures @ 30.5 psi
Total Exposures	0	0	0	0
Minke whale:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Pantropical spotted dolphin:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Pilot whales:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Risso's dolphin:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Rough-toothed dolphin:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0
Striped dolphin:				
MISSILEX training	NA	0	0	0
FIREX training	0	NA	0	0
MINEX training	NA	0	0	0
Total Exposures	0	0	0	0

Note: Events were either modeled for 177 dB re 1 microPa^2-sec due to multiple detonations (FIREX with IMPASS) or modeled for 182 dB re 1 microPa^2-sec or 23 psi due to single detonations (MISSILEX and MINEX). Therefore, for FIREX the NA refers to the criteria that were less dominant and therefore not used in the analysis. For MISSILEX and MINEX the NA refers to the fact that these events are not multiple detonations and therefore not modeled at 177 dB re 1 microPa^2-sec.

VI. Potential Effects of Exposures to Explosives

Effects from exposure to explosives vary depending on the level of exposure. Animals exposed to levels that constitute MMPA Level B harassment may experience a behavioral disruption from the use of explosive ordnance. Behavioral responses can include shorter surfacings, shorter dives, fewer blows per surfacing, longer intervals between blows (breaths), ceasing or increasing vocalizations, shortening or lengthening vocalizations, and changing frequency or intensity of vocalizations (NRC, 2005). However, it is not known how these responses relate to significant effects (e.g., long-term effects or population consequences) (NRC, 2005). In addition, animals exposed to levels that constitute MMPA Level B harassment may experience a temporary threshold shift (TTS), which may result in a slight, recoverable loss of hearing sensitivity (DoN, 2001).

Exposures that reach Level A harassment may result in long-term injuries such as permanent threshold shift (PTS). The resulting injuries may limit an animal's ability to find food, communicate with other animals, and/or interpret the environment around them. Impairment of these abilities can decrease an individual's chance of survival or impact their ability to successfully reproduce. Level A harassment will have a long-term impact on an exposed individual.

Mortality of an animal would remove the animal entirely from the population as well as eliminate any future reproductive potential.

Based on the modeling conducted by the Navy, marine mammals that could be potentially exposed to explosive ordnance as a result of the Cherry Point Range Complex training activities would be limited to Level B behavioral harassment, specifically, two individuals of Atlantic spotted dolphins.

Though the Navy's model has shown that it is unlikely more than two individuals of Atlantic spotted dolphins would be affected by the proposed Range Complex training activities, a further analysis by NMFS revealed that additional species may be taken by the Navy's exercises. For example, due to the higher abundances of Atlantic spotted, bottlenose, common, striped, and Risso's dolphins in the Cherry Point Range Complex Study Area, and the fact

that these species tend to congregate in relatively large groups, there is an increased chance they too, may be taken by the Navy's exercises if not detected in advance by Navy watchstanders or lookouts. Therefore, NMFS proposes to authorize take, by Level B harassment of these species incidental to the Navy's Cherry Point Range Complex training exercises. NMFS preliminarily concludes that takes due to explosive ordnance and underwater detonations could result in short-term behavioral harassment of a limited number (i.e., 20 takes each) of Atlantic spotted, bottlenose, common, striped, and Risso's dolphins annually. There would be no mortality or injury to these marine mammal species; therefore, the proposed Navy training activities would not affect the annual rates of recruitment or survival of these species, or affect the population levels of these species. Moreover, take by Level B behavioral harassment of 20 individuals of each of these species per year would likewise have no effect on annual rates or recruitment or survival or affect their population levels. The population levels of each of these species are healthy and short-term behavioral harassment would result in minor effects, if any, to the individuals and would have no lasting effect on the species (Waring *et al.*, 2008). The mitigation measures presented below would further reduce the potential for exposures.

Proposed Mitigation Measures

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The National Defense Authorization Act (NDAA) of 2004 amended the MMPA as it relates to military-readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The training activities described in the Cherry Point Range Complex LOA application are considered military readiness activities.

In addition, any mitigation measure prescribed by NMFS should be known to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(a) Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

(b) A reduction in the numbers of marine mammals (total number or number at a biologically important time or location) exposed to received levels of underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(c) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(d) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(e) A reduction in adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(f) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

NMFS worked with the Navy and identified potential practicable and effective mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity''. These mitigation measures are listed below.

General Maritime Measures

The mitigation measures presented below would be taken by Navy personnel on a regular and routine basis. These are routine measures and are considered ''Standard Operating Procedures.''

I. Personnel Training—Lookouts

The use of shipboard lookouts is a critical component of all Navy standard operating procedures. Navy shipboard lookouts (also referred to as ''watchstanders'') are qualified and experienced observers of the marine environment. Their duties require that they report all objects sighted in the water to the Officer of the Deck (OOD) (e.g., trash, a periscope, marine mammals, sea turtles) and all disturbances (e.g., surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. There are personnel serving as lookouts on station at all times (day and night) when a ship or surfaced submarine is moving through the water.

For the past few years, the Navy has implemented marine mammal spotter training for its bridge lookout personnel on ships and submarines. This training has been revamped and updated as the Marine Species Awareness Training (MSAT) and is provided to all applicable units. The lookout training program incorporates MSAT, which addresses the lookout's role in environmental protection, laws governing the protection of marine species, Navy stewardship commitments, and general observation information, including more detailed information for spotting marine mammals. MSAT may also be viewed on-line at *https://portal.navfac.navy.mil/go/msat*.

1. All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews will complete MSAT.

2. Navy lookouts would undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

3. Lookout training will include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts will complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

4. Lookouts will be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

5. Surface lookouts would scan the water from the ship to the horizon and

be responsible for all contacts in their sector. In searching the assigned sector, the lookout would always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout would hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout would scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They would search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses would be lowered to allow the eyes to rest for a few seconds, and then the lookout would search back across the sector with the naked eye.

II. Operating Procedures & Collision Avoidance

1. Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order will be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

2. Commanding Officers will make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship according to the proposed mitigation and monitoring measures.

3. While underway, surface vessels will have at least two lookouts with binoculars; surfaced submarines will have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts will watch for and report to the OOD the presence of marine mammals.

4. Personnel on lookout will employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

5. After sunset and prior to sunrise, lookouts will employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

6. While in transit, personnel aboard naval vessels will be alert at all times, use extreme caution, and proceed at a ''safe speed'' (the minimum speed at which mission goals or safety will not be compromised) so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

7. When whales have been sighted in the area, Navy vessels will increase vigilance and shall implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Actions shall include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

8. Naval vessels will maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel's safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged operations, launching and recovering aircraft or landing craft, minesweeping operations, replenishment while underway and towing operations that severely restrict a vessel's ability to deviate course. Vessels will take reasonable steps to alert other vessels in the vicinity of the whale.

9. Where feasible and consistent with mission and safety, vessels will avoid closing to within 200 yds (183 m) of marine mammals other than whales (whales addressed above).

10. Floating weeds, algal mats, Sargassum rafts, clusters of seabirds, and jellyfish are good indicators of marine mammal presence. Therefore, increased vigilance in watching for marine mammals will be taken where these conditions exist.

11. Navy aircraft participating in exercises at sea will conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties described in the Navy's LOA application. Marine mammal detections will be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

12. All vessels will maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records will be kept for a period of 30 days following completion of a major training exercise.

Coordination and Reporting Requirements

The Navy will coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training activities. Additionally, the Navy will follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

Mitigation Measures Applicable to Vessel Transits in the Mid-Atlantic During North Atlantic Right Whale Migration

For purposes of these measures, the mid-Atlantic is defined broadly to include ports south and east of Block Island Sound southward to South Carolina. The procedure described below would be established as mitigation measures for Navy vessel transits during North Atlantic right whale migratory seasons near ports located off the western North Atlantic, offshore of the eastern United States. The mitigation measures would apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and OPAREAs. Seasonal migration of right whales is generally described by NMFS as occurring from October 15th through April 30th, when right whales migrate between feeding grounds farther north and calving grounds farther south. The Navy mitigation measures have been established in accordance with rolling dates identified by NMFS consistent with these seasonal patterns.

NMFS has identified ports located in the western Atlantic Ocean, offshore of the southeastern United States, where vessel transit during right whale migration is of highest concern for potential ship strike. The ports include the Hampton Roads entrance to the Chesapeake Bay, which includes the concentration of Atlantic Fleet vessels in Norfolk, Virginia. Navy vessels are required to use extreme caution and operate at a slow, safe speed (the minimum speed at which mission goals or safety will not be compromised) consistent with mission and safety during the months indicated in Table 11 below and within a 20 nm (37 km) arc (except as noted) of the specified reference points.

During the indicated months, Navy vessels would practice increased vigilance with respect to avoidance of

vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified above.

TABLE 11—NORTH ATLANTIC RIGHT WHALE MIGRATION PORT REFERENCES

Region	Months	Port reference points
South and East of Block Island	Sep–Oct and Mar–Apr	37 km (20 nm) seaward of line 41°4.49 N, 71°51.15 W and 41°18.58 N, 70°50.23 W.
New York/New Jersey	Sep–Oct and Feb–Apr	40°30.64 N, 73°57.76 W.
Delaware Bay (Philadelphia)	Oct–Dec and Feb–Mar	38°52.13 N, 75°01.93 W.
Chesapeake Bay (Hampton Roads and Baltimore).	Nov–Dec and Feb–Apr	37°01.11 N, 75°57.56 W.
North Carolina	Dec–Apr	34°41.54 N, 76°40.20 W.
South Carolina	Oct–Apr	33°11.84 N, 79°08.99 W and 32°43.39 N, 79°48.72 W.

Proposed Mitigation Measures for Specific At-Sea Training Events

These measures are standard operating procedures that are in place currently and will be used in the future for all activities being analyzed in this LOA request.

I. Firing Exercise (FIREX) Using the Integrated Maritime Portable Acoustic Scoring System (IMPASS) (5-in Explosive Rounds)

FIREX using IMPASS will occur in two areas in the Navy Cherry Point Study Area: Areas of 4/5 & 13/14. The locations were established to be far enough from shore to reduce civilian encounters (e.g., diving and recreational fishing). Surface ships conducting FIREX with IMPASS do not have strict distance from land restrictions like aircraft that embark from shore-based facilities.

The following measures would be implemented for FIREX using IMPASS:

1. This activity would only occur in Areas 4/5 and 13/14.

2. Pre-exercise monitoring of the target area will be conducted with ''Big Eyes'' prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships will maintain lookouts dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

3. ''Big Eyes'' on the ship will be used to monitor a 640-yd (585-m) buffer zone for marine mammals during naval-gunfire events.

4. Ships will not fire on the target if any marine mammals are detected within or approaching the 640-yd (585-m) buffer zone until the area is clear of marine mammals. If marine mammals are present, operations would be suspended. Visual observation will occur for approximately 45 minutes, or until the animal has been observed to have vacated the area and is heading away from the buffer zone.

5. Post-exercise monitoring of the entire effect range will take place with ''Big Eyes'' and the naked eye during the retrieval of the IMPASS sonobuoy array following each firing exercise.

6. The naval gunfire will take place during daylight hours only.

7. The naval gunfire utilizing 5-in. rounds will only be used in Beaufort Sea State three or less.

8. The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

9. No firing will occur if marine mammals are detected within 70 yds (64 m) of the vessel.

II. Air-to-Surface Missile Exercises (Explosives)

Marine Corps helicopters launch their Hellfire and TOW missiles in Air 16 and 17 of W–122 in the Navy Cherry Point Study Area. These sub-areas are far enough from shore to reduce civilian encounters (e.g., diving and recreational fishing), while remaining within 60 nm of shore-based facilities, close enough so a helicopter can complete its training mission before needing to return for refueling.

The following measures will be implemented:

1. This activity will only occur in Air 16 and 17 of W–122 for Hellfire and TOW missile launches.

2. Before launching a missile, participant aircraft will visually survey the target area for marine mammals. Visual inspection of the target area will be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at slowest safe speed (the minimum speed at which mission goals or safety will not be compromised). The aircrew must be able to actually see ordnance impact areas. Explosive ordnance shall not be targeted to impact within 1,800 yards (1,646 m) of sighted marine mammals.

III. Mine Neutralization Training Involving Underwater Detonations (Up to and Including 20-lb Charges)

Mine neutralization involving underwater detonations occurs in shallow water (0–120 ft, or 0–36 m) and is executed by divers using SCUBA. These exercises utilize small boats that deploy from shore based facilities. Often times these small boats are rigid-hulled inflatable boats, which are designed for shallow water and have limited seaworthiness, necessitating a nearshore location. The exercise is a one-day event that occurs only during daylight hours; therefore, the distance from shore is limited.

1. This activity will only occur in the UNDET area of Onslow Bay.

2. Observers will survey the ZOI, a 656-yd (600-m) radius from detonation location, for marine mammals from all participating vessels during the entire operation. A survey of the ZOI (minimum of three parallel tracklines 219 yds [200 m] apart) using support craft will be conducted at the detonation location 30 minutes prior through 30 minutes post detonation.

3. Detonation operations will be conducted during daylight hours.

4. If a marine mammal is sighted within the ZOI, the animal will be allowed to leave of its own volition. The Navy will suspend detonation exercises and ensure the area is clear for a full 30 minutes prior to detonation.

5. Divers placing the charges on mines and dive support vessel personnel will survey the area for marine mammals and will report any sightings to the surface observers. These animals will be allowed to leave of their own volition and the ZOI will be clear for 30 minutes prior to detonation.

6. No detonations will take place within 3.2 nm (6 km) of an estuarine inlet (Bogue, Bear, Browns, New River, Inlets).

7. No detonations will take place within 1.6 nm (3 km) of shoreline.

8. No detonations will take place within 0.5 nm (1 km) of any artificial reef, shipwreck, or live hard-bottom community.

9. Personnel will record any protected species observations during the exercise as well as measures taken if species are detected within the ZOI.

Adaptive Management

NMFS proposes to include an adaptive management component in the final regulations governing the take of marine mammals incidental to Navy training exercises in the Cherry Point Range Complex. The use of adaptive management will provide NMFS the ability to consider new data from different sources to determine (in coordination with the Navy), on an annual basis (or earlier, as warranted), if new or modified mitigation or monitoring measures are appropriate for subsequent annual LOAs. Following are some of the possible sources of applicable data:

- Results from the Navy's monitoring from the previous year (either from the Cherry Point Range Complex or other locations)
- Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP, which is discussed elsewhere in this document)
- Results from general marine mammal and sound research (funded by the Navy [described below] or otherwise)
- Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

Mitigation measures could be modified or added if new data suggests that such modifications would have a reasonable likelihood of accomplishing the goals of mitigation laid out in this proposed rule and if the measures are practicable. NMFS would also coordinate with the Navy to modify or add to the existing monitoring requirements if the new data suggest that the addition of a particular measure would more effectively accomplish the goals of monitoring laid out in this proposed rule. The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider the data in issuing annual LOAs. NMFS and the Navy will meet annually prior to LOA issuance to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate.

Monitoring and Reporting Measures

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

a. An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the effects analyses.

b. An increase in our understanding of how many marine mammals are likely to be exposed to levels of explosives or other stimuli that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

c. An increase in our understanding of how marine mammals respond (behaviorally or physiologically) to explosives or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival).

d. An increased knowledge of the affected species.

e. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

f. A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization.

The Navy would be required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

The Navy must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in this document.

The Navy must conduct all monitoring and/or research required under the Letter of Authorization, if issued.

The monitoring methods proposed for use during training events in the Cherry Point Range Complex include a combination of individual elements designed to allow a comprehensive assessment include:

1. Vessel and aerial surveys.

i. Visual surveillance of 1 event per year. If possible, the event surveyed will be one involving multiple detonations. Due to the limited number of events conducted in the Cherry Point Range Complex, there is a potential that it may be impossible to coordinate required surveys to take place during the limited opportunities presented. In any case, any missed annual survey requirement will roll into the subsequent year ensuring that the appropriate number of surveys occur over the 5-year regulations. Likewise, additional surveys may be scheduled in any year where additional opportunities arise, with the number of surveys during the 5-year regulations not to exceed 5.

ii. For surveyed training events, aerial or vessel surveys will be used 1–2 days prior to, during (if safe to do so), and 1–5 days post detonation. The variation in the number of days after allows for the detection of animals that gradually return to an area, if they indeed do change their distribution in response to underwater detonation events.

iii. Surveys will include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). The survey shall be conducted using a towed array behind the survey vessel in transect lines or grid in the predetermined area outside the exclusion zone and should be conducted in a manner that ensures the entire circumference of the exclusion zone can be observed. For vessel-based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event. Depending on animals sighted, it may be possible to conduct focal surveys of animals outside of the exclusion zone (detonations could be delayed if marine mammals are observed within the exclusion zone) to record behavioral responses to the detonations.

iv. When conducting a particular survey, the survey team will collect:

A. Species identification and group size;

B. Location and relative distance from the detonation site;

C. The behavior of marine mammals including standard environmental and oceanographic parameters;

D. Date, time and visual conditions associated with each observation;

E. Direction of travel relative to the detonation site; and

F. Duration of the observation.

2. Passive acoustic monitoring.

i. When practicable, a towed hydrophone array should be used whenever shipboard surveys are being conducted. The towed array would be deployed during daylight hours for each of the days the ship is at sea.

ii. A towed hydrophone array is towed from the boat and can detect and localize marine mammals that vocalize and would be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

iii. The array would need to detect low frequency vocalizations (< 1,000 Hz) for baleen whales and relatively high frequency vocalizations (up to 30 kHz) for odontocetes such as sperm whales. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

3. Marine mammal observers on Navy platforms

i. Marine mammal observers (MMOs) will be placed on a Navy platform during one of the exercises being monitored per year.

ii. Qualifications must include expertise in species identification of regional marine mammal species and experience collecting behavioral data. Experience as a NMFS marine mammal observer is preferred, but not required. Navy biologists and contracted biologists may also be used; contracted MMOs must have appropriate security clearance to board Navy platforms.

iii. MMOs will not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation will take into account safety, logistics, and operational concerns.

iv. MMOs will observe from the same height above water as the lookouts.

v. The MMOs will not be part of the Navy's formal reporting chain of command during their data collection efforts; instead, Navy lookouts will continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO will inform the lookout of the sighting for the lookout to take the appropriate action through the chain of command.

vi. The MMOs will collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. All MMO sightings will be conducted according to a standard operating procedure.

The Navy would submit a report annually on September 1 describing the implementation and results (through June 1 of the same year) of the monitoring required above. Standard marine species sighting forms would be provided by the Navy and data collection methods will be standardized across ranges to allow for comparison in different geographic locations.

The Cherry Point Range Complex Comprehensive Report—The Navy will submit to NMFS a draft report that summarizes all of the marine mammal observations and data gathered during explosive exercises through February 1, 2013. This report will be submitted to NMFS at the end of the fourth year of the rule (May 2013).

The Navy will respond to NMFS' comments on the draft comprehensive report if submitted within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or three months after the submittal of the draft if NMFS does not comment by then. To implement the aforementioned monitoring measures, the Navy is developing an Integrated Comprehensive Monitoring Program (ICMP) for marine species in order to assess the effects of training activities on marine species and investigate population-level trends in marine species distribution, abundance, and habitat use in various range complexes and geographic locations where Navy training occurs. Although the ICMP is intended to apply to all Navy training, use of mid-frequency active (MFA) sonar in training, testing, and research, development, test, and evaluation (RDT&E) will comprise a major component of the overall program.

The ICMP will establish the overarching structure and coordination that will facilitate the collection and synthesis of monitoring data from Navy training and research and development projects. The Program will compile data from range-specific monitoring efforts as well as research and development (R&D) studies that are fully or partially Navy-funded. Monitoring methods across the ranges will include methods such as vessel and aerial surveys, tagging, and passive acoustic monitoring.

The Navy will coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during or within 24 hours after completion of explosives training activities.

Estimated Take of Marine Mammals

With respect to the MMPA, NMFS' effects assessment serves four primary purposes: (1) To prescribe the permissible methods of taking (i.e., Level B Harassment (behavioral harassment), Level A harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of affecting the least practicable adverse impact on such species or stock and its habitat (i.e., mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in the Cherry Point Range Complex, so this determination is inapplicable for this rulemaking); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the *Assessment of Marine Mammal Response to Anthropogenic Sound* section, NMFS' analysis identified the lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), and behavioral responses that could potentially result from explosive ordnance exposures. In this section, we will relate the potential effects to marine mammals from underwater detonation of explosives to the MMPA regulatory definitions of Level A and Level B Harassment and attempt to quantify the effects that might occur from the specific training activities that the Navy is proposing in the Cherry Point Range Complex.

Take Calculations

In estimating the potential for marine mammals to be exposed to an acoustic source, the Navy completed the following actions:

1. Evaluated potential effects within the context of existing and current regulations, thresholds, and criteria;

2. Identified all acoustic sources that will be used during Navy training activities;

3. Identified the location, season, and duration of the action to determine which marine mammal species are likely to be present;

4. Determined the estimated number of marine mammals (i.e., density) of each species that will likely be present in the respective OPAREAs during the Navy training activities;

5. Applied the applicable acoustic threshold criteria to the predicted sound exposures from the proposed activity. The results were then evaluated to determine whether the predicted sound exposures from the acoustic model might be considered harassment; and

6. Considered potential harassment within the context of the affected marine mammal population, stock, and species to assess potential population viability. Particular focus on recruitment and survival are provided to analyze whether the effects of the action can be considered to have a negligible impact on marine mammal species or stocks.

Starting with a sound source, the attenuation of an emitted sound due to propagation loss is determined. Uniform animal distribution is overlaid onto the calculated sound fields to assess if animals are physically present at sufficient received sound levels to be considered ''exposed'' to the sound. If the animal is determined to be exposed, two possible scenarios must be considered with respect to the animal's physiology—effects on the auditory system and effects on non-auditory system tissues. These are not independent pathways and both must be considered since the same sound could affect both auditory and non-auditory tissues. Note that the model does not account for any animal response; rather the animals are considered stationary, accumulating energy until the threshold is tripped.

These modeling results do not take into account the mitigation measures (detailed in the Proposed Mitigation Measure section above) that lower the potential for exposures to occur given standard range clearance procedures and the likelihood that these species can be readily detected (e.g., small animals move quickly throughout the water column and are often seen riding the bow wave of large ships or in large groups). Nevertheless, based on the modeling results, only two individuals of Atlantic spotted dolphins would be taken by Level B behavioral harassment as a result of the Navy training activities in the Cherry Point Range Complex. In addition, NMFS does not believe that there would be any mortality of any marine mammal resulting from the proposed training activities due to the sparse training activities and the implementation of mitigation and monitoring measures described above. Therefore, mortality of marine mammals would not be authorized. With the mitigation and monitoring measures implemented, the estimated take could be further reduced.

Although exposure of marine mammals based on the Navy's modeling shows that only two individuals of Atlantic spotted dolphins would be taken by Level B behavioral harassment, because of the relatively high abundance of several species (Atlantic spotted dolphins, bottlenose dolphins, common dolphins, striped dolphins, and Risso's dolphins) in the proposed action area (Waring et al., 2008) and their aggregation in relatively large groups, NMFS considers that additional takes of these five species by Level B behavioral harassment are possible. Therefore, NMFS proposes to authorize the take of 20 individuals annually from each species over the course of the 5-year regulations.

Effects on Marine Mammal Habitat

Activities from Atlantic Fleet training activities in the Cherry Point Range Complex that may affect marine mammal habitat include changes in water quality, the introduction of sound into the water column, and temporary changes to prey distribution and abundance. However, potential impacts to marine mammal habitat are not anticipated to alter the function of the habitat and, therefore, will have little to no impact of marine mammal species. There is no critical habitat within the Cherry Point Range Complex.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

Based on the analyses of the potential impacts from the proposed Navy Cherry Point Range Complex training activities contained herein, NMFS has preliminarily determined that the issuance of 5-year regulations and annual LOAs is appropriate for Navy training exercises utilizing underwater detonations and will have a negligible impact on the marine mammal species and stocks present in the Cherry Point Range Complex.

Subsistence Harvest of Marine Mammals

NMFS has preliminarily determined that the issuance of an LOA for Navy training exercises in the Cherry Point Range Complex would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use, since there are no such uses in the specified area.

ESA

There are six ESA-listed marine mammal species that are listed as endangered under the ESA with confirmed or possible occurrence in the Cherry Point Range Complex: Humpback whale, North Atlantic right whale, fin whale, and sperm whale. The Navy has begun consultation with NMFS pursuant to section 7 of the ESA, and NMFS will also consult internally on the issuance of an LOA under section 101(a)(5)(A) of the MMPA for training exercises in the Cherry Point Range Complex. Consultation will be concluded prior to a determination on the issuance of the final rule and an LOA.

NEPA

The Navy is preparing an Environmental Impact Statement (EIS) for the proposed Cherry Point Range Complex training activities. A draft EIS was released for public comments from September 13–October 27, 2008 and it is

available at *http://www.NavyCherry PointRangeComplexEIS.com*. NMFS is a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the EIS. NMFS has reviewed the Draft EIS and will be working with the Navy on the Final EIS (FEIS).

NMFS intends to adopt the Navy's FEIS, if adequate and appropriate, and we believe that the Navy's FEIS will allow NMFS to meet its responsibilities under NEPA for the issuance of the 5-year regulation and LOAs for training activities in the Cherry Point Range Complex. If the Navy's FEIS is not adequate, NMFS will supplement the existing analysis and documents to ensure that we comply with NEPA prior to the issuance of the final rule or LOA.

Preliminary Determination

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation measures, NMFS preliminarily finds that the total taking from Navy training exercises utilizing underwater explosives in the Cherry Point Range Complex will have a negligible impact on the affected marine mammal species or stocks. NMFS has proposed regulations for these exercises that prescribe the means of affecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Classification

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. Section 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. This rulemaking authorizes the take of marine mammals incidental to a specified activity. The specified activity defined in the proposed rule includes the use of underwater detonations during training activities that are only conducted by the U.S. Navy. Additionally, the proposed regulations are specifically written for ''military readiness'' activities, as defined by the NDAA, which means they cannot apply to small businesses. Consequently, any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Dated: March 9, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart C is added to part 218 to read as follows:

Subpart C—Taking Marine Mammals Incidental to U.S. Navy Training in the Cherry Point Range Complex

Sec.
218.20 Specified activity and specified geographical region.
218.21 Permissible methods of taking.
218.22 Prohibitions.
218.23 Mitigation.
218.24 Requirements for monitoring and reporting.
218.25 Applications for Letters of Authorization.
218.26 Letters of Authorization.
218.27 Renewal of Letters of Authorization.
218.28 Modifications to Letters of Authorization.

Subpart C—Taking Marine Mammals Incidental to U.S. Navy Training in the Cherry Point Range Complex

§ 218.20 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the Cherry Point Range Complex, which is located along the southern east coast of the U.S., as stated in the Navy's letter of authorization application. The coordinates of the Cherry Point Range Complex Study Area are: 35°30′ N, 75°25′ W; 34°14′ N, 73°57′ W; 32°12′ N, 76°49′ W; 32°20′ N, 77°20′ W; 33°10′ N, 77°31′ W; and 34°23′30″ N, 77°30′ W; then along the 3 nm from and parallel to the shoreline.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training exercises indicated in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:

(A) AGM–114 (Hellfire missile);

(B) Tube-launched Optically tracked Wire-guided (TOW) missile;

(C) Mine Neutralization (20 lb NEW charges); and

(D) 5″ Naval Gunfire.

(ii) Training Exercises:

(A) Mine Neutralization (20 lb NEW charges)—up to 100 exercises over the course of 5 years (an average of 20 per year);

(B) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 40 exercises over the course of 5 years (an average of 8 per year);

(C) Missile Exercise (MISSILEX) (Air-to-Surface; TOW)—up to 40 exercises over the course of 5 years (an average of 8 per year); and

(D) FIREX with IMPASS—up to 10 exercises over the course of 5 years (an average of 2 per year).

(2) [Reserved].

§ 218.21 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.26, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.20(b), provided the activity is in compliance with all terms, conditions, and

requirements of this Subpart and the appropriate Letter of Authorization.

(b) The incidental take of marine mammals under the activities identified in § 218.20(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment (annual estimates):

(A) Atlantic spotted dolphin (*Stenella frontalis*)—22;

(B) Striped dolphin (*S. coeruleoalba*)—20;

(C) Bottlenose dolphin (*Tursiops truncatus*)—20;

(D) Common dolphin (*Delphinus delphis*)—20; and

(E) Risso's dolphin (*Grampus griseus*)—20.

(2) [Reserved].

§ 218.22 Prohibitions.

Notwithstanding takings contemplated in § 218.21 and authorized by a Letter of Authorization issued under §§ 216.106 and 218.26, no person in connection with the activities described in § 218.20 may:

(a) Take any marine mammal not specified in § 218.21(b);

(b) Take any marine mammal specified in § 218.21(b) other than by incidental take as specified in § 218.21(b)(1) and (2);

(c) Take a marine mammal specified in § 218.21(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this Subpart or a Letter of Authorization issued under §§ 216.106 and 218.26.

§ 218.23 Mitigation.

(a) When conducting training activities identified in § 218.20(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §§ 216.106 and 218.26 must be implemented. These mitigation measures include, but are not limited to:

(1) *General Maritime Measures:* (i) Personnel Training—Lookouts;

(A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete MSAT.

(B) Navy lookouts shall undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses shall be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(ii) Operating Procedures & Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts shall watch for and report to the OOD the presence of marine mammals.

(D) Personnel on lookout will employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(E) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a ''safe speed'' (the minimum speed at which mission goals or safety will not be compromised) so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(G) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Such measures shall include changing speed and/or course direction and would be dictated by environmental and other conditions (e.g., safety or weather).

(H) Naval vessels shall maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on.

(I) Where feasible and consistent with mission and safety, vessels shall avoid closing to within 200-yd (183 m) of marine mammals other than whales.

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties under § 218.20. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(2) *Coordination and Reporting Requirements.* (i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training activities.

(ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(3) *Mitigation Measures Applicable Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration:* (i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:

(*1*) South and East of Block Island (37 km (20 NM) seaward of line between 41–4.49 °N. lat. 071–51.15 °W. long. and 41–18.58 °N. lat. 070–50.23 °W. long): Sept-Oct and Mar-Apr

(*2*) New York/New Jersey (40–30.64 °N. lat. 073–57.76 °W. long.): Sep–Oct and Feb-Apr.

(*3*) Delaware Bay (Philadelphia) (38–52.13 °N. lat. 075–1.93 °W. long.): Oct–Dec and Feb–Mar.

(*4*) Chesapeake Bay (Hampton Roads and Baltimore) (37–1.11 °N. lat. 075–57.56 °W. long.): Nov-Dec and Feb–Apr.

(*5*) North Carolina (34–41.54 °N. lat. 076–40.20 °W. long.): Dec-Apr

(*6*) South Carolina (33–11.84 °N. lat. 079–8.99 °W. long. and 32–43.39 °N. lat. 079–48.72 °W. long.): Oct-Apr

(B) During the months indicated in paragraph (a)(3)(i)(A) of this section, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in paragraph (a)(3)(i)(A) of this section.

(C) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(D) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States—for the purposes of the measures below (paragraph (a)(3)(ii)(A) and (B) of this section), the ''southeast'' encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15 °N. lat. to 30–15 °N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00 °N. lat. to 30–15 °N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15—April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(*1*) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(*2*) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(*3*) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(*4*) Ships shall not transit through the critical habitat or associated area of concern in a North-South direction.

(*5*) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(iii) Northeast Atlantic, Offshore of the Eastern United States:

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00 °N. lat., 69–05 °W. long.; 41–45 °N. lat, 69–45 °W. long; 42–10 °N. lat., 68–31 °W. long.; 41–38 °N. lat., 68–13 °W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8 °N. lat., 70–10 °W. long.; 42–12 °N. lat., 70–15 °W. long.; 42–12 °N. lat., 70–30 °W. long.; 41–46.8 °N. lat., 70–30 °W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to the Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(*1*) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(*2*) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum speed at which mission goals or safety will not be compromised) so as to be

able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(*3*) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(*4*) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions as per Rule 6 of International Navigational Rules.

(4) *Proposed Mitigation Measures for Specific At-Sea Training Events*: (i) Firing Exercise (FIREX) Using the Integrated Maritime Portable Acoustic Scoring System (IMPASS) (5-in Explosive Rounds)

(A) This activity shall only occur in Areas 4/5 and 13/14.

(B) Pre-exercise monitoring of the target area shall be conducted with ''Big Eyes'' prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall maintain lookouts dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

(C) ''Big Eyes'' on the ship shall be used to monitor a 640-yd (585-m) buffer zone for marine mammals during naval-gunfire events.

(D) Ships shall not fire on the target if any marine mammals are detected within or approaching the 640-yd (585-m) buffer zone. If marine mammals are present, operations must be suspended. Visual observation shall occur for approximately 45 min, or until the animal has been observed to have cleared the area and is heading away from the buffer zone. At such time as animals have cleared the area and are heading away from the buffer zone, the Navy may begin or resume operations.

(E) Post-exercise monitoring of the entire effect range shall take place with ''Big Eyes'' and the naked eye during the retrieval of the IMPASS sonobuoy array following each firing exercise.

(F) The naval gunfire shall take place during daylight hours only.

(G) The naval gunfire utilizing 5-in. rounds shall only be used in Beaufort Sea State three or less.

(H) The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

(I) No firing shall occur if marine mammals are detected within 70 yd (64 m) of the vessel.

(ii) Air-to-Surface Missile Exercises (Explosive):

(A) This activity shall only occur in Air 16 and 17 of W–122 for Hellfire and TOW missile launches.

(B) Before launching a missile, participant aircraft shall visually survey the target area for marine mammals. Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at slowest safe speed. The aircrew must be able to actually see ordnance impact areas. Explosive ordnance shall not be targeted to impact within 1,800 yards (1,646 m) of sighted marine mammals.

(iii) Mine Neutralization Training Involving Underwater Detonations (up to and including 20-lb charges):

(A) Underwater detonations shall only occur in the UNDET area of Onslow Bay.

(B) Observers shall survey the ZOI, a 656-yd (600-m) radius from detonation location, for marine mammals from all participating vessels during the entire operation. A survey of the ZOI (minimum of three parallel tracklines 219 yd [200 m] apart) using support craft shall be conducted at the detonation location 30 minutes prior through 30 minutes post detonation.

(C) Detonation operations shall be conducted during daylight hours.

(D) If a marine mammal is sighted within the ZOI, the animal shall be allowed to leave of its own volition. The Navy shall suspend detonation exercises and ensure the area is clear for a full 30 minutes prior to detonation.

(E) Divers placing the charges on mines and dive support vessel personnel shall survey the area for marine mammals and shall report any sightings to the surface observers. These animals shall be allowed to leave of their own volition and the ZOI shall be clear for 30 min prior to detonation.

(F) Personnel shall record any protected species observations during the exercise as well as measures taken if species are detected within the ZOI.

§ 218.24 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§ 216.106 and 218.26 for activities described in § 218.20(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.20(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified or authorized in § 218.21(b).

(c) The Holder of the Letter of Authorization must conduct all monitoring and/or research required under the Letter of Authorization.

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan.

(5) A method for standardizing data collection for Cherry Point Range Complex and across Range Complexes.

(e) The Holder of the Letter of Authorization shall, when conducting training events in the Cherry Point Range Complex, implement the following monitoring methods:

(1) Vessel and aerial surveys:

(i) Visual surveillance of 1 event per year. The event surveyed shall be one involving multiple detonations. If it is impossible to conduct the required surveys due to lack of training exercises, the missed annual survey requirement shall roll into the subsequent year to ensure that the appropriate number of surveys (i.e., total of 5) occurs over the 5-year period of effectiveness of this subpart.

(ii) For surveyed training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if safe to do so), and 1–5 days post detonation.

(iii) Survey effort shall focus on any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). The survey shall be conducted using a towed array behind the survey vessel in transect lines or grid in the predetermined area outside the exclusion zone.

(iv) When conducting a particular survey, the survey team shall collect:

(A) Species identification and group size;

(B) Location and relative distance from the detonation site;

(C) The behavior of marine mammals including standard environmental and oceanographic parameters;

(D) Date, time and visual conditions associated with each observation;

(E) Direction of travel relative to the detonation site; and

(F) Duration of the observation.

(2) Passive acoustic monitoring: When practical, a towed hydrophone array should be used whenever shipboard surveys are being conducted. The towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(3) Marine mammal observers on Navy platforms.

(i) Marine mammal observers (MMOs) shall be placed on a Navy platform during the exercises.

(ii) Qualifications must include expertise in species identification of regional marine mammal species and experience collecting behavioral data. Experience as a NMFS marine mammal observer is preferred, but not required. Navy biologists and contracted biologists shall be used.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) The MMOs shall not be part of the Navy's formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting for the lookout to take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed.

(f) Monitoring Report—The Navy shall submit a report annually on September 1 describing the implementation and results (through June 1 of the same year) of the monitoring required in §218.24(e).

(g) Cherry Point Range Complex Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes *all* of the multi-year marine mammal information gathered during explosive exercises for which individual reports are required in § 218.24(e). This report will be submitted at the end of the fourth year of the rule (May 2013), covering activities that have occurred through February 1, 2013.

(h) The Navy shall respond to NMFS's comments on the draft comprehensive report if submitted within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS's comments, or three months after the submittal of the draft if NMFS does not comment by then.

(i) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 218.25 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 218.20(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 218.26 or a renewal under § 218.27.

§ 218.26 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 218.27.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.27 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 218.26 for the activity identified in § 218.20(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.25 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 218.24(b); and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 218.23 and the Letter of Authorization issued under §§ 216.106 and 218.26, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 218.27 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from Cherry Point Range Complex Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (section 218.24(i)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 218.24(d)).

(4) Results from specific stranding investigations (either from the Cherry Point Range Complex Study Area or other locations).

(5) Results from the Long Term Prospective Study described in the preamble to these regulations.

(6) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

(7) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 218.28 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 218.26 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.27, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.20(b), a Letter of Authorization issued pursuant to §§ 216.106 and 218.26 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E9–5474 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648–AX72

Identification and Certification of Nations Whose Fishing vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources; Correction

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

ACTION: Notice of public hearing; request for comments; correction.

SUMMARY: NMFS published a document in the **Federal Register** of March 3, 2009, announcing five public hearings to discuss and collect comments on issues described in a proposed rule for developing identification and certification procedures to address illegal, unreported, or unregulated fishing activities and bycatch of protected living marine resources pursuant to the High Seas Driftnet Fishing Moratorium Protection Act. This document corrects a hotel name, address, and phone number of an April 6, 2009, meeting.

FOR FURTHER INFORMATION CONTACT: Laura Cimo (ph. 301–713–9090, fax 301–713–9106, e-mail Laura.Cimo@noaa.gov).

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 3, 2009, in FR Doc. E9—4478, on page 9208, in the second column, under the heading ''Dates, Times, and Locations'' correct the hotel name, address, and phone number under ''2'' to read:

''2. Monday, April 6, 2009, 6:30–8:30 p.m., Crowne Plaza, Lincoln Ballroom, 8777 Georgia Avenue, Silver Spring, MD 20910; phone 301–589–0800.''

Dated: March 9, 2009.

Jean-Pierre Ple,

Acting Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E9–5483 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 49
Monday, March 16, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 11, 2009.

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) 720–8681.

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.

National Agricultural Statistics Service

Title: Agricultural Labor Survey.

OMB Control Number: 0535–0109.

Summary of Collection: The 1938 Agricultural Adjustment Act, as amended in 1948, requires wage rate data for computation of an index component. This component is used in calculation of parity prices. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. Agricultural labor statistics are an integral part of National Agricultural Statistics Service (NASS) primary function of collecting, processing, and disseminating current state, regional, and national agricultural statistics. Comprehensive and reliable agricultural labor data are also needed by the Department of Labor in the administration of the ''H–2A'' program (non-immigrants who enter the United States for temporary or seasonal agricultural labor) and for setting ''Adverse Effect Wage Rates.'' The Agricultural Labor Survey is the only timely and reliable source of information on the size of the farm worker population. NASS will collect information using a survey.

Need and Use of the Information: NASS will collect information on wage rate estimates and the year-to-year changes in these rates and how changes in wage rates help measure the changes in costs of production of major farm commodities. NASS will also collect information on data to measure the availability of national farm workers. The information is used by farm worker organizations to help set wage rates and negotiate labor contracts as well as determine the need for additional workers and to help ensure federal assistance for farm worker assistance programs supported with government funding.

Description of Respondents: Farms.

Number of Respondents: 11,750.

Frequency of Responses: Reporting: Quarterly; Annually.

Total Burden Hours: 11,425.

National Agricultural Statistics Service

Title: Mink Survey.

OMB Control Number: 0535–0212.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. Statistics on mink production are published for the 15 major states that account for 95 percent of the U.S. production. There is no other source for this type of information. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204.

Need and Use of the Information: NASS collects information on mink pelts produced by color, number of females bred to produce kits the following year, number of mink farms, average marketing price, and the value of pelts produced. The data is disseminated by NASS in the Mink Report and is used by the U.S. government and other groups.

Description of Respondents: Farms.

Number of Respondents: 362.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 99.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–5624 Filed 3–13–09; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0004]

Notice of Request for Extension of Approval of an Information Collection; Importation of Shelled Garden Peas From Kenya

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of shelled garden peas from Kenya.

DATES: We will consider all comments that we receive on or before May 15, 2009.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2009–0004* to submit or view comments and to view supporting and related materials available electronically.

• *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0004, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0004.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of shelled garden peas from Kenya, contact Ms. Shirley Wager-Pagé, Branch Chief, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–8453. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Shelled Garden Peas from Kenya.

OMB Number: 0579–0302.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–48).

Under these regulations, shelled garden peas from Kenya may be imported into the United States only under certain conditions to prevent the introduction of plant pests into the United States. The regulations in § 319.56–45 require that shipments of peas be accompanied by a phytosanitary certificate issued by the national plant protection organization of Kenya with an additional declaration stating that the peas have been shelled and washed in accordance with § 319.56–45 and have been inspected and found free of pests.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.15 hours per response.

Respondents: Importers and Kenyan national plant protection organizations and producers.

Estimated Annual Number of Respondents: 2.

Estimated Annual Number of Responses per Respondent: 20.

Estimated Annual Number of Responses: 40.

Estimated Total Annual Burden on Respondents: 6 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 10th day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–5623 Filed 3–13–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc County Resource Advisory Committee, Alturas, California 96101, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343) the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, April 6, 2009 in Alturas, California 96101, for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on April 6, 2009 will begin at 4 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California 96101. Agenda topics will include RAC business and reviewing project proposals that meet the intent of Public Law 110–343. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Stan Sylva, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Rural Development and Partnership Specialist Dina McElwain at (530) 233–8723.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. E9–5586 Filed 3–13–09; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting and Briefing Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that a planning meeting and briefing meeting of the Vermont Advisory Committee will convene at 11 a.m. on Tuesday, March 31, 2009, at the

University of Vermont, Trinity College Campus, Farrell Hall, 210 Colchester Avenue, Burlington, Vermont. The purpose of the planning meeting is to review the draft report on racial profiling in Vermont and plan future activities. The purpose of the briefing meeting is to hear about sentencing disparities in the Vermont judicial system.

Members of the public are entitled to submit written comments. The address is U.S. Commission on Civil Rights, Eastern Regional Office, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Persons wishing to e-mail their comments, present their comments at the meeting, or who desire additional information should contact Alfreda Greene, Secretary, at 202–376–7533 or by e-mail to: *ero@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 11, 2009.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E9–5658 Filed 3–13–09; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting and Community Forum of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that a planning meeting and community forum of the New Jersey Advisory Committee will convene at 9:30 a.m. on Friday, May 8, 2009, at the Legislative Annex of the State House, 152 West State Street, Room L6 (first floor), Trenton, New Jersey 08625. The purpose of the planning meeting is to review the format for conducting the community forum. The purpose of the community forum is to discuss two topics: immigration and education. The immigration review will begin at approximately 9:30 a.m. The education review will begin at approximately 2 p.m.

Members of the public are entitled to submit written comments. The address is U.S. Comission on Civil Rights, Eastern Regional Office, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Persons wishing to email their comments, present their comments at the meeting, or who desire additional information should contact Alfreda Greene, Secretary, at 202–376–7533 or by e-mail to: *ero@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 11, 2009.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E9–5664 Filed 3–13–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Application for Low-Power Television and Translator Upgrade Program.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 1,250.

Average Hours per Response: 1 hour and 15 minutes.

Burden Hours: 1,563.

Needs and Uses: The Digital Television Transition and Public Safety Act of 2005 (Act), as amended by the DTV Delay Act, Public Law 111–4, permits low-power television and translator stations to continue to broadcast in analog after June 12, 2009, the date on which full-power television facilities are required to convert to digital broadcasting. Most low-power television or translator stations extend the service area of a full-power television station by receiving the full-power station's off-air signal and then rebroadcasting the programming on another channel.

The Act directs NTIA to administer a program through which an eligible low-power television or translator station may receive reimbursement for equipment to upgrade low-power television stations from analog to digital in eligible rural communities.

The information collection will be used by NTIA to receive applications from low-power television and translator stations requesting Federal reimbursement toward the purchase of digital transmission equipment. The applications will be used by NTIA to determine the eligibility of applicant stations to receive funds from the Upgrade Program and to determine those stations eligible for priority compensation.

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–5806, or *Nicholas_A._Fraser@omb.eop.gov*.

Dated: March 10, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–5542 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–846

Brake Rotors from the People's Republic of China: Notice of Amended Final Results of Administrative ReviewSales at Less Than Fair Value and Antidumping Duty Order Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 16, 2009.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202- 482–0413.

SUPPLEMENTARY INFORMATION:

Background

This matter arose from a challenge to the *Final Results* issued by the Department of Commerce (''Department'') for the period of review (''POR'') April 1, 2004,4 through Marchy 31, 20055.[1] *See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006) (''*Final Results*''). Following publication of the *Final Results*, the Respondents[2] filed a lawsuit with the Court of International Trade (''CIT'') challenging the Department's *Final Results*. The Respondents contested several aspects of the *Final Results*, including the Department's surrogate valuation for steel scrap.

On June 26, 2008, the CIT directed the Department to: 1) explain whether the rejected rotors, casting strands/handles, *etc.*, reintroduced into the production process should be properly accounted for in the factor of production ''STLSCRAP''; 2) address the issue of the composition of the predominant scrap used in the production process; 3) address respondents' argument that the Department should be solely focusing on the type of scrap the Respondents reported in the factor field ''STLSCRAP''; and 4) explain whether the Department has in fact reassessed its position in subsequent reviews as to the proper harmonized tariff schedule (''HTS'') classification of the Respondents' scrap. *See Laizhou Auto Brake Equipment Company, et. al. v. United States*, Court No. 06–00430, Slip Op. 08–71 (CIT June 26, 2008) (''*Laizhou I*''), at 17–18. Pursuant to the CIT's remand instructions, we reexamined the record and determined that the best available information on the record with which to value steel scrap is HTS 7204.49.00 (other ferrous waste and scrap (''ferrous scrap'')), rather than HTS 7204.10.00 (waste and scrap of cast iron (''cast iron scrap'')) which was used in the Final Results.

The Department released the *Draft Results of Redetermination Pursuant to Court Remand* to interested parties on September 8, 2008. No party submitted comments. On September 24, 2008, the Department filed its final results of redetermination pursuant to *Laizhou I* with the CIT. *See Final Results of Redetermination Pursuant to Court Remand*, Court No. 06–00430 (September 24, 2008) (''*Final Redetermination*''). In responding to the CIT's questions and reassessing the record evidence, we have determined it appropriate to value steel scrap using HTS 7204.49.00 (ferrous scrap), instead of the previously selected value, HTS 7204.10.00 (cast iron scrap). We note that respondents reported purchasing steel scrap that is captured under HTS 7204.49.00, and there is no record evidence which contradicts this assertion. The Department valued HTS 7204.49.00 using publicly available Indian import statistics for the POR from the *World Trade Atlas (''WTA'')*.[3] Thus, the Department revised, as appropriate, the remanded steel scrap surrogate value selection components of the margin calculations of Longkou Haimeng Machinery Co., Ltd. and Hongfa Machinery (Dalian) Co., Ltd. The Department also revised the ''sample rate'' applicable to the non–mandatory respondents separate from the PRC–wide entity who are parties to this litigation: Laizhou Auto Brake Equipment Co., Ltd.; Laizhou City Luqi Machinery Co., Ltd.; Laizhou Hongda Auto Replacement Parts Co., Ltd.; and Qingdao Gren (Group) Co.[4] On November 5, 2008, the CIT sustained all aspects of the remand redetermination made by the Department pursuant to the CIT's remand of the *Final Results. See Laizhou II.*

On November 21, 2008, consistent with the decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department notified the public that the Court's decision was not in harmony with the Department's final results. *See Brake Rotors Timken Notice. See Brake Rotors from the People's Republic of China: Notice of Court Decision Not In Harmony With Final Results of Administrative Review*, 73 FR 70618 (November 21, 2008) *Brake Rotors from the People's Republic of China: Notice of Court Decision Not In Harmony With Final Results of Administrative Review*, 73 FR 70618 (November 21, 2008). No party appealed the CIT's decision. As there is now a final and conclusive court decision in this case, we are amending our *Final Results*.

Amended Final Results

As the litigation in this case has concluded, the Department is amending the *Final Results* to reflect the results of our remand determination. The revised dumping margins for the order on brake rotors in the amended final results areis as follows:

Exporter	Margin
Hongfa Machinery (Dalian) Co.	0.01% (*de minimis*)
Laizhou Auto Brake Equipment Company	6.20%
Laizhou Luqi Machinery Co., Ltd.	6.20%
Laizhou Hongda Auto Replacement Parts Co., Ltd.	6.20%
Longkou Haimeng Machinery Co., Ltd.	0.01% (*de minimis*)
Qingdao Gren (Group) Co.	6.20%

The Department intends to issue instructions to U.S. Customs and Border Protection (''CBP'') fifteen days after publication of this notice, to revise the cash deposit rates for the companiesy listed above, effective as of the publication date of this notice. In addition, we will also instruct CBP to

[1] We note that the Court of International Trade cited an incorrect period of review (''POR'') of April 1, 2005, through May 31, 2006 in its decision. *See Laizhou Auto Brake Equipment Company, et. al. v. United States*, Court No. 06-00430, Slip Op. 08-120 (CIT November 5, 2008) (''Laizhou II''). The CIT corrected this error on February 20, 2009. *See Laizhou II Errata*, dated February 20, 2009.

[2] The Respondents referenced here are Longkou Haimeng Machinery Co., Ltd., Hongfa Machinery (Dalian) Co., Ltd., Laizhou Auto Brake Equipment Co., Ltd., Laizhou City Luqi Machinery Co., Ltd., Laizhou Hongda Auto Replacement Parts Co., Ltd., and Qingdao Gren (Group) Co.

[3] *WTA* is published by Global Trade Information Services, Inc., which is a secondary electronic source based upon the publication, *Monthly Statistics of the Foreign Trade of India, Volume II: Imports. See* http://www.gtis.com/wta.htm.

[4] For the sample rate calculation which includes other mandatory respondents, please see Memo to the File, through Scot T. Fullerton, Program Manager, Office 9, from Toni Dach, International Trade Compliance Analyst, Office 9, Regarding ''Calculation of the 'Sample Rate' for the Draft Redetermination of the 2004/2005 Administrative Review of Brake Rotors from the People's Republic of China,'' dated September 8, 2008.

liquidate all entries at the appropriate rates.

This notice is published in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

Dated: March 4, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–5665 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–816)

Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 9, 2008, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review for certain corrosion–resistant carbon steel flat products (CORE) from the Republic of Korea (Korea). *See Certain Corrosion–Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 52267 (September 9, 2008) (*Preliminary Results*). This review covers seven manufacturers and exporters (collectively, the respondents) of the subject merchandise: LG Chem., Ltd. (LG), Haewon MSC Co. Ltd. (Haewon), Dongkuk Industries Co., Ltd. (Dongkuk), Dongbu Steel Co., Ltd., (Dongbu), Hyundai HYSCO (HYSCO), Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group), and Union Steel Manufacturing Co., Ltd. (Union) (collectively, respondents).[1] The period of review (POR) is August 1, 2006, through July 31, 2007.

As a result of our analysis of the comments received, these final results differ from the *Preliminary Results*. For our final results, we find that Dongbu, HYSCO, the POSCO Group, and Union, made sales of subject merchandise at less than normal value (NV). In addition, based on the final results for the respondents selected for individual review, we have determined a weighted–average margin for those companies that were not selected for individual review. Further, we find that the single sale made by Haewon during the POR was covered by the new shipper review published in the **Federal Register** on June 23, 2008,[2] and thus, Haewon should be rescinded from the instant review.

EFFECTIVE DATE: March 16, 2009.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska (Union), Cindy Robinson (Dongbu), Christopher Hargett (HYSCO) and Victoria Cho (the POSCO Group, and non–selected companies), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8362, (202) 482–3797, (202) 482–4161, and (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2008, the Department published the *Preliminary Results*. In the *Preliminary Results*, the Department determined that during the POR, Dongbu, HYSCO, the POSCO Group, and Union, made sales of subject merchandise at less than normal value (NV). In addition, based on the preliminary results for the respondents selected for individual review, the Department calculated a weighted–average margin for those companies that were not selected for individual review. On November 12, 2008, the Department extended the time limits for the final results of this review until no later than March 9, 2009. *See Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Extension of Time Limits for the Final Results of Antidumping Duty Administrative Review*, 73 FR 66841 (November 12, 2008).

Comments from Interested Parties

We invited parties to comment on our *Preliminary Results*. On October 9, 2008, ArcelorMittal Steel Inc. (Mittal), United States Steel Corporation (US Steel), and Nucor Corporation (Nucor) filed case briefs concerning all four mandatory respondents. On the same day, the four mandatory respondents and Haewon filed case briefs. On October 17, 2008, Mittal, US Steel, and Nucor filed rebuttal briefs concerning all of the mandatory respondents. The four mandatory respondents filed rebuttal briefs on the same day.

Scope of the Order

This order covers cold–rolled (cold–reduced) carbon steel flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion–resistant flat–rolled products of non–rectangular cross–section where such cross–section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') – for example, products which have been beveled or rounded at the edges. Excluded from this order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin–free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight

[1] As noted in the *Preliminary Results*, on December 6, 2007, the Department selected Dongbu, HYSCO, the POSCO Group and Union as mandatory respondents in this review. See Memorandum from Christopher Hargett, International Trade Compliance Analyst, through James Terpstra, Program Manager, to Melissa Skinner, Director, Office 3, entitled ''2006-2007 Antidumping Duty Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Selection of Respondents for Individual Review,'' dated December 6, 2007.

[2] *See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of Antidumping Duty New Shipper Review*, 73 FR 35366 (June 23, 2008).

lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Partial Rescission of Review

Pursuant to 19 CFR 351.214(j), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, the merchandise sold in the U.S. was subject to a new shipper review, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act). The merchandise sold by Haewon during the current review is the same merchandise that was examined by the Department in a new shipper review. *See Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of Antidumping Duty New Shipper Review*, 73 FR 35366 (June 23, 2008)(*Haewon New Shipper Review*). Therefore, we are rescinding this review with respect to Haewon in accordance with 19 CFR 351.214(j). The cash–deposit rate for Haewon will remain the rate established in the final results of the new shipper review. *See Haewon New Shipper Review*.

Final Results of Review

We determine that the following weighted–average margins exist:

Manufacturer/exporter	Percent margin
Dongbu	1.85
HYSCO	1.57
The POSCO Group	0.53
Union	7.56
Review–Specific Average Rate Applicable to the Following Companies[3]: LG, and Dongkuk	5.01

[3] This rate is based on the weighted average of the margins calculated for those companies selected for individual review, excluding *de minimis* margins or margins based entirely on adverse facts available.

Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review.

The Department clarified its ''automatic assessment''' regulation on May 6, 2003 (68 FR 23954). This clarification applies to POR entries of subject merchandise produced by companies examined in this review (*i.e.*, companies for which a dumping margin was calculated) where the companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of CORE from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) for companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 17.70 percent, the all–others rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Administrative Protective Order

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 9, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Accompanying Issues and Decision Memorandum

A. General Issues

Comment 1: Model–Match Methodology and Laminated Products

Comment 2: Treatment of Negative Dumping Margins (Zeroing)

Comment 3: Recalculation of General and Administrative (''G&A'') and Financial Expense Ratios

B. Company–Specific Issues

Dongbu

Comment 4: Exclusion of Gains and Losses on Currency Forward Contracts

Comment 5: Exclusion of Losses on the Disposal of Accounts Receivable from Short Term Interest Rate Calculation

Union

Comment 6: Inclusion of Union's U.S. Warehousing Expenses in the Calculation of International Movement Expense

Comment 7: The Department's Treatment of Union's Purchases of Steel Substrate from Affiliated and Unaffiliated Parties

POSCO

Comment 8: Whether to Collapse the POSCO Group and Union for the Final Results

Comment 9: The POSCO Group's Inland Freight from Plant to Port Incurred by POSCO for Its U.S. Sales

Comment 10: The Department's Calculation of POCOS' Loans in the Calculation of the Home Market Interest Rate

Comment 11: The Department's Calculation of the POSCO Group's U.S. Indirect Selling Expense (INDIRSU)

Comment 12: The POSCO Group's Reporting of POCOS' Home Market Warranty

Comment 13: The POSCO Group's Transaction–Specific Reporting of Expenses

Comment 14: The POSCO Group's Transaction–Specific Reporting of Other Transportation Expenses

Hyundai HYSCO

Comment 15: Inclusion of Sales to Affiliates in the CEP Profit Calculation

Comment 16: Recalculation of Net Interest Expense

Comment 17: HYSCO's Window Period

Comment 18: HYSCO's Date of Sale

Haewon

Comment 19: Haewon's Cash Deposit Rate

[FR Doc. E9–5631 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

C–475–819

Certain Pasta from Italy: Extension of Time Limit for Preliminary Results of the 12th (2007) Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 16, 2009.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Shelly Atkinson, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1174 and (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department of Commerce (''the Department'') published a countervailing duty order on certain pasta from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996). On July 11, 2008, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order for calendar year 2007, the period of review (''POR''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 39948 (July 11, 2008). In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 26, 2008, for the POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008). The preliminary results for this review are currently due no later than April 2, 2009.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

We are awaiting supplemental information from the respondent and the Government of Italy in this review. Because the Department will require additional time to review and analyze this supplemental information and may issue further supplemental questionnaires, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by April 2, 2009). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than June 1, 2009, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 10, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–5646 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–475–818)

Certain Pasta from Italy: Extension of Time Limits for the Preliminary Results of Twelfth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone (202) 482–4161

Background

On August 26, 2008, the U.S. Department of Commerce (''Department'') published a notice of initiation of the administrative review of the antidumping duty order on certain pasta from Italy, covering the period July 1, 2007 to June 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008). The preliminary results of this review are currently due no later than April 2, 2009.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable because the Department requested additional information from all interested parties regarding wheat code classifications for model match.[1] Wheat code classification is an integral part in making comparisons between home market and U.S. sales in the Department's margin calculations in this proceeding. Given the complexity of this issue and in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the preliminary results of review by 120 days. Therefore, the preliminary results are now due no later than July 31, 2009. The final results continue to be due 120 days after publication of the preliminary results.

This notice is issued and published pursuant to sections 751(a) and 777(i) of the Act.

Dated: March 9, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–5668 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See* Memo from the Department entitled ''Request for Comments on Wheat Code Classifications,'' dated January 9, 2009.

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–888

Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 9, 2008, the U.S. Department of Commerce (the Department) published the preliminary results of the 2006 2007 administrative review of the antidumping duty order on floor–standing, metal–top ironing tables from the People's Republic of China (PRC). *See Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof From the eople's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52277 (September 9, 2008) (*AR3 Preliminary Results*). This review covers two exporters. The period of review (POR) is August 1, 2006 through July 31, 2007. We invited interested parties to comment on the *Preliminary Results*.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the Final Results differ from the *Preliminary Results*. The weighted average dumping margins are listed below in the section entitled ''Final Results of Review''.

EFFECTIVE DATE: March 16, 2009.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

We published in the **Federal Register** the preliminary results of the second administrative review on September 9, 2008. *See AR3 Preliminary Results*.

Following the *AR3 Preliminary Results*, on October 8 and October 10, 2008, the Department received respective case briefs from Since Hardware and from Home Products International (the Petitioner in this case). On October 14, and October 17, 2008, respectively Petitioner and Since Hardware submitted rebuttal briefs. On January 5, 2009, the Department extended the time frame for publication of the final results of review by an additional 60 days. *See Floor–Standing Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Extension of Time Limit for the Final Results of Administrative Review*, 74 FR 267 (January 5, 2009).

Scope of the Order

For purposes of the order, the product covered consists of floor–standing, metal–top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full–height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor–standing, metal–top ironing tables are covered by this review.

Furthermore, the order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of the order, the term ''unassembled'' ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term ''complete'' ironing table means product sold as a ready–to-use ensemble consisting of the metal–top table and a pad and cover, with or without additional features, *e.g.*, iron rest or linen rack. The term ''incomplete'' ironing table means product shipped or sold as a ''bare board'' *i.e.*, a metal–top table only, without the pad and cover with or without additional features, *e.g.* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by the order under the term ''certain parts thereof'' consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor–standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading

9403.90.8040. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (CBP) purposes, the Department's written description of the scope remains dispositive.

Separate Rates

Since Hardware and Forever Holdings requested a separate, company–specific antidumping duty rate. In the *AR3 Preliminary Results*, we found that both Since Hardware and Forever Holdings had met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*, 72 FR at 52278.

We have determined that because Since Hardware has provided inaccurate and unreliable data, it is no longer eligible for separate rate status, and thus is properly considered to be part of the PRC–wide entity. *See* Issues and Decision Memorandum at page 6. *See also, Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 883 (January 9, 2009) (where the Department revoked a respondent's separate rate status after the respondent refused to cooperate with the Department's administrative review). We have not received any information since the *Preliminary Results* with respect to Forever Holdings that would warrant reconsideration of our separate–rates determination. Therefore, we have assigned an individual dumping margin to Forever Holdings for this review period.

Analysis of Comments Received

All issues raised in the case briefs by the parties and to which we have responded are addressed in the Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled ''Issues and Decision Memorandum for the Final Results in the Administrative Review of Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China'', (March 9, 2009) (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room 1117 of the Department of Commerce. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://trade.gov/ia. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes since the Preliminary Results

Based on the comments received from interested parties, we have based our analysis for the PRC–wide entity, which includes Since Hardware on AFA. See Comment 1 of the Issues and Decision Memorandum for the discussion of the basis for, and the application of, AFA; *see also* Memorandum from Richard Weible, Director, Office 7 to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Since Hardware (Guangzhou) Co., Ltd's. Claim Regarding Market Economy Purchases, and Use of Adverse Facts Available,'' dated March 9, 2009 (AFA Memorandum).

We have also used the financial statements of Infiniti Modules for the year ended March 31, 2007 to calculate factory overhead, SG&A expenses and profit in the final results calculations for Forever Holdings. *See* Comment 2 of the Issues and Decision Memorandum.

Final Results of Review

We determine that the following antidumping duty margins exist in these final results:

Exporter	Margin (percent)
PRC–wide Entity (which includes Since Hardware)	157.68 %
Forever Holdings Limited	0.00%

See AFA Memorandum for discussion of the basis for, and application of, AFA with respect to the PRC–wide entity, which includes Since Hardware. For details on the calculation of the antidumping duty weighted–average margin for Forever Holdings, *see* Memorandum to the File; from Michael J. Heaney, Senior International Trade Compliance Analyst; ''Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Forever Holdings Limited (Forever Holdings) Analysis Memorandum for the Final Results,'' dated March 9, 2009. The public versions of both memoranda are on file in the CRU.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For assessment purposes, where possible, we calculated importer–specific assessment rates for subject ironing tables from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for Since Hardware the cash deposit rate will be 157.68 percent; (2) for Forever Holdings, the Department has calculated a zero percent margin for these final results, and therefore no cash deposit will be required for this company; (3) for previously–investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (4) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, including those companies for which this review has been rescinded, the cash deposit rate will be the PRC–wide rate of 157.68 percent; and (5) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 9, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Issues in Decision Memorandum

Comment 1: Since Hardware's Claimed Purchases of Inputs from Market Economy Suppliers; Use of Adverse Facts Available

Comment 2: Proper Financial Statements to Use in Calculating Respondents' Financial Expenses

[FR Doc. E9–5627 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–863

Honey from the People's Republic of China: Partial Rescission of the Seventh Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 16, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Blaine Wiltse, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3207 or (202) 482–6345, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2009, the Department of Commerce (''Department'') published a notice of initiation of an administrative review of the antidumping duty order on honey from the People's Republic of China (''PRC'') covering the period December 1, 2007, through November 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009).

On February 23, 2009, the American Honey Producers Association and the Sioux Honey Association (collectively ''Petitioners'') timely withdrew their request for an administrative review for the following 33 companies: Alfred L. Wolff (Beijing) Co., Ltd., Anhui Honghui Foodstuff (Group) Co., Ltd., Cheng Du Wai Yuan Bee Products Co., Ltd., Chengdu Stone Dynasty Art Stone, Eurasia Bee's Products Co., Ltd., Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen), Golden Tadco Int'l, Hangzhou Golden Harvest Health Industry Co., Ltd., Haoliluck Co., Ltd., Hubei Yusun Co., Ltd., Inner Mongolia Altin Bee–Keeping, Jiangsu Kanghong Natural Healthfoods Co., Ltd., Jiangsu Light Industry Products Imp & Exp (Group) Corp., Jilin Province Juhui Import, Maersk Logistics (China) Company Ltd., Nefelon Limited Company, Ningbo Shengye Electric Appliance, Ningbo Shunkang Health Food Co., Ltd., Qingdao Aolan Trade Co., Ltd., QHD Sanhai Honey Co., Ltd., Renaissance India Mannite, Shaanxi Youthsun Co. Ltd., Shanghai Bloom International Trading Co., Ltd., Shanghai Foreign Trade Co., Ltd., Shanghai Hui Ai Mal Tose Co., Ltd., Shanghai Taiside Trading Co., Ltd., Sichuan–Dujiangyan Dubao Bee Industrial Co., Ltd., Silverstream International Co., Ltd., Tianjin Eulia Honey Co., Ltd., Wuhan Bee Healthy Co., Ltd., Wuhan Shino–Food Trade Co., Ltd., Wuhu Qinshi Tangye, and Xinjiang Jinhui Food Co., Ltd. Petitioners were the only party to request a review of the entries of subject merchandise exported by these companies.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within ninety days of the date of publication of notice of initiation of the requested review. Because Petitioners' withdrawal of requests for review was timely and no other party requested a review of the aforementioned companies, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to the 33 aforementioned companies for which Petitioners withdrew their request for an administrative review.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded and which have a separate rate from a prior segment of this proceeding, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of this notice for the following companies: Anhui Honghui Foodstuff (Group) Co., Ltd., Jiangsu Kanghong Natural Healthfoods Co., Ltd., Shanghai Taiside Trading Co., Ltd., and Wuhan Bee Healthy Co., Ltd.

The Department cannot order liquidation for companies which, although they are no longer under review as a separate entity, may still be under review as part of the PRC–wide entity. Therefore, the Department cannot, at this time, order liquidation of entries for the following companies: Alfred L. Wolff (Beijing) Co., Ltd., Cheng Du Wai Yuan Bee Products Co., Ltd., Chengdu Stone Dynasty Art Stone, Eurasia Bee's Products Co., Ltd., Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen), Golden Tadco Int'l, Hangzhou Golden Harvest Health Industry Co., Ltd., Haoliluck Co., Ltd., Hubei Yusun Co., Ltd., Inner Mongolia Altin Bee–Keeping, Jiangsu Light Industry Products Imp & Exp (Group) Corp., Jilin Province Juhui Import, Maersk Logistics (China) Company Ltd., Nefelon Limited Company, Ningbo Shengye Electric Appliance, Ningbo Shunkang Health Food Co., Ltd., Qingdao Aolan Trade Co., Ltd., QHD Sanhai Honey Co., Ltd., Renaissance India Mannite, Shaanxi Youthsun Co. Ltd., Shanghai Bloom International Trading Co., Ltd., Shanghai Foreign Trade Co., Ltd., Shanghai Hui Ai Mal Tose Co., Ltd., Sichuan–Dujiangyan Dubao Bee Industrial Co., Ltd., Silverstream International Co., Ltd., Tianjin Eulia Honey Co., Ltd., Wuhan Shino–Food Trade Co., Ltd., Wuhu Qinshi Tangye, and Xinjiang Jinhui Food Co., Ltd.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of

antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 10, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–5654 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Economic Surveys of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands Small Boat-based Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 15, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Minling Pan, (808) 983–5347 or *Minling.Pan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to collect information about fishing expenses in the American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) boat-based reef fish, bottomfish, and pelagics fisheries with which to conduct economic analyses that will improve fishery management in those fisheries; satisfy NMFS' legal mandates under Executive Order 12866, the Magnuson-Steven Fishery Conservation and Management Act (U.S.C. 1801 et seq.), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act; and quantify achievement of the performances measures in the NMFS Strategic Operating Plans. An example of these performance measures: the economic data collected will allow quantitative assessment of the fisheries sector's social and economic contribution, linkages and impacts of the fisheries sector to the overall economy through Input-output (I–O) models analyses. The results from I–O analyses will not only provide indicators of social-economic benefits of the marine ecosystem, a performance measure in the NMFS Strategic Operating Plans, but also be used to assess how fishermen and economy will be impacted by and respond to regulations likely to be considered by fishery managers. These data will be collected in conjunction with catch and effort data already being collected in this fishery as part of its creel survey [1] program. In general, participation in the economic data collection will be voluntary.

II. Method of Collection

The economic surveys will be conducted in-person interview when a fishing trip is completed. Captains of selected vessels by the creel survey will be required to report information about trip costs, input usage, and input prices.

III. Data

OMB Control Number: 0648-xxxx.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 1200.
Estimated Time per Response: 10 minutes per trip survey
Estimated Total Annual Burden Hours: 200.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 11, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–5649 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–22–P

[1] The Creel Survey Program is one of the major data collection systems to monitor fisheries resources in these three geographic areas. The survey monitors the islands' fishing activities and interviews returning fishermen at the most active launching ramps/docks during selected time periods on the islands.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO05

Climate and Sustainability Conference

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) and the International Trade Administration will host a seminar on April 1, 2009 at the U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW, Washington, DC 20230, in Room 4830. The seminar will present climate data, services, and programs available from the U.S. Department of Commerce for U.S. companies coming to terms with climate variability. The agenda will feature strategies for sustainability, competitiveness, and networking for the business community.

DATES: The meeting will begin at 8:30 a.m. on Wednesday, April 1, 2009, recess at 3:00 p.m.

ADDRESSES: Department of Commerce, 14th and Constitution NW, Washington DC 20230, Room 4830.

FOR FURTHER INFORMATION CONTACT: To register, please email your name, company name, contact information including email and phone number to: *April1.Conference@mail.doc.gov*. For further information, phone Ellen Bohon, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–0359.

SUPPLEMENTARY INFORMATION:

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to (202) 482–0359.

Dated: March 10, 2009.

Captain Todd Stiles,

Executive Director, Office of the Deputy Under Secretary, National Oceanic and Atmospheric Administration.

[FR Doc. E9–5640 Filed 3–13–09; 8:45 am]

BILLING CODE 3510–12–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Emergency Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted an emergency public information collection request (ICR) entitled AmeriCorps VISTA Recovery Act Progress Report Supplement to the Office of Management and Budget (OMB) for review and approval within seven days of submission. This action is being implemented in accordance with OMB guidance and the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation may be obtained by contacting the Corporation for National Service, AmeriCorps VISTA, Craig Kinnear, Program Analyst, (202) 606–6708, or by e-mail at *ckinnear@cns.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, to (1) Corporation for National and Community Service, and (2) the Office of Information and Regulatory Affairs. Please send comments to:

(1) Corporation for National and Community Service, Attn: Craig Kinnear, Program Analyst, AmeriCorps VISTA by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(a) By fax to: (202) 606–3475 Attention: Craig Kinnear, Program Analyst, AmeriCorps VISTA; and

(b) Electronically by e-mail to *ckinnear@cns.gov*. and

(2) Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(a) By fax to: (202) 395–6974, Attention: Ms. Sharon Mar, OMBH Desk Officer for the Corporation for National and Community Service; and

(b) Electronically by e-mail to *smar@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and,
- Propose 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 (e.g., permitting electronic submissions of responses).

Current Action

The Corporation seeks to enhance data elements collected via these information collection tools.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: VISTA Recovery Act Progress Report Supplement.

OMB Number: New.

Agency Number: None.

Affected Public: AmeriCorps*VISTA sponsoring organizations (includes nonprofit organizations and state, local and tribal agencies).

Total Respondents: 950.

Frequency: Quarterly.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 3,800.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: March 11, 2009.

Paul Davis,

*Acting Director, AmeriCorps*VISTA.*

[FR Doc. E9–5669 Filed 3–13–09; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Continuation and Expansion of a Disease Management Demonstration Project for TRICARE Standard Beneficiaries

AGENCY: Department of Defense.

ACTION: Notice of demonstration project.

SUMMARY: This notice is to advise interested parties of the continuation and expansion of a Military Health System (MHS) demonstration project entitled ''Disease Management Demonstration Project for TRICARE Standard Beneficiaries''. The original demonstration notice was published on June 13, 2007 (72 FR 32628–32629) and described a demonstration project to provide disease management (DM) services to TRICARE Standard beneficiaries in addition to the TRICARE Prime beneficiaries who were already entitled to such services. TRICARE began the demonstration project in March 2007 for Standard beneficiaries and this demonstration project has enabled the MHS to provide uniform policies and practices on disease and chronic care management throughout the TRICARE network. Additionally, the demonstration has helped determine the effectiveness of DM programs in improving the health status of beneficiaries with targeted

chronic diseases or conditions, and any associated cost savings. The TRICARE Management Activity (TMA) chose a phased approach to determine the efficacy and cost effectiveness of its disease management demonstration, beginning with beneficiaries identified with the disease states of asthma, congestive heart failure, and diabetes. TMA now intends to expand the disease management services to TRICARE Standard beneficiaries with the additional disease states of cancer, Chronic Obstructive Pulmonary Disease (COPD), and anxiety and depression disorders as well as continue the original disease states of asthma, congestive heart failure, and diabetes. This expansion and continuation of the DM demonstration project will be conducted under the authority provided in 10 U.S.C. 1092.

DATES: The expansion of the demonstration will be effective April 1, 2009 and will continue for a period of 2 years until March 31, 2011. The terms and conditions of the original demonstration notice will continue.

FOR FURTHER INFORMATION CONTACT: Dr. Barry Cohen, Director of Healthcare Operations—TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206; telephone (703) 681–4029.

SUPPLEMENTARY INFORMATION:

A. Background

For additional information on the TRICARE demonstration project for DM, please see 72 FR 32628–32629. The demonstration notice focused on explaining the differences between the DM benefits available to TRICARE Standard and TRICARE Prime beneficiaries and the manner in which DM services had been provided prior to the demonstration. The prior notice explained that for purposes of the demonstration, the Department of Defense (DoD) would waive, for these DM services provided to Standard beneficiaries, the provisions of 10 U.S.C. 1079(a)(13) and 32 CFR 199.4(g)(39) that expressly exclude clinical preventive services for TRICARE Standard beneficiaries. The prior notice also explained the enrollment process and cap on DM costs.

B. Description of Expansion of Demonstration Project

Under this demonstration, DoD has waived, for disease management services provided to TRICARE Standard beneficiaries, the provisions of 10 U.S.C. 1079(a)(13) and 32 CFR 199.4(g)(39) that expressly exclude clinical preventive services for TRICARE Standard beneficiaries in the current benefit. The Military Health System (MHS) has enrolled TRICARE Standard beneficiaries in its DM programs. DM services provided to Standard beneficiaries have included, but have not been limited to: Clinical preventive examinations, patient education and counseling services, and periodic screening exams. MHS DM program costs have been capped not to exceed the amount approved by the contracting officer. The DM program costs are total costs of DM services provided to both Prime and Standard beneficiaries. Only those beneficiaries identified by the TRICARE Management Activity (TMA) for disease management of asthma, congestive heart failure, and diabetes have been included in the current program. TMA is now expanding the demonstration by including the additional disease states of cancer, COPD, and anxiety and depression disorders. Beneficiaries identified by TMA are included in the DM program unless they choose to opt out. This action directly reduces variation across the system and results in improved consistency and quality for beneficiaries with targeted chronic illness, regardless of TRICARE classification. Furthermore, including TRICARE Standard beneficiaries in current DM efforts informs the MHS about total potential savings and return on investment (ROI) associated with DM, a stated requirement of the John Warner National Defense Authorization Act for Fiscal Year 2007. Continuing to provide the current three, and adding the additional three diseases to the system-wide DM program, will improve the quality of care of our beneficiaries. By educating patients about their disease and helping them manage their symptoms, many of the complications of these diseases can be avoided, possibly slowing the progression of their chronic disease, thus resulting in significant cost savings.

C. Implementation

The expansion of the demonstration will be effective on April 1, 2009. The terms and conditions of the original demonstration as provided in the Notice in 72 FR 32368–32369 will continue on that date.

D. Evaluation

An independent evaluation of the demonstration will be conducted. The evaluation will be designed to use a combination of administrative and survey measures of health care outcomes (clinical, utilization, financial, and humanistic measures) to provide analyses and comment on meeting its goal of providing uniform disease management policies and practices across the MHS.

Dated: March 9, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–5626 Filed 3–13–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board will meet in closed session on May 13–14, 2009; at the Pentagon, Arlington, VA. The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss interim finding and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U. S. national defense posture and homeland security.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *debra.rose@osd.mil*, or via phone at (703) 571–0084.

SUPPLEMENTARY INFORMATION: In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. 2) and 41 CFR 102–3.155, the Department of Defense has determined that these Defense Science Board Quarterly meeting will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology and Logistics), with the coordination of the DoD Office of General Counsel, has determined in writing that all sessions of these meetings will be closed to the public because they will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(1).

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed

above, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: March 9, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–5630 Filed 3–13–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the National Defense University Visitors (BOV)

AGENCY: Department of Defense; National Defense University.

ACTION: Notice of open meeting.

SUMMARY: The National Defense University (NDU), Designated Federal Officer, has scheduled a meeting of the Board of Visitors. The National Defense University Board of Visitors is a Federal Advisory Board. The Board meets twice a year in proceedings that are open to the public.

DATES: The meeting will be held on May 28–29, 2009 from 1130–1700 on the 28th and continuing on the 29th from 0800–1200.

ADDRESSES: The Board of Visitors meeting will be held at Building 62, Marshall Hall, Room 155, National Defense University, 300 5th Avenue, Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: The point of contact for this notice is Jeanette Tolbert @ (202) 685–3955, Fax (202) 685–3328 or *TolbertJ@ndu.edu*.

SUPPLEMENTARY INFORMATION: The Board will discuss: State of the University, National Security Professional Development, Accreditation, and Federal Policy. The meeting is open to the public; limited space is made available for observers and will be allocated on a first-come, first-serve basis.

Dated: March 9, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–5629 Filed 3–13–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 15, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 10, 2009.

Angela C. Arrington,

Director, IC Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Grants for the Centers for International Business Education Program.

Frequency: Every 5 years.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 1,000.

Abstract: This is an application package for institutions of higher education to apply for funding to the Title VI Centers for International Business Education program. This program provides grants to fund Centers for International Business Education that serve as national centers for teaching and research on international business subjects. The information and data provided in these applications will be used to evaluate the application and to select the most highly ranked applications for funding.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3960. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–5550 Filed 3–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy

Agency (IEA) will meet on March 25, 2009, at the headquarters of the IEA in Paris, France, in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market on March 25, and on March 26 in connection with a meeting of the SEQ on March 26.

DATES: March 25–26, 2009.

ADDRESSES: 9, rue de la Fédération, Paris, France.

FOR FURTHER INFORMATION CONTACT: Diana D. Clark, Assistant General for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–3417.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

Meetings of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on March 25, 2009, beginning at 9 a.m. and on March 26 beginning at 9:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) on March 25 beginning at 9 a.m. at the same location, and at a meeting of the SEQ on March 26 beginning at 9:30 a.m. The IAB will also hold a preparatory meeting among company representatives at the same location at 8:30 a.m. on March 26. The agenda for this preparatory meeting is to discuss the March 25 joint meeting of the SEQ and the SOM and to review the agenda for the SEQ meeting commencing at 9:30 a.m. on March 26.

The agenda of the joint SEQ/SOM meeting on March 25 is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the November 2008 SEQ/SOM Joint Session
3. Update on the Oil Market
4. Update on the Gas Market
5. Reports by Member Countries on Oil and Gas Markets
6. Preparation for the October 2009 Ministerial Meeting
7. Recent Developments in the Caucasus/Caspian Region
8. Overview of the Russia—Ukraine Gas Dispute of January 2009
9. Update on EMS (Energy Markets and Security) Activities
10. Panel Discussion on Price Formation
11. Other Business

The agenda of the SEQ meeting on March 26, 2009, is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 125th Meeting
3. Status of Compliance with IEP Stockholding Commitments
4. Emergency Response Exercise
   —Draft Outline for Workshop on Public Stock Release, June 2009
   —Draft Program for ERES
5. Emergency Response Review Program
   —Questionnaire Response of Ireland
   —Questionnaire Response of Belgium
   —Questionnaire Response of Canada
   —Emergency Response Review of Luxembourg
   —Emergency Response Review of Portugal
   —Emergency Response Review of Italy
   —Schedule of Emergency Response Reviews
6. Policy and Other Developments in Member Countries
   —Australia
   —Canada
   —Japan
   —United Kingdom
   —United States
7. Activities with International Organizations and Non-Member Countries
   —Comparison of Draft EU Directive on Emergency Oil Stocks with the IEA System
   —Work on Candidate Countries
   —Emergency Response Exercises in Thailand, China, and India
   —IEA/HANDA/EC Workshop on Establishment of Emergency Oil Stocks in Southeast Europe, May 28–29, 2009, Croatia
8. Report from the Industry Advisory Board
9. Emergency Policy for Natural Gas
   —Draft Proposal on Energy Policy for Natural Gas for the October 2009 Ministerial Meeting
   —Natural Gas Reserves in Hungary
10. Documents for Information
   —Emergency Reserve Situation of IEA Member Countries on January 1, 2009
   —Base Period Final Consumption: 1Q 2008–4Q 2008
   —Monthly Oil Statistics: December 2008
   —Updated Emergency Contacts List
12. Other Business
   —Tentative Schedule of Meetings:
   —June 23–25, 2009
   —October 20–22, 2009

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC, March 10, 2009.

Diana D. Clark,

Assistant General Counsel for International and National Security Programs.

[FR Doc. E9–5607 Filed 3–13–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12576–004]

CRD Hydroelectric, LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing a Deadline for Submission of Final Amendments

March 9, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original License.

b. *Project No.:* 12576–004.

c. *Date Filed:* February 24, 2009.

d. *Applicant:* CRD Hydroelectric, LLC.

e. *Name of Project:* Red Rock Hydroelectric Project.

f. *Location:* On the Des Moines River, in Marion County, Iowa. The project would be located at U.S. Army Corps of Engineer facilities.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact:* Ms. Douglas A. Spaulding, Nelson Energy LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; (952) 544–8133.

i. *FERC Contact:* Timothy Konnert, *Timothy.Konnert@ferc.gov*, (202) 502–6359.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with

us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form a factual basis for complete analysis of the application on its merits, the resource agency, Indian tribe, or person must file a request for the study with the Commission no later than 60 days from the application filing date, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: April 27, 2009.

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.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link. After logging into the eFiling system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.

m. This application is not ready for environmental analysis at this time.

n. The proposed Red Rock Hydroelectric Project would be located at the existing U.S. Army Corps of Engineers (Corps) Red Rock dam, which was constructed by the Corps in 1969 for flood control. The existing Corps facilities consist of: (1) A 110-foot-high, 6,260-foot-long earth-fill dam with a 241-foot-long gated ogee spillway equipped with five 45-foot-high tainter gates; and (2) a 15,253-acre reservoir at a normal conservation pool water surface elevation of 742.0 feet National Geodetic Vertical Datum of 1929.

The proposed project would utilize the head created by the existing Corps dam and consist of: (1) A new, approximately 127-foot-long by 19-foot-wide intake structure connected to; (2) three new 19-foot-diameter, approximately 211-foot-long penstocks passing through the left side of the spillway leading to; (3) a new 59-foot-long by 132-foot-wide powerhouse located directly downstream of the existing spillway structure containing three new 12.13-megawatt (MW) generating units for a total generating capacity of 36.4 MW; (4) a new approximately 8.4-mile-long, 69-kilovolt transmission line; and (5) appurtenant facilities. The estimated average annual generation would be 158,000 megawatt hours.

The project would be operated in run-of-river mode in that it would have no storage and only use flows released by the Corps in accordance with its present operations.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number filed to access the documents. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intends to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Issue Acceptance or Deficiency Letter—May 2009.

Issue Scoping Document—October 2009.

Notice of application is ready for environmental analysis—January 2010.

Notice of the availability of the EA—November 2010.

Final amendments: Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5556 Filed 3–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 6, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–1435–017.
Applicants: Avista Corporation.
Description: Avista Corp submits an errata to its January 29, 2009 filing to reflect a correct effective date of January 29, 2009, which includes Revised Sheets 5, 6, and 8.
Filed Date: 03/02/2009.
Accession Number: 20090306–0009.
Comment Date: 5 p.m. Eastern Time on Friday, March 13, 2009.

Docket Numbers: ER99–1435–018.
Applicants: Avista Corporation.
Description: Notice of non-material change in status.
Filed Date: 03/04/2009.
Accession Number: 20090304–5139.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 25, 2009.

Docket Numbers: ER03–534–009.
Applicants: Ingenco Wholesale Power, LLC.
Description: Supplement to Application for Finding of Category 1 Seller Status and filing of Revised Market-Based Rate Tariff of Ingenco Wholesale Power, LLC.
Filed Date: 03/02/2009.
Accession Number: 20090302–5190.
Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: ER04–691–091.
Applicants: Midwest Independent System Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits responses to the FERC's 2/9/09 letter seeking additional information, and requiring the amendment of compliance filing etc.
Filed Date: 02/24/2009.
Accession Number: 20090225–0227.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 17, 2009.

Docket Numbers: ER07–771–003.
Applicants: E.ON U.S. LLC.
Description: True-Up Filing of E.ON U.S. LLC.

Filed Date: 03/02/2009.
Accession Number: 20090302–5184.
Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: ER08–1317–003.
Applicants: California Independent System Operator Corp.
Description: Quarterly Report on Process in Processing Interconnection Requests and Motion for Extension of Time of the California Independent System Operator Corporation.
Filed Date: 02/27/2009.
Accession Number: 20090227–5220.
Comment Date: 5 p.m. Eastern Time on Friday, March 20, 2009.

Docket Numbers: ER09–369–000.
Applicants: PJM Interconnection L.L.C.
Description: PJM Interconnection, LLC submits response to FERC 1/3/09 deficiency notice requesting PJM to provide additional information re its proposed change to the PJM Open Access Transmission Tariff, etc.
Filed Date: 03/02/2009.
Accession Number: 20090305–0052.
Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–5582 Filed 3–13–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–59–000]

Dominion Cove Point LNG, LP; Environmental Assessment for the Proposed Pipeline Compressor Addition Project and Request for Comments on Environmental Issues

March 9, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Pipeline Compressor Addition Project (Project) involving construction and operation of facilities by Dominion Cove Point LNG, LP (Cove Point) in Calvert County, Maryland.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on April 8, 2009.

This notice is being sent to affected landowners; Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

A brochure prepared by the FERC entitled ''A Guide to LNG—What All Citizens Should Know'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This brochure addresses a number of typically asked questions, including what is LNG and how is it transported.

Summary of the Proposed Project

Cove Point is proposing to construct, install and operate on land owned by Cove Point:

- One 3,500 horsepower (HP) electric motor driven reciprocating compressor unit;
- Associated compressor piping;
- Electrical connections for power;
- System controls;
- Approximately 900 feet of 6-inch pipeline to replace existing 4-inch 108J discharge pipeline;
- Coalescing separator to replace existing coalescing separator; and
- Boil-off gas (BOG) turbine meter to replace existing BOG turbine meter.

The general location of the project facilities is shown in Appendix 1.[2]

If approved, Cove Point proposes to commence construction of the proposed facilities in the beginning of May 2009 in order to meet an in-service date of early fourth quarter 2009.

Land Requirements for Construction

Construction of the project would occur entirely on previously developed property inside the existing 136 acre fenced area for terminal operations and within the existing 1,017 acre Cove Point terminal site. The temporary footprint of the project construction area would take place on approximately 2 acres or less of previously disturbed land. The permanent footprint of the project area would affect less than 0.1 acre of previously disturbed land currently covered in stone.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to

[1] On February 3, 2009, Cove Point filed its application with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations. The Commission issued its Notice of Application on February 18, 2009.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this NOI, we are asking Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Cove Point. This preliminary list of issues may be changed based on your comments and our analysis.

- The operation of the proposed compressor would contribute to noise generated by the existing Cove Point facility.
- No impacts would occur to water resources, fisheries, wetlands, vegetation or wildlife. Other than air quality and noise, all impacts would occur within existing Cove Point property.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before April 8, 2009.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP09–59–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's internet Web site at&fnl; *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426. Label one copy of the comments for the attention of Gas Branch 3, PJ11.3.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected

an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5559 Filed 3–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08–591–002]

Equitrans LP; Notice of Filing

March 9, 2009.

Take notice that on March 5, 2009, Equitrans, L.P. filed an offer of settlement in the form of a Stipulation and Agreement resolving all issues concerning Equitrans' Tennessee Capacity Surcharge Tracker.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the date as indicated below. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, March 13, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5551 Filed 3–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–804–000]

PJM Interconnection, LLC; Notice of Filing

March 9, 2009.

Take notice that on March 6, 2009, pursuant to Rule 207(a)(5) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(5), PJM Interconnection, LLC filed a request for limited tariff waiver as may be necessary to implement the allocation of Auction Revenue Rights pursuant to the Notice of Cancellation of the Amended and Restated Wholesale Power Contract filed with the Commission on September 8, 2008, by Old Dominion Electric Cooperative (ODEC) to effect the withdrawal of Northern Virginia Electric Cooperative from ODEC.

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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 March 17, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5555 Filed 3–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–779–000]

Nordic Energy Services, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 9, 2009.

This is a supplemental notice in the above-referenced proceeding of Nordic Energy Services, LLC's application for

market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 30, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5554 Filed 3–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–762–000]

Power Resources, Ltd.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 9, 2009.

This is a supplemental notice in the above-referenced proceeding of Power Resources Ltd.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 30, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5553 Filed 3–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–750–000]

Windy Flats Partners, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 9, 2009.

This is a supplemental notice in the above-referenced proceeding of Windy Flats Partners, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 30, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5552 Filed 3–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13–023]

Green Island Power Authority; Notice of Staff Participation in Meeting

March 9, 2009.

On March 24, 2009, Office of Energy Projects staff will participate by teleconference in a work group meeting to discuss fishery resources and fish passage issues for the relicensing of the Green Island Hydroelectric Project (FERC No. 13–023). The meeting will begin at 11 a.m. EDST.

For parties wishing to participate in the teleconference, the call-in number is 1–866–448–6761 (participant code: 129040#). For further information please contact Wendy Jo Carey, Albany Engineering Corporation, at (518) 456–7712, ext. 401, or Tom Dean, FERC, at (202) 502–6041.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5557 Filed 3–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–15–000]

Arcadia Gas Storage, LLC; Notice of Petition for Rate Approval

March 9, 2009.

Take notice that on February 27, 2009, Arcadia Gas Storage, LLC (Arcadia) filed a petition for rate approval pursuant to section 284.123 of the Commission's regulations requesting that the Commission approve market-based rates for firm and interruptible natural gas storage services provided at its natural gas storage facilities in Bienville Parish, Louisiana, commencing on February 27, 2009.

Any person desiring to participate in this rate proceeding must file a motion 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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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, Tuesday, March 24, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5558 Filed 3–13–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0102; FRL–8405–5]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before April 15, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0102, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0102. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through

regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511P), listed in the following table:

Regulatory Action Leader	Telephone Number and E-mail Address	Mailing Address	File Symbol
Chris Pfeifer	(703) 308-0031 *pfeifer.chris@epa.gov*	Biopesticides and Pollution Prevention Division (7511P), Office of Pesticides Programs, Environmental Protection Agency, 1200 Pennsylvania, Ave., NW., Washington, DC 20460–0001	73049-UAE
Chris Pfeifer	(703) 308-0031 *pfeifer.chris@epa.gov*	Do.	83941-R
Ann Sibold	(703) 305-6502 *sibold.ann@epa.gov*	Do.	84059-L
Ann Sibold	(703) 305-6502 *sibold.ann@epa.gov*	Do.	84059-U
John Fournier	(703) 308-0169 *fournier.john@epa.gov*	Do.	84565-E
Chris Pfeifer	(703) 308-0031 *pfeifer.chris@epa.gov*	Do.	84565-T
Driss Benmhend	(703) 308-9525 *benmhend.driss@epa.gov*	Do.	84565-U

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any

previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

File Symbol: 73049-UAE. *Applicant*: Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. *Product name*: VBC-30101. *Active ingredient*: Plant Growth Regulator, *S*-Abscisic Acid; (*S*)-5-(1-hydroxy-2,6,6-trimethyl-4-oxo-1-cyclohex-2-enyl)-3-methyl-penta-(2Z,4E)-dienoic Acid at 10 percent. *Proposal classification/Use*: Biochemical pesticide/Plant Growth Regulator. (C. Pfeifer).

File Symbol: 83941-R. *Applicant*: Laboratoires Goemar SA, Z.AC La Madeline, Avenue General Patton, 35400 Saint-Malo, France c/o SciReg, Inc. 12733 Director's Loop, Woodbridge, VA 22192. *Product name*: Vacciplant. *Active ingredient*: Systemic Acquired Response Inducer, Laminarin at 3.5 percent. *Proposal classification/Use*: Biochemical pesticide/Systemic Acquired Response Inducer. (C. Pfeifer).

File Symbol: 84059-L. *Applicant*: Marrone Organic Innovations, 2121 Second St., Ste B-107, Davis, CA 95618. *Product name*: MOI 401 Pf CL 145 A End Product. *Active ingredient*: Pseudomonas fluorescens CL 145A strain toxins, molluscicide at 1 percent. *Proposal classification/Use*: Microbial pesticide /molluscicide. (A. Sibold).

File Symbol: 84059-U. *Applicant*: Marrone Organic Innovations, 2121 Second St., Ste B-107, Davis, CA 95618. *Product name*: MOI 401 Pf CL 145 A Tech Material. *Active ingredient*: Pseudomonas fluorescens CL 145A strain toxins at 1 percent. *Proposal classification/Use*: Microbial pesticide/ manufacturing use. (A. Sibold).

File Symbol: 84565-E. *Applicant*: Bull Run Scientific VBT, 7400 Beaufont Springs Drive, Suite 300, Richmond, VA 23225. *Product name*: Bull Run Fly Attractant. *Active ingredient*: Sucrose at 42.1 percent and Dried whole egg solids at 18.0 percent and Yeast at 5.5 percent and Indole at 0.2 percent and Trimethylamine at 2.8 percent. *Proposal classification/Use*: Biochemical pesticide/Insect Attractant. (J. Fournier).

File Symbol: 84565-T. *Applicant*: Bull Run Scientific VBT, 7400 Beaufont Springs Drive, Suite 300, Richmond, VA 23225. *Product name*: Disposable Bull Run Yellow Jacket Trap E. *Active ingredients*: Attractants, 2-Methyl-1 butanol at 5.1 percent and Calcium acetate at 19.8 percent. *Proposal classification/Use*: Biochemical pesticide/Insect Attractants. (C. Pfeifer).

File Symbol: 84565-U. *Applicant*: Bull Run Scientific VBT, 7400 Beaufont Springs Drive, Suite 300, Richmond, VA 23225. *Product name*: Bull Run Yellow Jacket Trap. *Active ingredient*: Yellow Jacket's Attractant and Heptyl Butyrate at 99.8 percent. *Proposal classification/ Use*: Biochemical pesticide/Insect attractant. (D. Benmhend).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 5, 2009.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–5618 Filed 3–13–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0045; FRL–8405–1]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 15, 2009.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the pesticide petition number (PP) for the petition of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You

may also reach each contact person by mail at Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have a typical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that is the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance Exemption

PP 9F7511. (EPA–HQ–OPP–2009–0087). Marrone Organic Innovations, 2121 Second St., Davis, CA 95618, proposes to establish an exemption from the requirement of a tolerance for residues of the microbial molluscicide, *Pseudomonas fluorescens* biotype A isolate CL145A, ATCC #55799, in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Ann Sibold, (703) 305–6502, *sibold.ann@epa.gov*.

Amended Tolerance Exemptions

1. *PP 8F7467*. (EPA–HQ–OPP–2005–0316). SHB Scientific, 18907 N., 43rd Way, Phoenix, AZ 85050, on behalf of JABB of the Carolinas, 456 E. Main St., Pine Level, NC 27568, proposes to amend an exemption from the requirement of a tolerance in 40 CFR 180.1273 for residues of the microbial insecticide, *Beauveria bassiana* HF23, in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Shanaz Bacchus, (703) 308–8097, *bacchus.shanaz@epa.gov*.

2. *PP 8E7461*. (EPA–HQ–OPP–2007–0158). Interregional Research Project Number 4 (IR–4), Rutgers University, 500 College Road East, Suite 201W., Princeton, NJ 08540, on behalf of the Arizona Cotton Research and Protection Council, 3721 East Weir Avenue, Phoenix, AZ 85040–2933, proposes to amend a temporary exemption from the requirement of a tolerance in 40 CFR 180.1206(b) for residues of the atoxigenic microbial antifungal agent, *Aspergillus flavus* AF36, in or on pistachio. Because this petition is a request for a temporary exemption from the requirement of a tolerance without numerical limitations, no analytical

method is required. Contact: Shanaz Bacchus, (703) 308–8097, *bacchus.shanaz@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 26, 2009.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–5636 Filed 3–13–09; 8:45 am]

Billing Code 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket 07–269; FCC 09–10]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document extends the deadlines for filing comments and reply comments in response to the notice of inquiry for the 14th Annual Report to Congress, which requested data as of June 2007. The Commission needs to bring its reporting up to date and plans to issue a single report for 2007, 2008, and 2009. The Commission will issue a supplemental notice of inquiry to request information for 2008 and 2009. The supplemental notice will establish a single deadline for the filing of information for 2007 and 2008, consistent with this extension of time, and a slightly later deadline for the filing of 2009 information. A single set of deadlines for 2007 and 2008 will avoid duplication of effort by commenters and streamline Commission review of the submitted information.

DATES: Interested parties may file comments on or before April 28, 2009, and reply comments on or before May 28, 2009.

ADDRESSES: You may submit comments, identified by MB 07–269, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/efcs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Dana Scherer, Media Bureau at (202) 418–2330.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in MB Docket No. 07–269, FCC 09–10, adopted February 20, 2009, and released February 23, 2009. The complete text of the Order is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Room CY-A257, Portals II, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is also available on the Commission's Internet Site at *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The complete text of the Order may also be purchased from the Commission's duplicating contractor, Best Company and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or by e-mail *fcc@bcpiweb.com,* or via its Web site *http://www.bcpiweb.com.*

Synopsis of Order

1. On January 16, 2009, the Commission released its 13th Annual Report to Congress on the status of competition in the market for the delivery of video programming. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* 13th Annual Report, MB Docket No. 06–189, FCC 07–206. The Report provided information as of 2006. On the same date, the Commission released a Notice of Inquiry (''NOI'') soliciting 2007 data for the 14th Annual Report. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Notice of Inquiry, MB Docket No. 07–269, FCC 07–207. *See also* 74 FR 6875, Feb. 11, 2009. To fulfill its obligation to report annually on the state of competition in the video marketplace, pursuant to 47 U.S.C. 548(g), the Commission needs to bring its reporting up to date. Accordingly, the Commission will issue a single report covering 2007, 2008, and 2009. To provide a record for the development of this combined report, the Commission will issue a supplemental notice of inquiry in this proceeding, as soon as possible, to request information for 2008 and 2009. The supplemental notice will establish a single deadline for the filing of information for 2007 and 2008 and a slightly later deadline for the filing of information for 2009. The establishment of a single set of filing deadlines for 2007 and 2008 will avoid duplication of effort by commenters and will streamline Commission review of the submitted information, thereby conserving commenters' and Commission resources.

2. Comments in response to the pending NOI seeking information as of June 30, 2007, are due on February 27, 2009, and reply comments are due on March 27, 2009. To provide time for the Commission to solicit additional data and comment pertaining to 2008 and 2009, and to afford commenters the opportunity to file their 2007 and 2008 information concurrently, we are hereby extending the comment periods announced in the NOI to coincide with the filing deadlines we expect to establish for the additional information for 2008. Accordingly, the deadlines for responding to the NOI are extended, *sua sponte* until April 28, 2009, for initial comments and until May 28, 2009, for reply comments. Comment deadlines for 2009 will be announced when the Commission issues its Supplemental NOI.

Procedural Matters

3. **Authority.** This *Order* is issued pursuant to Sections 4(i), 4(j), 403 and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 403, and 548(g), and Sections 0.061, 0.204, 0.283, and 1.46 of the rules, 47 CFR 0.061, 0.204, 0.283, and 1.46.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–5634 Filed 3–13–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of the

proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final Approval Under OMB Delegated Authority of the Revision, Without Extension of the Following Report

1. *Report Title:* Consolidated Financial Statements for Bank Holding Companies, Parent Company Only Financial Statements for Small Bank Holding Companies.

Agency Form Number: FR Y–9C, FR Y–9SP.

OMB Control Number: 7100–0128.

Frequency: FR Y–9C, quarterly; FR Y–9SP, semi-annually.

Reporters: Bank holding companies (BHCs).

Annual Reporting Hours: FR Y–9C, 162,602 hours; FR Y–9SP, 48,254 hours.

Estimated Average Hours per Response: FR Y–9C, 41.65 hours; FR Y–9SP, 5.40 hours.

Number of Respondents: FR Y–9C, 976; FR Y–9SP, 4,468.

General Description of Report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6) and (b)(8)).

Abstract: The FR Y–9C and FR Y–9SP are standardized financial statements for the consolidated BHC and its parent. The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on-site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from BHCs. The FR Y–9C is filed by top-tier BHCs with total consolidated assets of $500 million or more. (Under certain circumstances defined in the General Instructions, BHCs under $500 million may be required to file the FR Y–9C.)

The FR Y–9SP is a parent company only financial statement filed by smaller BHCs. Respondents include BHCs with total consolidated assets of less than $500 million. This form is a simplified or abbreviated version of the more extensive parent company only financial statement for large BHCs (FR Y–9LP). This report is designed to obtain basic balance sheet and income information for the parent company, information on intangible assets, and information on intercompany transactions.

Current Actions: On November 13, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 67159) requesting public comment for 60 days on the revision, without extension, of the FR Y–9C and FR Y–9 SP reports. The comment period for this notice expired on January 12, 2009. The Federal Reserve received two comment letters on this proposal addressing only changes proposed to the FR Y–9C report. In addition, six comment letters were received by the Federal Reserve, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency (the banking agencies) on proposed revisions to the Call Reports that parallel the proposed revisions to the FR Y–9C and are taken into consideration for this proposal. No comments were received on proposed changes to the FR Y–9SP.

The Federal Reserve received two comment letters on proposed revisions to the FR Y–9C: One from a bankers' organization (which also submitted comparable comments on proposed changes to the Call Report) and one from a bank consulting firm. In addition, the banking agencies received comment letters from six organizations: Two banks, one bank holding company, two bankers' organizations, and a bank insurance consultant on proposed changes to the Call Report that parallel proposed changes to the FR Y–9C, and are taken into consideration for this proposal. No comments were received on proposed changes to the FR Y–9SP.

None of the commenters addressed all of the aspects of the proposed changes to the FR Y–9C. Rather, individual comments addressed certain specific proposed changes. In two cases, commenters raised reporting matters that were not addressed in the Federal Reserve's proposal. The following is a summary of the general comments received on the proposed FR Y–9C revisions and on proposed changes to the Call Report that parallel proposed changes to the FR Y–9C.

One bankers' organization stated that it believed that the proposed revisions would provide additional information that would be useful for the assessment of risk. This organization expressed general agreement, on balance, with the proposed revisions, but also offered several suggested changes for consideration.[1] Another bankers' organization indicated its understanding of the need for more information on certain types of loans currently under stress, but noted that the proposed revisions would require many community banking institutions to submit significantly more data in their regulatory reports. This organization hoped that the increased staff time that would be needed to provide the proposed data would be offset by a reduction in on-site examination time through examiners' use of these data to better focus their examination priorities. In this regard, the intent in proposing the revisions to the FR Y–9C was to enhance risk-focused supervision, both from an off-site and an on-site perspective. The third bankers' organization commented on the amount of lead time necessary for institutions to implement systems changes to enable them to provide the requested additional data, recommending a

[1] On bank that is a member of this bankers' organization referred to the organization's comment letter and appeared to concur with the organization's comments, but also addressed one aspect of the proposal on which the bankers' organization did not specifically comment.

minimum of three months between the publication of final revisions in the **Federal Register** and the effective date of the reporting changes.

Two commenters submitted comments on issues that were not addressed in the FR Y–9C proposal. One bank holding company sent a copy of separate correspondence that it had previously sent to three organizations suggesting a suspension of the accounting rules for other-than-temporary impairments on investment securities. By law, the accounting principles applicable to the FR Y–9C must be consistent with or, if certain conditions are met, no less stringent than generally accepted accounting principles (GAAP).[2] Therefore, the suggested suspension of accounting rules cannot be implemented for FR Y–9C reporting purposes.

One bank consulting firm recommended revising the FR Y–9C to require fee income to be reported separately from interest income, and to add a new data item for the fair value changes to interest revenue. As stated in the FR Y–9C instructions (and noted by the commenter), FASB Statement No. 91, ''Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases,'' generally prescribes that fees associated with lending activities should be deferred and recognized over the life of the related loan as an adjustment of yield (interest income). Thus, GAAP guidance does not require separate disclosure of fee income. Regarding the request for a new data item for fair value changes to interest income, the commenter mistakenly concluded that fair value option revaluations (net change in the fair values of interest-bearing financial assets) is included with interest and fee income on loans, and thus wanted this amount reported separately from interest and fee income. However, such fair value option revaluations are included in other noninterest income on the income statement, not as part of interest income and fees on loans. Accordingly, the Federal Reserve will not implement either of the commenter's suggested revisions.

After considering the comments received on the proposal, the Federal Reserve will move forward with the majority of the proposed revisions, with limited modifications in response to certain comments, on the phased-in basis as proposed. The Federal Reserve is continuing to evaluate certain other proposed revisions in light of the comments received thereon, and therefore will not implement these revisions until after it has fully reviewed the comments.[3]

The Federal Reserve recognizes institutions' need for lead time to prepare for reporting changes, which was the rationale for proposing the phased-in implementation schedule for 2009. The data items that will be new or revised effective March 31, 2009, are limited in number and most are linked to changes in GAAP or changes in regulation. For the March 31, 2009, report date, bank holding companies may provide reasonable estimates for any new or revised data item initially required to be reported as of that date for which the requested information is not readily available. This same policy on the use of reasonable estimates will apply to the reporting of other new or revised data items when they are first implemented effective June 30 or later.

Sections I and II of this memo identify the changes proposed to take effect March 31 and June 30, respectively; discuss the Federal Reserve's evaluation of the comments received on the proposed changes that the Federal Reserve will implement, as modified; and describe the proposed FR Y–9C revisions that will remain under review.

I. FR Y–9C Report Revisions Proposed for March 2009

The Federal Reserve and the other banking agencies received either supportive comments or no comments on the following revisions that were proposed to take effect as of March 31, 2009, and therefore the Federal Reserve will implement these revisions as proposed:

- New data items and revisions to existing data items on trading assets and liabilities,
- New data items associated with the U.S. Department of the Treasury (Treasury) Capital Purchase Program (CPP)[4],
- New data items and revisions to existing data items on regulatory capital requirements,
- Revisions to several FR Y–9C schedules in response to accounting changes applicable to noncontrolling (minority) interests in consolidated subsidiaries, and
- Instructional guidance on quantifying misstatements.

The Federal Reserve and other banking agencies received one or more substantive comments addressing each of the following proposed March 31, 2009, revisions:

- The addition of new data items in response to a revised accounting standard that will provide information on held-for-investment loans and leases acquired in business combinations,
- Clarifications of the definition of the term loan secured by real estate and of the instructions for reporting unused commitments, and
- Exemptions from reporting certain existing data items for bank holding companies with less than $1 billion in total assets.

The comments and the Federal Reserve's responses related to these proposed revisions are discussed below.

A. Loans and Leases Acquired in Business Combinations

Banking institutions must apply Statement of Financial Accounting Standards No. 141 (Revised), *Business Combinations* (FAS 141(R)), which was issued in December 2007, prospectively to business combinations for which the acquisition date is on or after the beginning of their first annual reporting period beginning on or after December 15, 2008. Thus, for banking institutions with calendar year fiscal years, FAS 141(R) will apply to business combinations with acquisition dates on or after January 1, 2009. Compared to current accounting practice, FAS 141(R) significantly changes the accounting for those loans and leases acquired in business combinations that will be held for investment.[5] In response to this accounting change, the Federal Reserve proposed to add new data items to the FR Y–9C loan and lease schedule (Schedule HC–C) that would mirror the acquisition-date disclosures required by FAS 141(R). These new data items would disclose the following information for four categories of loans (not subject to SOP 03–3) and leases that were acquired in each business combination that occurred during the year-to-date reporting period:

- The fair value of the loans and leases,
- The gross contractual amounts receivable, and
- The best estimate at the acquisition date of the contractual cash flows not expected to be collected.

The four categories of acquired held-for-investment loans (not subject to SOP 03–3) and leases are:

[2] *See* 12 U.S.C. 1831n(a).

[3] *See* section I.C of this notice on unused commitments, section II.B on past due and nonaccrual trading assets, and the portion of section II.C addressing the present value of unpaid premiums on sold credit protection.

[4] The Federal Reserve will also implement these new data items as proposed for the FR Y–9SP report, effective as of June 30, 2009.

[5] This change in accounting treatment does not apply to acquired held-for-investment loans within the scope of American Institute of Certified Public Accountants Statement of Position 03–3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer* (SOP 03–3).

- Loans secured by real estate;
- Commercial and industrial loans;
- Loans to individuals for household, family, and other personal expenditures; and
- All other loans and all leases.

These new data items would be completed by banking institutions that have engaged in business combinations that must be accounted for in accordance with FAS 141(R) for transactions for which the acquisition date is on or after January 1, 2009. A banking institution that has completed one or more business combinations during the current calendar year would report these acquisition date data (as aggregate totals if multiple business combinations have occurred) in each FR Y–9C submission after the acquisition date during that year. The acquisition date data would not be reported in years after the year in which the acquisition occurs.

One bankers' organization stated that it concurred with the proposal to require these additional disclosures for loans (not subject to SOP 03–3) and leases acquired in business combinations that occurred during the reporting period. No other commenter addressed these proposed additional disclosures. Accordingly, the Federal Reserve will implement these data items in the March 31, 2009, FR Y–9C, as proposed.

In the FR Y–9C proposal, the Federal Reserve stated that it was considering whether banking institutions that have engaged in FAS 141(R) business combinations should provide additional information in the FR Y–9C (beyond the disclosures described above) about acquired held-for-investment loans (not subject to SOP 03–3) and leases and the loss allowances established for them in periods after their acquisition. The proposal stated that the additional data items under consideration included the outstanding balance of these acquired loans and leases, their carrying amount, and the amount of allowances for post-acquisition credit losses on these loans and leases. The Federal Reserve indicated that this information would help the Federal Reserve as well as other report users to track management's judgments regarding the collectability of the acquired loans and leases in periods after the acquisition date and evaluate fluctuations in the level of the overall Allowance for Loan and Lease Losses (ALLL) as a percentage of the held-for-investment loan and lease portfolio in periods after a business combination. The Federal Reserve requested comment on the merits and availability of these post-acquisition loan and lease data and the period of time after a business combination that this information should be reported.

Two bankers' organizations commented on these additional loan and lease disclosures. One organization did not specifically address the merits of this information, stating only that if banking institutions were required to report these additional data, they should report it only through the end of the calendar year of the business combination. The second organization agreed with the first organization concerning the reporting period for these additional data. However, this organization also stated its belief that the post-acquisition data on acquired loans and leases would often not be available because acquired performing loans and leases would tend to be combined with, rather than segregated from, a banking institution's other performing loans and leases.

After considering these comments, the Federal Reserve will not add data items to the FR Y–9C for the outstanding balance of held-for-investment loans (not subject to SOP 03–3) and leases acquired in FAS 141(R) business combinations, their carrying amount, and the amount of allowances for post-acquisition credit losses on these loans and leases. The Federal Reserve will continue to monitor accounting and disclosure practices with respect to these acquired loans and leases and their post-acquisition allowances and assess their data needs in this area. Any future revisions to the FR Y–9C to collect data on acquired loans and leases and post-acquisition allowances will be subject to notice and comment.

B. Clarification of the Definition of Loan Secured by Real Estate

The Federal Reserve has found that the definition of a loan secured by real estate in the Glossary section of the FR Y–9C instructions has been interpreted differently by report preparers and users. This has led to inconsistent reporting of loans collateralized by real estate in the loan schedule (Schedule HC–C) and other schedules of the FR Y–9C that collect loan data. As a result, the Federal Reserve proposed to clarify the definition by explaining that the estimated value of the real estate collateral must be greater than 50 percent of the principal amount of the loan at origination in order for the loan to be considered secured by real estate. Banking institutions would apply this clarified definition prospectively and they need not reevaluate and recategorize loans that they currently report as loans secured by real estate into other loan categories on the FR Y–9C loan schedules.

One bankers' organization stated that it believes that the proposed definition of a loan secured by real estate is workable and provides additional clarity. One bank submitted examples involving loans with real estate as collateral and asked how they would be reported based on the revised definition. The Federal Reserve will implement the clarified definition of loan secured by real estate as proposed but, in response to this latter comment, also add examples to the definition to assist banking institutions in understanding how it should be applied.

C. Clarification of Instructions for Unused Commitments

Banking institutions report unused commitments in Schedule HC–L, data item 1. The instructions for this data item identify various arrangements that should be reported as unused commitments, including but not limited to commitments for which the banking institution has charged a commitment fee or other consideration, commitments that are legally binding, loan proceeds that the banking institution is obligated to advance, commitments to issue a commitment, and revolving underwriting facilities. However, some banking institutions have not reported commitments that they have entered into until they have signed the loan agreement for the financing that they have committed to provide. Although these arrangements are considered to be within the scope of the existing instructions for reporting commitments in Schedule HC–L, the instructions may not be sufficiently clear. Therefore, the Federal Reserve proposed to revise the instructions for Schedule HC–L, data item 1, Unused commitments, to more clearly and completely explain the arrangements that should be reported in this data item.

All three bankers' organizations submitting comments on the proposed FR Y–9C revisions specifically addressed the proposed instructional clarification pertaining to unused commitments. One organization agreed that clarification is needed, but recommended that commitments to issue a commitment in the future, including those entered into even though the related loan agreement has not yet been signed, should be removed from the list of types of arrangements that the instructions would direct banking institutions to report as unused commitments. The other two bankers' organizations also commented on the inclusion of this type of arrangement as an unused commitment. One organization expressed concern about reporting ''commitments that contain a

relatively high level of uncertainty until a loan agreement has been signed or the loan has been funded with a first advance'' and the reliability of data on such commitments. The other organization stated that because some banking institutions do not have systems for tracking such arrangements, the instructions should in effect permit banking institutions to exclude commitment letters with an expiration date of 90 days or less. Finally, the first bankers' organization also recommended that the instructions for reporting unused commitments should state that amounts conveyed or participated to others that the conveying or participating banking institution is not obligated to fund should not be reported as unused commitments by the conveying or participating banking institution.

The Federal Reserve is continuing to evaluate these recommendations. As a consequence, the Federal Reserve will not revise the instructions for Schedule HC–L, data item 1, Unused commitments, effective March 31, 2009, as proposed, leaving the existing instructions for this Schedule HC–L data item to remain in effect. Once deliberations on these recommendations are concluded and a determination is made on whether and how to revise the instructions for reporting Unused commitments in Schedule HC–L, data item 1, these conclusions will be published in a separate **Federal Register** notice. If the instructions to Schedule HC–L, data item 1, are subsequently revised, the clarifications to these instructions would take effect no earlier than December 31, 2009.

D. Exemptions From Reporting for Certain Existing FR Y–9C

The Federal Reserve has identified certain data items for which the reported data are of lesser usefulness for banking institutions with less than $1 billion in total assets. Accordingly, the Federal Reserve proposed to exempt such banking institutions from completing the following data items effective March 31, 2009:

- Schedule HI, Memorandum item 12, Income from the sale and servicing of mutual funds and annuities (in domestic offices),
- Schedule HC–L, data item 2.a, Amount of financial standby letters of credit conveyed to others, and
- Schedule HC–L, data item 3.a, Amount of performance standby letters of credit conveyed to others.

One commenter, a bank insurance consultant, objected to the proposal to exempt banking institutions with less than $1 billion in total assets from reporting the data item, Income from the sale and servicing of mutual funds and annuities (in domestic offices), stating that this data item should be preserved in the regulatory reports. This commenter also stated that the proposal did not explain how the determination was made that the collection of this data item from banking institutions in this size range is of lesser usefulness. This commenter added that by eliminating the reporting of this income information for these banking institutions, ''we will lose our sole window into community banks' mutual fund and annuity activities.''

Memorandum item 12 was added to Schedule HI of the FR Y–9C in 1995. At that time, the Federal Reserve collected limited information on banking institutions' noninterest income. However, since 2001, the Federal Reserve has significantly expanded the amount of detailed information collected on noninterest income in recognition of the increasing importance of such income to banking institutions' earnings. As a result, all respondents, regardless of size, currently report the amount of Fees and commissions from securities brokerage and Fees and commissions from annuity sales in Schedule HI, data items 5.d.(1) and 5.d.(3), each quarter. Data item 5.d.(1) specifically includes income from the sale and servicing of mutual funds. Thus, in general, the income that a banking institution reports in Schedule HI, Memorandum item 12, will have been included in these two noninterest income data items in the body of Schedule HI. However, although the bank insurance consultant stated that as of ''June 30, 2008, more banks with less than $1 billion in assets reported mutual fund and annuity income'' than reported eight other types of noninterest income in the body of the income statement, the consultant did not provide comparative data for the number of such banks reporting ''Fees and commissions from securities brokerage'' or ''Fees and commissions from annuity sales.''

In addition, the Federal Reserve will continue to use the FR Y–9C to identify banking institutions that sell private label or third party mutual funds and annuities (Schedule HC-M, data item 15) as well as banking institutions managing assets held in proprietary mutual funds and annuities (Schedule HC-M, data item 16). Furthermore, FR Y–9C users have indicated that Schedule HI, Memorandum item 12, Income from the sale and servicing of mutual funds and annuities is regarded as being of lesser usefulness than the noninterest income data items with which it overlaps (data items 5.d.(1) and 5.d.(3) of Schedule HI). Accordingly, after considering the views expressed by the bank insurance consultant, the Federal Reserve believes that the existing income statement data items for Fees and commissions from securities brokerage and Fees and commissions from annuity sales are sufficient to meet ongoing needs for income data on these types of activities from banking institutions with less than $1 billion in total assets and recommends that such banking institutions should be exempt from separately reporting Income from the sale and servicing of mutual funds and annuities beginning March 31, 2009, as proposed.

The Federal Reserve received no comments specifically addressing the other data items for which banking institutions with less than $1 billion in assets would be exempt from continued reporting and the Federal Reserve will implement these exemptions as of March 31, 2009, as proposed.

II. FR Y–9C Revisions Proposed for June 2009

The Federal Reserve and other banking agencies received either supportive comments or no comments on the following revisions to the FR Y–9C that were proposed to take effect as of June 30, 2009, and therefore the Federal Reserve will implement these revisions as proposed:

- Holdings of collateralized debt obligations and other structured financial products by type of product and underlying collateral,
- Holdings of commercial mortgage-backed securities,
- Unused commitments with an original maturity of one year or less to asset-backed commercial paper conduits,
- Pledged loans and pledged trading assets,
- Collateral held against over-the-counter (OTC) derivative exposures by type of collateral and type of counterparty as well as the current credit exposure on OTC derivatives by type of counterparty (for banking institutions with $10 billion or more in total assets),
- Fair value measurements by level for asset and liability categories reported at fair value on a recurring basis (banking institutions that apply a fair value option, or are required to complete the FR Y–9C trading schedule), and
- Investments in real estate ventures.

The agencies received one or more substantive comments addressing each of the following proposed June 30, 2009, revisions:

• Real estate construction and development loans outstanding with capitalized interest and the amount of such interest included in income for the quarter (for banking institutions with construction and development loan concentrations),

• Past due and nonaccrual trading assets, and

• Credit derivatives by credit quality and remaining maturity and by regulatory capital treatment.

The comments and the Federal Reserve's responses related to these proposed revisions are discussed below.

A. Construction and Development Loans With Interest Reserves

In December 2006, the agencies issued final guidance on commercial real estate (CRE) loans, including construction, land development, and other land (C&D) loans, entitled *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices* (CRE Guidance).[6] This guidance was developed to reinforce sound risk management practices for institutions with high and increasing concentrations of commercial real estate loans on their balance sheets. It provides a framework for assessing CRE concentrations; risk management, including board and management oversight, portfolio management, management information systems, market analysis and stress testing, underwriting and credit risk review; and supervisory oversight, including CRE concentration management and an assessment of capital adequacy.

In issuing the CRE Guidance, the agencies noted that CRE concentrations had been rising over the past several years and had reached levels that could create safety and soundness concerns in the event of a significant economic downturn. As a consequence, the CRE Guidance explains that, as part of their ongoing supervisory monitoring processes, the agencies would use certain criteria to identify institutions that are potentially exposed to significant CRE concentration risk. Thus, the CRE Guidance states in part that an institution whose total reported C&D loans is approaching or exceeds 100 percent or more of the institution's total risk-based capital may be identified for further supervisory analysis of the level and nature of its CRE concentration risk. As of March 31, 2008, approximately 51 percent of all FR Y–9C respondents held C&D loans in excess of 100 percent of their total risk-based capital.

[6] 71 FR 74580, December 12, 2006.

A practice that is common in C&D lending is the establishment of an interest reserve as part of the original underwriting of a C&D loan. The interest reserve account allows the lender to periodically advance loan funds to pay interest charges on the outstanding balance of the loan. The interest is capitalized and added to the loan balance. Frequently, C&D loan budgets will include an interest reserve to carry the project from origination to completion and may cover the project's anticipated sell-out or lease-up period. Although potentially beneficial to the lender and the borrower, the use of interest reserves carries certain risks. Of particular concern is the possibility that an interest reserve could disguise problems with a borrower's willingness and ability to repay the debt consistent with the terms and conditions of the loan agreement. For example, a C&D loan for a project on which construction ceases before it has been completed or is not completed in a timely manner may appear to be performing if the continued capitalization of interest through the use of an interest reserve keeps the troubled loan current. This practice can erode collateral protection and mask loans that should otherwise be reported as delinquent or in nonaccrual status.

Since the CRE Guidance was issued, market conditions have weakened, most notably in the C&D sector. As this weakening has occurred, examiners have been encountering C&D loans on projects that are troubled, but where interest has been capitalized inappropriately, resulting in overstated income and understated volumes of past due and nonaccrual C&D loans. Therefore, to assist in the monitoring of C&D lending activities at those banking institutions with a concentration of such loans, *i.e.*, C&D loans (in domestic offices) that exceeded 100 percent of total risk-based capital as of the previous calendar year-end, the Federal Reserve proposed to add two new data items. First, banking institutions with such a concentration would report the amount of C&D loans (in domestic offices) included in the FR Y–9C loan schedule (Schedule HC–C) on which the use of interest reserves is provided for in the loan agreement. Second, these banking institutions would report the amount of capitalized interest included in the interest and fee income on loans during the quarter. These data, together with information that banking institutions currently report on the amount of past due and nonaccrual C&D loans, would assist in identifying respondents with C&D loan concentrations that may be engaging in questionable interest capitalization practices for supervisory follow-up.

One bank expressed agreement with concerns about the disguising of problems with a borrower's willingness and ability to repay the debt consistent with the terms and conditions of the loan agreement through the improper use of interest reserves on C&D loans. The bank also acknowledged that real estate market conditions have weakened in its market area since the agencies issued the CRE Guidance in December 2006. Although the bank stated that it has a concentration of C&D loans, as defined above, it reported that a recent review of its portfolio revealed that only a modest number of its C&D loan agreements included interest reserves. The bank also described its lending policies and controls over the approval of interest reserves in the original underwriting of a C&D loan and in the limited cases when the original loan had matured or was otherwise recast. It then stated that both the bank lender and its supervisory agency should focus their attention—and any regulatory reporting requirements—on situations when interest reserves are added to a loan after a development project is completed or ''when a project goes over budget or otherwise has completion issues.'' With respect to the two proposed data items pertaining to C&D loans with interest reserves, the bank noted that its loan system does not currently capture the required data and adding this capability to the loan system by the proposed June 30, 2009, effective date would likely be difficult, which would mean that the data would have to be compiled manually until system changes are in place.

After further review, the Federal Reserve has decided it will not collect the two proposed items related to the use of interest reserves at this time.

B. Trading Assets That Are Past Due or in Nonaccrual Status

Currently, the FR Y–9C does not distinguish past due and nonaccrual trading assets from other assets on Schedule HC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets. The Federal Reserve proposed to replace Schedule HC–N, data item 9, Debt securities and other assets, that are past due 30 days or more or in nonaccrual status with two separate data items: Data item 9.a, Trading assets, and data item 9.b, All other assets (including available-for-sale and held-to-maturity securities). These data items would follow the existing three column breakdown on Schedule HC–N that respondents utilize to report assets past

due 30 through 89 days and still accruing, past due 90 days or more and still accruing, and in nonaccrual status. Data item 9.a would include all assets held for trading purposes, including loans held for trading. Collection of this information would allow the Federal Reserve to better assess the quality of assets held for trading purposes, and generally enhance surveillance and examination planning efforts.

The Federal Reserve also proposed to expand the scope of Schedule HC–D, Trading Assets, Memorandum item 3, Loans measured at fair value that are past due 90 days or more, to include loans held for trading and measured at fair value that are in nonaccrual status. This change was intended to provide for more consistent treatment with the information that would be collected on Schedule HC–N and with the disclosure requirements in FASB Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities.*

One bankers' organization stated that it believed that disclosure requirements regarding the delinquency and nonaccrual status of trading securities is not particularly meaningful given that these securities are marked to market through earnings. As a consequence, credit risk is already incorporated into the market price of each trading security. The organization further stated that the nonaccrual concept traditionally has not been applied to trading securities, which makes the proposed reporting of such data costly and difficult to implement. Accordingly, this commenter recommended against adding the proposed disclosure requirements regarding the delinquency and nonaccrual status of trading securities.

The Federal Reserve is continuing to evaluate this commenter's recommendation. Therefore, the Federal Reserve will not implement the revisions to Schedule HC–N, data item 9, and Schedule HC–D, Memorandum item 3, effective June 30, 2009, as proposed. The Federal Reserve will retain the current data items while it considers the proposed reporting changes in light of this comment. Once deliberations on these proposed disclosure requirements are concluded and a determination is made on whether and how to proceed with them, these conclusions will be published in a separate **Federal Register** notice. If Schedule HC–N, data item 9, and Schedule HC–D, Memorandum item 3, are subsequently revised, these reporting changes would take effect no earlier than December 31, 2009.

C. Enhanced Information on Credit Derivatives

Effective for the March 2006 FR Y–9C, the Federal Reserve revised the information collected on credit derivatives in Schedules HC–L, Derivatives and Off-Balance Sheet Items, and HC–R, Regulatory Capital, to gain a better understanding of the nature and trends of banking institutions' credit derivative activities. Since that time, the volume of credit derivative activity in the banking industry, as measured by the notional amount of these contracts, increased steadily through March 31, 2008, rising to an aggregate notional amount of over $16 trillion as of that date. The aggregate notional amount has since declined slightly. Reported data further indicate that the credit derivative activity in the industry is highly concentrated in banking institutions with total assets in excess of $10 billion. For these banking institutions, credit derivatives function as a risk mitigation tool for credit exposures in their operations as well as a financial product that is sold to third parties for risk management and other purposes.

The Federal Reserve's safety and soundness efforts continue to place emphasis on understanding and assessing the role of credit derivatives in bank risk management practices. In addition, the Federal Reserve's monitoring of credit derivative activities at certain banking institutions has identified differences in interpretation as to how credit derivatives are treated under the Federal Reserve's risk-based capital standards. To further the Federal Reserve's safety and soundness efforts concerning credit derivatives and to improve transparency in the treatment of credit derivatives for regulatory capital purposes, the Federal Reserve proposed to revise the information pertaining to credit derivatives that is collected on Schedules HC–L, HC–N (Past Due and Nonaccrual Loans, Leases, and Other Assets), and HC–R.

In Schedule HC–L, data item 7, Credit derivatives, the Federal Reserve proposed to change the column A caption, Guarantor, to Sold Protection and the column B caption, Beneficiary, to Purchased Protection to eliminate confusion surrounding the meaning of Guarantor and Beneficiary that commonly occurs between the users and preparers of these data. The Federal Reserve also proposed to add a new data item 7.c to Schedule HC–L to collect information on the notional amount of credit derivatives by regulatory capital treatment. For credit derivatives that are subject to the Federal Reserve's market risk capital standards, the Federal Reserve proposed to collect the notional amount of sold protection and the amount of purchased protection. For all other credit derivatives, the Federal Reserve proposed to collect the notional amount of sold protection, the notional amount of purchased protection that is recognized as a guarantee under the risk-based capital guidelines, and the notional amount of purchased protection that is not recognized as a guarantee under the risk-based capital standards.

The Federal Reserve also proposed to add a new data item 7.d to Schedule HC–L to collect information on the notional amount of credit derivatives by credit rating and remaining maturity. The data item would collect the notional amount of sold protection broken down by credit ratings of investment grade and subinvestment grade for the underlying reference asset and by remaining maturities of one year or less, over one year through five years, and over five years. The same information would be collected for purchased protection.

In Schedule HC–N, the Federal Reserve proposed to change the scope of Memorandum item 6, Past due interest rate, foreign exchange rate, and other commodity and equity contracts, to include credit derivatives. The fair value of credit derivatives where the banking institution has purchased protection increased significantly to over $500 billion at March 31, 2008, as compared to below negative $10 billion at March 31, 2007. Thus, the performance of credit derivative counterparties has increased in importance. The expanded scope of Memorandum item 6 on Schedule HC–N would include the fair value of credit derivatives carried as assets that are past due 30 through 89 days and past due 90 days or more.

In Schedule HC–R the Federal Reserve proposed to change the scope of the information collected in Memorandum items 2.g.(1) and (2) on the notional principal amounts of Credit derivative contracts that are subject to risk-based capital requirements to include only (a) the notional principal amount of purchased protection that is defined as a covered position under the market risk capital guidelines and (b) the notional principal amount of purchased protection that is not a covered position under the market risk capital guidelines and is not recognized as a guarantee for risk-based capital purposes. The scope of Memorandum item 1, Current credit exposure across all derivative contracts covered by the risk-based capital standards, would be

similarly revised to include the current credit exposure arising from credit derivative contracts that represent (a) purchased protection that is defined as a covered position under the market risk capital guidelines and (b) purchased protection that is not a covered position under the market risk capital guidelines and is not recognized as a guarantee for risk-based capital purposes. The Federal Reserve also proposed to add new Memorandum items 3.a and 3.b to Schedule HC–R to collect the present value of unpaid premiums on sold credit protection that is defined as a covered position under the market risk capital guidelines. Consistent with the information currently reported in Memorandum item 2.g, the Federal Reserve proposed to collect this present value information with a breakdown between investment grade and subinvestment grade for the rating of the underlying reference asset and with the same three remaining maturity breakouts.

No comments were received on any of the proposed reporting revisions pertaining to credit derivatives described above, except for a comment from a bankers' organization on the proposal to collect data on Schedule HC–R relating to the present value of unpaid premiums on sold credit protection that is defined as a covered position under the market risk capital guidelines. Accordingly, the Federal Reserve will implement all of the proposed credit derivative reporting changes—other than the proposed new Schedule HC–R data items for present value data—as of June 30, 2009, as proposed. With respect to the present value data, the bankers' organization requested clarification of the impact of this proposed reporting requirement on a banking institution's risk-based capital calculations. The Federal Reserve is continuing to consider this comment and the proposed collection of present value data for certain credit derivatives. Therefore, the Federal Reserve will not add Memorandum items 3.a and 3.b to Schedule HC–R to collect this present value information effective June 30, 2009, as proposed. Once deliberations on the comment and the proposed present value data items have been concluded, conclusions will be published in a separate **Federal Register** notice. If Memorandum items 3.a and 3.b are subsequently added to Schedule HC–R, this new reporting requirement would take effect no earlier than December 31, 2009.

Board of Governors of the Federal Reserve System, March 11, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–5584 Filed 3–13–09; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Improving Patient Flow and Reducing Emergency Department Crowding.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on January 15th, 2009 and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by April 15, 2009.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Improving Patient Flow and Reducing Emergency Department Crowding'' AHRQ proposes to study implementation of strategies from the Urgent Matters (UM) Toolkit for improving patient flow in emergency departments (ED). UM, a Robert Wood Johnson Foundation (RWJF) funded initiative, began as a collaborative of 10 urban, safety net hospitals that experimented with a variety of strategies (now included in the ''UM Toolkit'') designed to relieve ED crowding. The first phase of this initiative demonstrated that reductions in ED crowding were achievable without investment of significant financial resources. However, implementation of these strategies has not been widespread, and questions remain about how readily the strategies could be implemented in a more diverse group of hospitals, and the associated costs and outcomes of implementation. This study is funded by a grant from RWJF to AHRQ.

Six diverse hospitals have been selected for this study of the implementation of strategies from the UM Toolkit for improving ED patient flow. This study poses a common outcome goal across all six sites of improving patient flow and reducing ED crowding, but requires each hospital to select strategies that fit its own needs and context. This approach rests on innovation research showing that organizational innovations are more successful when they are aligned with features of the adopting hospital. Participating hospitals will select strategies from the UM Toolkit that they believe will work best to address the particular problems they face. The six hospitals have agreed to participate in a collaborative run by the UM National Program Office (NPO) over the course of this study to facilitate the sharing of data and experiences while the project is underway.

This study will document the experiences of a diverse set of hospital EDs as they identify and implement ED patient flow improvement strategies. The six case study hospitals were selected to reflect diversity of size, ownership, teaching status, safety net status, and types of challenges with ED crowding.

Research methods will include observational site visits, in-person and telephone interviews, and the analysis of cost data. AHRQ's contractor for this study, Health Research & Educational Trust (HRET), will perform analysis of secondary data on ED performance measures; this secondary data will be provided to HRET by the Urgent Matters NPO. These qualitative and quantitative methods will be used to:

- Study the processes through which hospitals decide upon and adopt patient flow improvement strategies;

• Identify facilitators and barriers to the implementation and maintenance of these strategies;

• Document changes in patient flow, patient satisfaction, and staff satisfaction associated with the implementation of strategies and processes;

• Generate estimates of the costs of adopting the strategies;

• Identify issues associated with the reporting of ED performance measures; and,

• Develop lessons for hospitals considering the adoption of patient flow improvement strategies.

The study will not be used to answer questions about causality or degrees of effectiveness (*e.g.*, to what degree did a given intervention cause an improvement in patient flow?). Rather, the study seeks to enhance understanding of factors affecting decision-making and adoption processes that facilitate or hinder implementation. Insights and lessons learned about organizational, technical and resource challenges arising from these improvement activities may be of interest or benefit to others seeking to identify and adopt strategies to address similar problems in their EDs.

This study is being conducted pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to: The quality, effectiveness, efficiency, appropriateness and value of health care services; quality measurement and improvement; and health care costs, productivity, organization, and market forces. 42 U.S.C. 299a(a)(1), (2), and (6).

Method of Collection

AHRQ seeks approval for the following data collection activities:

In-person interviews will be conducted within two months of the implementation with up to 12 individuals at each of the 6 sites during two-day site visits to each of the hospitals.

Telephone interviews will be conducted approximately 6 months after implementation with 12 individuals from each of the six hospitals (most or all of whom will be the same individuals interviewed in person).

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the hospitals' time to participate in this study. In-person interviews will be conducted within two months of implementation with 12 administrative and clinical personnel from each of the six participating hospitals and will require about one hour. Telephone interviews will be conducted approximately six months thereafter with 12 individuals (administrative and clinical) from each hospital and will take about 45 minutes. The total estimated burden for participation in this study is 126 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection	Number of hospitals	Number of responses per hospital	Hours per response	Total burden hours
In-person interviews	6	12	1.0	72
Telephone interviews	6	12	45/60	54
Total	12	na	na	126

Exhibit 2 shows the estimated annualized cost burden for the respondents' time to provide the requested data. The total cost burden is approximately $4,419.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection	Total burden hours	Average hourly wage rate *	Total cost burden
In-person interviews	72	$35.07	$2,525
Telephone interviews	54	$35.07	1,894
Total	126	na	4,419

* For the interviews, the hourly rate of $35.07 is an average of the admini strative personnel hourly wage of $14.53, the physician rate of $62.52, and the registered nurse rate of $28.15. National Compensation Survey: Occupational Wages in the United States 2005, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost to the government for this eighteen-month study.

EXHIBIT 3—ESTIMATED COST

Cost component	Total cost	Annualized cost
Project Development	52,446	34,964
Data Collection Activities	90,298	60,199

EXHIBIT 3—ESTIMATED COST—Continued

Cost component	Total cost	Annualized cost
Data Processing and Analysis	70,569	47,046
Publication of Results	41,420	27,613
Project Management	68,908	45,939
Overhead	76,320	50,880
Total	$399,961	266,641

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection.

All comments will become a matter of public record.

Dated: March 9, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–5581 Filed 3–13–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ).

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, April 3, 2009, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Eisenberg Conference Center, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Deborah Queenan, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, (301) 427–1330. For press-related information, please contact Karen Migdail at (301) 427–1855.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144, no later than March 27, 2009. The agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850. Ms. Campbell's phone number is (301) 427–1554.

SUPPLEMENTARY INFORMATION:

I. Purpose

The National Advisory Council for Healthcare Research and Quality was established in accordance with Section 921 (now Section 931) of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of AHRQ to enhance the quality, improve the outcomes, and reduce the costs of health care services; improve access to such services through scientific research; and promote improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members.

II. Agenda

On Friday, April 3, the Council meeting will convene at 9 a.m., with the call to order by the Council Chair and approval of previous Council minutes. The AHRQ director will present her update on current research, programs, and initiatives. The agenda will include a discussion of AHRQ budget for FY09, the comparative effectiveness program, and the AHRQ activities under American Recovery and Reinvestment Act (ARRA).

The final agenda will be available on the AHRQ Web site at *http://www.ahrg.gov* no later than March 30, 2009.

Dated: March 9, 2009.

Carolyn M. Clancy,

Alternate Certifying Officer Director.

[FR Doc. E9–5580 Filed 3–13–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Reviews, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC announces the following meeting for the aforementioned subcommittee:

Time and Date: 10 a.m.–5 p.m., March 24, 2009.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. Telephone (859) 334–4611, Fax (859) 334–4619.

Status: Open to the public, but without a public oral comment period. To access by conference call dial the following information 1 (866) 659–0537, Participant Pass Code 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program

Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

Purpose: The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction. It will be responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Office of Compensation Analysis and Support (OCAS) and its dose reconstruction contractor.

Matters to be Discussed: The agenda for the Subcommittee meeting includes: A discussion of proposed new versions of the computer-assisted telephone interview scripts and procedures NIOSH uses to interview claimants at the outset of the dose reconstruction process; a discussion of ORAUT–OTIB–0054 (''Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses''), ORAUT–OTIB–0066 (''Calculation of Dose from Intakes of Special Tritium Compounds''), and ORAUT–OTIB–0052 (''Parameters for Processing Claims for Construction Workers''); and, a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

This meeting was previously scheduled to convene on January 29, 2009, but was cancelled due to inclement weather and airport and facility inaccessibility. The meeting was scheduled to reconvene as soon as possible; therefore, this **Federal Register** notice is being published less than fifteen days prior to the meeting date.

For Further Information Contact: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta GA 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, E-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 6, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–5522 Filed 3–13–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–145]

Notice of Public Comment Period for the NIOSH Childhood Agricultural Injury Prevention Initiative

Authority: 29 U.S.C. 669(a).

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Document Available for Public Comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability of the following document which encompasses progress to-date and planned future activities of the NIOSH Childhood Agricultural Injury Prevention Initiative. The document, *NIOSH Childhood Agricultural Injury Prevention Initiative: Progress and Proposed Future Activities*, can be found at *http://www.cdc.gov/niosh/review/public/145/*.

Public Comment Period: March 16, 2009 to May 15, 2009.

Purpose: To seek comments on the progress and proposed future activities of the Childhood Agricultural Injury Prevention Initiative begun by NIOSH in October 1996, in order to ensure that the program is meeting the needs of stakeholders (*e.g.*, national youth agricultural injury prevention organizations, agricultural youth injury prevention groups, individuals, *etc.*) and other interested members of the public, and to identify ways in which the program can be improved to increase its impact on the safety of children in agriculture. A review of progress and public comment on the proposed future activities of the NIOSH Childhood Agricultural injury Prevention Initiative is desired periodically to assess whether the NIOSH Childhood Agricultural Injury Prevention Initiative is addressing the most pressing issues and areas of childhood agricultural injury prevention. NIOSH will compile and consider all comments received through the NIOSH docket and use them in making decisions on how to proceed with the Childhood Agricultural Injury Prevention Initiative.

Background: The problem of children being injured while living, working, or visiting agricultural work environments (farms) has been recognized for several decades. The most recent data suggest about 100 youths under the age of 20 die on farms each year and about 27,600 farm-related injuries occur to the same age group. Many individuals and groups have advocated for the prevention of agricultural injuries experienced by youths, and media attention has been generated on the issue, but until 1996 a national coordinated effort to address the problem had not existed.

In April 1996, the National Committee for Childhood Agricultural Injury Prevention (NCCAIP) published a report entitled *Children and Agriculture: Opportunities for Safety and Health, A National Action Plan* to promote the health and safety of children exposed to agricultural hazards. The National Action Plan recommends leadership, surveillance, research, education, and public policy. The plan specifically recommended that NIOSH serve as the lead federal agency in preventing childhood agricultural injury. Due in large part to the efforts by NCCAIP to raise awareness and concern about childhood agricultural injury issues, in October 1996, NIOSH began implementing a Childhood Agricultural Injury Prevention Initiative. In July, 1999, a review was conducted by NIOSH to seek input on the progress and direction of the Childhood Agricultural Injury Prevention Initiative

to date. The input provided by stakeholders at that meeting was useful in providing insight into stakeholder needs and in helping to improve the Childhood Agricultural Injury Prevention Initiative.

In 2001, a Childhood Agricultural Injury Prevention Summit was organized and convened by the National Children's Center for Rural and Agricultural Health and Safety (NCCRAHS), an extramurally funded component, five years after the implementation of the NIOSH Childhood Agricultural Injury Prevention Initiative. The goal of the summit was to conduct a five-year review of the 1996 National Action Plan and to use a consensus development process to generate strategies for the future. Specifically, participants were asked to consider: (a) Successes to date, (b) gaps and barriers in achieving objectives, (c) current and potential effective interventions not addressed in the National Action Plan, and (d) strategies for the future. To date, NIOSH has undertaken a number of activities, both intramurally and extramurally, to address the recommendations in the 1996 National Action Plan and the 2001 Childhood Agricultural Injury Prevention Summit.

Status: The Document, *NIOSH Childhood Agricultural Injury Prevention Initiative: Progress and Proposed Future Activities*, will be available for comment by stakeholders and other interested members of the public. Written comments should be submitted to the NIOSH Docket Office as outlined in the next section.

Docket: Written comments on the usefulness of the Childhood Agricultural Injury Prevention Initiative for improving childhood agricultural safety and suggestions for enhancing or improving the impact of the Initiative should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–8303, facsimile (513) 533–8285. Comments may also be submitted by e-mail to *niocindocket@cdc.gov*. E-mail attachments should be formatted in Microsoft Word. All materials submitted to the Agency should reference NIOSH docket number 145 and must be submitted by May 15, 2009 to be considered by the Agency. All electronic comments should be formatted as Microsoft Word. All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226. After the comment period has closed, comments may be accessed electronically at *http://www.cdc.gov/niosh* under the link to the NIOSH docket. As appropriate, NIOSH will post comments with the commenters' names, affiliations, and other information, on the Internet.

Contact Person for Technical Information: David Hard, Health Scientist, Analysis and Field Investigations Branch, Division of Safety Research, telephone (304) 285–6068, E-mail *DHard@cdc.gov*, facsimile (304) 285–6235.

Dated: March 9, 2009.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–5583 Filed 3–13–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Proposed Project

Title: Head Start Family and Child Experiences Survey (FACES 2009).

OMB No.: 0970–0151.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is planning to collect data on a new cohort for the Head Start Family and Child Experiences Survey (FACES). FACES is a longitudinal study of a nationally representative sample of Head Start programs and children that will collect information for Head Start performance measures. Data for FACES will be collected annually through interviews with Head Start parents, teachers, program directors and other Head Start staff, as well as direct child assessments and observations of Head Start classrooms.

Data will be collected on a sample of approximately 3,400 children and families from 60 Head Start programs. Data collection will include assessments of Head Start children, interviews with their parents, and ratings by their Head Start teachers. Site visitors will interview Head Start teachers in approximately 405 classrooms and make observations of the types and quality of classroom activities. Interviews will also be conducted with Head Start program directors and other staff. A follow-up for children in Kindergarten will include child assessments, parent interviews, and teacher questionnaires and child ratings.

The purpose of this data collection is to fulfill the requirements of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), and by the 1994 reauthorization of the Head Start program (Head Start Act, as amended, May 18, 1994, Section 649 (d)), which call for periodic assessments of Head Start's quality and effectiveness.

Respondents: Parents of Head Start Children, Head Start Children, Head Start Teachers, Head Start Program Directors and Staff, and Kindergarten Teachers of former Head Start enrollees.

ANNUAL BURDEN ESTIMATES

	Annual number of respondents	Number of responses per respondent	Average burden hour per response	Estimated annual burden hours
Parent Interview	3,185	1.0	.81	2,564
Child Assessment	3,245	1.0	0.75	2,434
Head Start Teacher Interview	405	1.0	0.50	203
Head Start Teacher Child Rating	405	9.0	0.17	620
Program Director Interview	20	1.0	0.50	10
Center Director Interview	40	1.0	0.50	20
Education Coordinator Interview	20	1.0	0.50	10
Kindergarten Teacher Questionnaire	1,128	1.3	0.50	733
Kindergarten Teacher Child Rating	1,128	1.3	0.17	249
Total Annual Burden Hours:				6,843

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *OPREinfocollection@acf.hhs.qov*.

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 0MB 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: March 9, 2009.

Brendan C. Kelly,

OPRE Reports Clearance Officer.

[FR Doc. E9–5511 Filed 3–13–09; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0556]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescription Drug User Fee Act Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 15, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0429. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Formal Meetings With Sponsors and Applicants for PDUFA Products (OMB Control Number 0910–0429)—Extension

This information collection approval request is for an FDA guidance on the procedures for formal meetings between FDA and sponsors or applicants regarding the development and review of Prescription Drug User Fee Act (PDUFA) products. The guidance describes procedures for requesting, scheduling, conducting, and documenting such formal meetings. The guidance provides information on how the agency will interpret and apply section 119(a) of the Food and Drug Administration Modernization Act (the Modernization Act), specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82 (21 CFR 312.47 and 312.82)).

The guidance describes two collections of information: The submission of a meeting request containing certain information and the submission of an information package in advance of the formal meeting. Agency regulations at § 312.47(b)(1)(ii), (b)(1)(iv), and (b)(2) describe information that should be submitted in support of a request for an End-of-Phase 2 meeting and a Pre-New Drug Application meeting. The information collection provisions under § 312.47 have been approved by OMB (OMB control no. 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting additional estimates for OMB approval.

I. Request for a Meeting

Under the guidance, a sponsor or applicant interested in meeting with the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) should submit a meeting request to the appropriate FDA component as an amendment to the underlying application. FDA regulations (§§ 312.23, 314.50, and 601.2 (21 CFR 312.23, 314.50, and 601.2)) state that information provided to the agency as part of an investigational new drug application (IND), new drug application (NDA), or biological license application (BLA) must be submitted with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571 (OMB control no. 0910–0014) and FDA Form 356h (OMB control no. 0910–0338).

In the guidance document, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of §§ 312.23, 314.50, and 601.2; therefore, requests should be submitted to the agency with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the agency to monitor progress on the activities attendant to scheduling and holding a formal meeting and to ensure that appropriate steps will be taken in a timely manner.

Under the guidance, the agency requests that sponsors and applicants include in meeting requests certain information about the proposed meeting as follows:

- Information identifying and describing the product;
- The type of meeting being requested;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes from the meeting;
- A preliminary proposed agenda;
- A draft list of questions to be raised at the meeting;
- A list of individuals who will represent the sponsor or applicant at the meeting;

• A list of agency staff requested to be in attendance;
• The approximate date that the information package will be sent to the agency; and
• Suggested dates and times for the meeting.

This information will be used by the agency to: (1) Determine the utility of the meeting, (2) identify agency staff necessary to discuss proposed agenda items, and (3) schedule the meeting.

II. Information Package

A sponsor or applicant submitting an information package to the agency in advance of a formal meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the sponsor, applicant, or agency. The agency recommends that information packages generally include:
• Identifying information about the underlying product;
• A brief statement of the purpose of the meeting;
• A list of objectives and expected outcomes of the meeting;
• A proposed agenda for the meeting;
• A list of specific questions to be addressed at the meeting;
• A summary of clinical data that will be discussed (as appropriate);
• A summary of preclinical data that will be discussed (as appropriate); and
• Chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The purpose of the information package is to provide agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. Although FDA reviews similar information in the meeting request, the information package should provide updated data that reflect the most current and accurate information available to the sponsor or applicant. The agency finds that reviewing such information is critical to achieving a productive meeting.

The collection of information described in the guidance reflects the current and past practice of sponsors and applicants to submit meeting requests as amendments to INDs, NDAs, and BLAs and to submit background information prior to a scheduled meeting. Agency regulations currently permit such requests and recommend the submission of an information package before an End of Phase 2 meeting (§ 312.47(b)(1)(ii) and (b)(1)(iv)) and a Pre-NDA meeting (§ 312.47(b)(2)).

Description of Respondents: A sponsor or applicant for a drug or biological product who requests a formal meeting with the agency regarding the development and review of a PDUFA product.

Burden Estimate: An estimate of the annual reporting burden for the submission of meeting requests and information packages under the guidance is provided in table 1 of this document.

III. Request for a Formal Meeting

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 907 sponsors and applicants (respondents) request approximately 2,210 formal meetings with CDER annually and approximately 144 respondents request approximately 287 formal meetings with CBER annually regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted with a meeting request in accordance with the guidance, is estimated to be approximately 10 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting.

IV. Information Package

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 774 respondents submitted approximately 1,705 information packages to CDER annually and approximately 120 respondents submitted approximately 198 information packages to CBER annually prior to a formal meeting regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package in accordance with the guidance, is estimated to be approximately 18 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product, a description of the details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the agency.

As stated earlier, the guidance provides: (1) Information on how the agency will interpret and apply section 119(a) of the Modernization Act, (2) specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and (3) provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82). The information collection provisions in § 312.47 concerning End-of-Phase 2 meetings and Pre-NDA meetings have been approved by OMB (OMB control no. 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting these additional estimates for OMB approval.

In the **Federal Register** of November 13, 2008 (73 FR 67184), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Meeting Requests and Information Packages	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Meeting Requests					
CDER	907	2.44	2,210	10	22,100
CBER	144	1.99	287	10	2,870
Total					24,970
Information Packages					

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Meeting Requests and Information Packages	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
CDER	774	2.20	1,705	18	30,690
CBER	120	1.65	198	18	3,564
Total					34,254
Grand Total					59,224

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 9, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–5536 Filed 3–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0635]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Emergency Shortages Data Collection System (formerly ''Emergency Medical Device Shortages Program Survey'')

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 15, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0491. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Emergency Shortages Data Collection System (formerly ''Emergency Medical Device Shortages Program Survey'')—(Federal Food, Drug, and Cosmetic Act, Section 903 (d)(2) (OMB Control Number 0910–0491)—Extension

Under section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(d)(2)), the FDA Commissioner is authorized to implement general powers (including conducting research) to carry out effectively the mission of FDA. Subsequent to the events of September 11, 2001, and as part of broader counter-terrorism and emergency preparedness activities, FDA's Center for Devices and Radiological Health (CDRH) began developing operational plans and interventions that would enable the Center to anticipate and respond to medical device shortages that might arise in the context of federally-declared disasters/emergencies or regulatory actions. In particular, CDRH identified the need to acquire and maintain detailed data on domestic inventory, manufacturing capabilities, distribution plans and raw material constraints for medical devices that would be in high demand, and/or would be vulnerable to shortages in specific disaster/emergency situations, or following specific regulatory actions. Such data could support prospective risk assessment, help inform risk mitigation strategies, and support real-time decision making by the Department of Health and Human Services during actual emergencies or emergency preparedness exercises.

''The Emergency Medical Device Shortage Program Survey'' was developed in 2002 to support the acquisition of such data from medical device manufacturers. In 2004, CDRH changed the process for the data collection, and the electronic database in which the data were stored and was formally renamed the ''Emergency Shortages Data Collection System'' (ESDCS). Recognizing that some of the data collected may be commercially confidential, access to ESDCS is restricted to members of the FDA Emergency Shortage Team (EST) and senior management with a need-to-know. At this time, the need-to-know senior management personnel are limited to 5 senior managers. Further, the data are used by this defined group only for decision making and planning in the context of a federally-declared disaster/emergency, an official emergency preparedness exercise, or a potential public health risk posed by nondisaster-related device shortage.

The data procurement process consists of an initial scripted telephone call to a regulatory officer at a registered manufacturer of one or more key medical devices being tracked in the emergency shortages data collection system. In this initial call, the intent and goals of the data collection effort are described, and the specific data request is made. After the initial call, one or more additional follow-up calls and/or electronic mail correspondence may be required to verify/validate data sent from the manufacturer, confirm receipt and/or request additional detail. Although the regulatory officer is the agent who is initially contacted, they may designate an alternate representative within their organization to correspond subsequently with the CDRH EST member who is collecting or verifying/validating the data.

Because of the dynamic nature of the medical device industry, particularly with respect to specific product lines, manufacturing capabilities and raw material/subcomponent sourcing, it is necessary to update the data in the ESDCS at regular intervals. This is done on a weekly basis, but efforts are made to limit the frequency of outreach to a specific manufacturer to no more than every 4 months.

The ESDCS will only include those medical devices for which there will likely be high demand during a specific

emergency/disaster, or for which there are sufficiently small numbers of manufacturers such that disruption of manufacture or loss of one or more of these manufacturers would create a shortage.

In the **Federal Register** of December 19, 2008 (73 FR 77718), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
903(d)(2)	125	3	375	0.5	188

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based the burden estimates in Table 1 on past experience with direct contact with the medical device manufacturers, and anticipated changes in the medical device manufacturing patterns for the specific devices being monitored. FDA estimates that approximately 125 manufacturers would be contacted by telephone and/or electronic mail 3 times per year to either obtain primary data or to verify/validate data. Because the data being requested represent data elements that are monitored or tracked by manufacturers as part of routine inventory management activities, it is anticipated that for most manufacturers, the estimated time required of manufacturers to complete the data request will not exceed 30 minutes per request cycle.

Dated: March 9, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–5545 Filed 3–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0051]

Draft Guidance for Industry and Food and Drug Administration; User Fees and Refunds for Premarket Approval Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''User Fees and Refunds for Premarket Approval Applications'' (PMAs). The purpose of this draft guidance document is to outline the types of PMAs subject to user fees, including supplements and other submissions, as well as those that do not have an associated user fee. The draft guidance also identifies industry and FDA actions on these submissions that may result in a refund of the fee.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by April 15, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''User Fees and Refunds for Premarket Approval Applications,'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4010.

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 5515 Security Lane, rm. 130, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250) amends the Federal Food, Drug, and Cosmetic Act (the act) to provide FDA new responsibilities and resources associated with the collection and refund of user fees. The primary difference between this draft guidance and the November 24, 2003, version now in effect is the addition of user fee and user fee refund information for 30-day notices and periodic reports. Additionally, the draft guidance discusses the modified user fee refund provisions for modular PMAs. If finalized, this draft guidance will supersede the 2003 guidance.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on user fees and refunds for premarket approval applications. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''User Fees and Refunds for Premarket Approval Applications,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document, or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number (1681) to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available at *http://www.regulations.gov* or the CBER Internet site at *http://www.fda.gov/cber/guidelines.htm*.

IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: User Fees and Refunds for Premarket Approval Applications.

Description: Section 738 of the act requires the payment of user fees for devices subject to premarket approval (PMA) under section 515 of the act (21 U.S.C. 360e). Section 738(j) of the act allows for refunds of these fees in certain circumstances. This draft guidance document describes requirements associated with user fees and FDA's recommendation for the kind of information to include in a request for a refund.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Federal Food, Drug, and Cosmetic Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
738(j)	17	1	17	0.5	9

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The industry-wide burden estimate is based on an FDA actual average fiscal year (FY) annual rate of receipt of 17 refund requests, using FY 2005 through 2007 data.

This draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 814, subparts B and E have been approved under OMB control number 0910–0231.

V. Comments

Interested persons may submit to the Division of Dockets Management (See **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 4, 2009.

Daniel G. Schultz,

Director, Center for Devices and Radiological Health.

[FR Doc. E9–5543 Filed 3–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0052]

Draft Guidance for Industry on Documenting Statistical Analysis Programs and Data Files; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry #197 entitled ''Draft Guidance for Industry on Documenting Statistical Analysis Programs and Data Files.'' The purpose of this draft guidance is to simplify the preparation and evaluation of submissions in support of new animal drug applications by providing a uniform system for documenting statistical analysis programs and data files.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by June 1, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Robert Abugov, Center for Veterinary Medicine (HFV–105), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8168, *Robert.abugov@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry #197 entitled ''Draft Guidance for Industry on Documenting Statistical Analysis Programs and Data Files.'' This draft guidance provides recommendations to study statisticians for documenting statistical analyses and data files submitted to the Center for Veterinary Medicine (CVM) for the evaluation of safety and effectiveness in new animal drug applications. These recommendations are intended to reduce the number of revisions that may be required for CVM to effectively review statistical analyses and to simplify submission preparation by providing a uniform documentation system.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control no. 0910–0032.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cvm* or *http://www.regulations.gov*.

Dated: March 10, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–5650 Filed 3–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Industry Exchange Workshop on Food and Drug Administration Drug and Device Requirements; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Chicago District, in cosponsorship with the Association of Food and Drug Officials (AFDO), is announcing a public workshop entitled ''Drugs and Devices—Promoting and Protecting the Public Health Through Risk Management and Product Cycle Improvement.'' This 2-day public workshop is intended to provide information about FDA drug and device regulation to the regulated industry.

Date and Time: The public workshop will be held on Monday, June 8, 2009, from 10:20 a.m. to 5 p.m. and Tuesday, June 9, 2009, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Doubletree Hotel Chicago—Oakbrook, 1909 Spring Rd., Oak Brook, IL 60523, 800–222–TREE, 800–222–8733, or 630–472–6000, FAX: 630–573–1909.

Attendees are responsible for their own accommodations. To make reservations at the Doubletree Hotel Chicago—OakBrook, at the reduced conference rate, contact the Doubletree Hotel Chicago—OakBrook before May 5, 2009, citing meeting code ''AFDO Conference''.

Contact: William Weissinger, Food and Drug Administration, 550 W. Jackson Blvd., 15th Fl., Chicago, IL 60661, 312–596–4210, FAX: 312–596–4242, e-mail: *William.weissinger@fda.hhs.gov*.

Registration: You are encouraged to register by May 12, 2009. The AFDO registration fees cover the cost of facilities, materials, and breaks. Seats are limited; please submit your registration as soon as possible. Course space will be filled in order of receipt of registration. Those accepted into the course will receive confirmation. Registration will close after the course is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 7:30 a.m. The cost of registration follows:

COST OF REGISTRATION

Affiliation	Fee
Government (AFDO/North Central AFDO Member)	$395.00
Government (Non-Member)	$495.00
Non-Government (AFDO/NCAFDO Member)	$450.00
Non-Government (Non-Member)	$550.00
To be added to registration fee for workshop registration postmarked after May 12,2009	$75.00

If you need special accommodations due to a disability, please contact William Weissinger at least 7 days in advance of the workshop.

Registration instructions: To register, please submit your name, affiliation, mailing address, phone, fax number, and e-mail, along with a check or money order payable to ''AFDO.'' Please mail your payment to: AFDO, 2550 Kingston Rd., suite 311, York, PA 17402. To register via the Internet, go to *www.afdo.org*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).

The registrar will also accept payment by major credit cards (VISA/MasterCard only). For more information on the meeting, or for questions on registration, contact AFDO, 717–757–2888, FAX: 717–755–8089, or e-mail: *afdo@afdo.org*.

SUPPLEMENTARY INFORMATION: The public workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The workshop will provide FDA-regulated drug and device entities with information on a number of topics concerning FDA requirements related to the production and marketing of drugs and/or devices. Topics for discussion include the following:

- Risk management approach to consumer protection and industry regulation
- How quality management systems (including corrective and preventive action) contribute to product cycle improvement
- Supplier management and component controls for drugs and devices
- Adverse drug event reporting requirements
- Medical device reporting requirements
- Recalls, corrections and removals
- Complaint handling from the FDA investigator's perspective.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The workshop helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by Government agencies to small businesses.

Dated: March 4, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–5648 Filed 3–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 31, 2009, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Ronald P. Jean, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD, 20850, 240–276–3676, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512521. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for OP-1 Putty, sponsored by Stryker Biotech. This combination product is indicated for posterolateral spinal fusion procedures in skeletally mature patients with lumbar spondylolisthesis who have failed at least 6 months of conservative nonsurgical treatment.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 24, 2009. Oral presentations from the public will be scheduled for 30 minutes at the beginning of the committee deliberations and for 30 minutes near the end of the deliberations. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 20, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 23, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 240–276–8932, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 10, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–5644 Filed 3–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Diversity Program.
Date: March 23, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Peter J. Perrin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodevelopment and Neurobiology.
Date: March 24–25, 2009.
Time: 9 a.m. to 11 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HIV Behavioral Interventions Member Conflicts.
Date: March 27, 2009.
Time: 12 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Kidney Dialysis, Monitoring, and Therapeutics Small Business Review.
Date: April 1–2, 2009.
Time: 10 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Krystyna E. Rys-Sikora, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, 301–451–1325, *ryssokok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AMCB, VACC, ADDT, ACE and AIP Member Conflicts.
Date: April 2–3, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuronal Development, Synaptic Transmission and Neuropathy.
Date: April 14, 2009.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892, (301) 451–1328, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Panel.
Date: April 22, 2009.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7849, Bethesda, MD 20892, 301–435–0483, *jacobsonrh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–5639 Filed 3–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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 Eye Institute Special Emphasis Panel; NEI K99 Pathways to Independence Grant Applications.
Date: April 7, 2009.
Time: 10 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anne E Schaffner, PhD, Scientific Review Officer, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–5475 Filed 3–13–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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) and552b(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 Environmental Health Sciences Special Emphasis Panel, Pathways to Independence/Career Development.

Date: April 1, 2009.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Linda K. Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 11, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–5645 Filed 3–13–09; 8:45 am]

BILLING CODE 4140–01–P

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 Office of AIDS Research Advisory Council.

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: Office of AIDS Research Advisory Council.

Date: April 23, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: The theme of the meeting will be ''HIV Prevention for Women.'' An update will also be provided on the OARAC Working Groups for Treatment and Prevention Guidelines.

Place: National Institutes of Health, 5635 Fishers Lane, MSC 9310 Suite 4000, Rockville, MD 20852.

Contact Person: Christina Brackna, Coordinator, Program Planning and Analysis, Office of AIDS Research, Office of the Director, NIH, 5635 Fishers Lane, MSC 9310 Suite 4000, Rockville, MD 20852. (301) 402–8655. *cm53v@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: *http://www.oar.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(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: March 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–5476 Filed 3–13–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Single-Source Program Expansion Supplement

AGENCY: Office of Refugee Resettlement, Administration for Children and Families.

ACTION: Notice to award a non-competitive single-source program expansion supplement to Mountain States Group—Idaho Office for Refugees (MSG–IOR) under the Idaho Wilson-Fish Program.

CFDA#: 93.583.

Legislative Authority: The Refugee Act of 1980 as amended, Wilson-Fish Amendment, 8 U.S.C. 1522(e)(7); section 412(e)(7)(A) of the Immigration and Nationality Act.

Amount of Award: $806,360 supplement for current year.

Project Period: 09/30/2005–09/29/2010.

Justification for the Exception to Competition: The Wilson-Fish program is an alternative to the traditional State-administered refugee assistance program for providing integrated assistance and services to refugees, asylees, Amerasian Immigrants, Cuban and Haitian Entrants, Trafficking Victims and Iraqi/Afghani SIV's. Idaho is one of 12 sites that has chosen this alternative approach.

The supplemental funds will allow the grantee, MSG–IOR, to provide refugee cash assistance through the end of this fiscal year to eligible refugees (and others eligible for refugee benefits) under the Idaho Wilson-Fish Program.

The primary reason for the grantee's supplemental request is a higher number of arrivals than anticipated when the grantee's budget was submitted and approved last year. The Refugee Act of 1980 as amended mandates that the Office of Refugee Resettlement (ORR) reimburse States and Wilson-Fish projects for the costs of cash and medical assistance for newly arriving refugees. Since 1991, ORR has reimbursed States and Wilson-Fish agencies for providing cash and medical assistance to eligible individuals during their first eight months in the United States.

Hence, the supplement is consistent with the purposes of the Wilson-Fish Program, the Refugee Act of 1980 as amended, and ORR policy.

FOR FURTHER INFORMATION CONTACT: Carl Rubenstein, Wilson-Fish Program Manager, Office of Refugee Resettlement, Aerospace Building, 8th Floor West, 901 D Street, SW., Washington, DC 20447. Telephone: 202–205–5933.

Dated: March 5, 2009.

David H. Siegel,

Acting Director, Office of Refugee Resettlement.

[FR Doc. E9–5535 Filed 3–13–09; 8:45 am]

BILLING CODE XXXX–XX–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0069; The National Fire Incident Reporting System (NFIRS) v5.0.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before April 15, 2009.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: National Fire Incident Reporting System (NFIRS) v5.0.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0069.

Form Titles and Numbers: National Fire Incident Reporting System (NFIRS) v5.0.

Abstract: NFIRS provides a mechanism using standardized reporting methods to collect and analyze fire incident data at the Federal, State, and local levels. Data analysis helps local fire departments and States to focus on current problems, predict future problems in their communities, and measure whether their programs are working.

Affected Public: ''State, Local or Tribal Government.''

Estimated Number of Respondents: 22,890.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: 470.50.

Estimated Total Annual Burden Hours: 10,769,720.

Estimated Cost: $13,310,000.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–5527 Filed 3–13–09; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: USCIS Case Status Online, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: USCIS Case Status Online; OMB Control No. 1615–0080.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 29, 2008, at 73 FR 79502, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 15, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0080 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* USCIS Case Status Online.

(3) *Agency Form Number, If Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* No Form Number. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required to Respond, as well as a Brief Abstract:*

Primary: Individuals and Households. This is an online internet application that permits individuals and

organizations to electronically request the status of their application or action.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated For an Average Respondent to Respond:* 20,000,000 responses at 4½ (.072) hours per response.

(6) *An Estimate of the Total Public Burden (In Hours) Associated With the Collection:* 1,440,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*.

If Additional Information is Required Contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210, (202) 272–8377.

Dated: March 11, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–5619 Filed 3–13–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Form I–881; Application for Suspension of Deportation or Special Rule Cancellation of Removal

Agency Information Collection Activities: Form I–881, Extension of a Currently Approved Information Collection; Comment Request.

ACTION: 30-Day Notice of Information Collection Under Review: Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal; OMB Control No. 1615–0072.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 29, 2008, at 73 FR 79501, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 15, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0072 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–881. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form is used by a nonimmigrant to apply for suspension of suspension of deportation or special rule cancellation of removal. The information collected on this form is necessary in order for USCIS to determine if it has jurisdiction over an individual applying for this release as well as to elicit information regarding the eligibility of an individual applying for release.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 55,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 660,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210, (202) 272–8377.

Dated: March 11, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–5620 Filed 3–13–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application and Approval To Manipulate, Examine, Sample, or Transfer Goods

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0006.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application

and Approval to Manipulate, Examine, Sample, or Transfer Goods. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in CBP's request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Application and Approval to Manipulate, Examine, Sample, or Transfer Goods.

OMB Number: 1651–0006.

Form Number: CBP Form-3499.

Abstract: CBP Form-3499 is prepared by importers or consignees as an application to request examination, sampling, or transfer of merchandise under CBP supervision. This form is also an application for the manipulation of merchandise in a bonded warehouse, and for abandonment or destruction of merchandise.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Responses: 151,140.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 15,114.

Dated: February 25, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–5608 Filed 3–13–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: General Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0002.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the General Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or recordkeepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: General Declaration.

OMB Number: 1651–0002.

Form Number: Form 7507.

Abstract: CBP Form 7507 allows an agent or pilot to make entry of an aircraft, as required by statute. The form is used to document clearance by the arriving aircraft at the required inspectional facilities, and inspections by appropriate regulatory agency staffs.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Number of Total Annual Responses: 1,000,000.

Estimated Time per Respondent: 166 hours.

Estimated Total Annual Burden Hours: 83,333.

Dated: February 25, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–5609 Filed 3–13–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Lien Notice

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0012.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Lien Notice (CBP Form-3485). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in CBP's request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Lien Notice.

OMB Number: 1651–0012.

Form Number: CBP Form-3485.

Abstract: The Lien Notice, CBP Form-3485, enables the carriers, cartmen, and similar businesses to notify CBP that a lien exists against an individual/business for non-payment of freight charges, etc., so that CBP will not permit delivery of the merchandise from public stores or bonded warehouses until the lien is satisfied or discharged.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 112,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 9,296.

Dated: February 25, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–5611 Filed 3–13–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application To Use the Automated Commercial Environment (ACE)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0105.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application to Use the Automated Commercial Environment (ACE). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in CBP's request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Application to Use ACE.

OMB Number: 1651–0105.

Form Number: None.

Abstract: CBP collects basic information from companies participating in ACE pilots in order to establish account structures for each company.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 21,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 6,930.

Dated: February 25, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–5615 Filed 3–13–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–21]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Homelessness Prevention and Rapid Re-Housing Program (HPRP) Annual Action Plan Substantial Amendment Form

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Ms. Kimberly P. Nelson, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20502; e-mail: *Kimberly_P._Nelson@omb.eop.gov*; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: *Lillian.L.Deitzer@hud.gov;* telephone (202) 402–8048. This is not a toll-free number. Copies of available documents should be submitted to OMB and may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed information collection for the Homelessness Prevention Fund, which is authorized under the American Recovery and Reinvestment Act (ARRA) of 2009. This new program provides $1.5 billion of formula grant funding for the provision of short-term or medium-term rental assistance, housing relocation and stabilization services, and other appropriate activities for homelessness prevention and rapid re-housing of persons who have become homeless. HUD will administer these funds as the Homelessness Prevention and Rapid Re-Housing Program (HPRP) and require a substantial amendment to the grantee's Consolidated Plan 2008 Annual Action Plan as a condition of receiving funds. HPRP grant amounts will be determined by a formula authorized by Section 413 of the McKinney-Vento Homeless Assistance Act and will be awarded by HUD to the following eligible grantees: states, metropolitan cities, and urban counties that receive over $500,000 according to the formula allocation, and territories, which receive 0.2% of the total allocation.

This Notice also lists the following information:

Title of Proposal: Homelessness Prevention and Rapid Re-Housing Program: Substantial Amendment to the Consolidated Plan 2008 Annual Action Plan.

Description of Information Collection: This is a new information collection. The Department of Housing and Urban Development is seeking emergency review of the Paperwork Reduction Act Requirements associated with the Homelessness Prevention and Rapid Re-Housing Program (HPRP).

Each HPRP grantee is required to submit (1) a SF–424 signed by an authorized representative; and (2) a HUD–40119, signed by an authorized official, which provides a description of how the grantee plans to use and monitor the use of the HPRP funds.

OMB Control Number: Pending.

Agency Form Numbers: SF–424; HUD–40119.

Members of the Affected Public: Eligible grantees.

Estimation of the total numbers of hours needed to prepare the information collection including number of responses, frequency of responses, and hours of responses: An estimation of the total number of reporting hours is 16.75 per response. The number of respondents is 540. The total hours requested is 9,045.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 10, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–5633 Filed 3–13–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2009–N0046; 40120–1112–0000–F2]

Receipt of an Application for an Incidental Take Permit for a Training Facility in Charlotte County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) and Habitat Conservation Plan (HCP). Visually Impaired Persons of Charlotte County (applicant) requests an ITP pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking about 1.91 acres of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging and sheltering habitat incidental to lot preparation for the construction of a training facility and supporting infrastructure in Charlotte County, Florida (Project). The applicant's HCP describes the mitigation and minimization measures proposed to address the effects of the Project to the scrub-jay.

DATES: We must receive your written comments on the ITP application and HCP on or before April 15, 2009.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section below for information on how to submit your comments on the ITP application and HCP. You may obtain a copy of the ITP application and HCP by writing to the South Florida Ecological Services Office, Attn: Permit number TE207151–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559. In addition, we will make the ITP application and HCP available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Trish Adams, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES**); telephone: (772) 562–3909, ext. 232.

SUPPLEMENTARY INFORMATION: If you wish to comment on the ITP application and HCP, you may submit comments by any one of the following methods. Please reference permit number TE207151–0 in such comments.

1. Mail or hand-deliver comments to our South Florida Ecological Services Office address (see **ADDRESSES**).

2. E-mail comments to *trish_adams@fws.gov.* If you do not

receive a confirmation that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Construction of a training facility for the Visually Impaired Persons of Charlotte County HCP will take place at latitude 27.0168 and longitude −82.0189 in Punta Gorda, Charlotte County, Florida. This lot is within scrub-jay occupied habitat.

The lot encompasses about 1.91 acres, and the footprint of the training facility, infrastructure, and landscaping preclude retention of scrub-jay habitat. In order to minimize take on site, the applicant proposes to mitigate for the loss of 1.91 acres of scrub-jay habitat by contribution of 4.3 acres of suitable scrub-jay habitat to nearby existing conservation lands.

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, will have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA)(40 CFR 1506.6), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). Low-effect HCPs are those involving (1) minor or negligible effects on federally listed or candidate species and their habitats and (2) minor or negligible effects on other environmental values or resources. Based on our review of public comments that we receive in response to this notice, we may revise this preliminary determination.

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets the requirements, we will issue the ITP for incidental take of the scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITP.

Authority: We provide this notice pursuant to Section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: February 13, 2009.

Paul Souza,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. E9–5591 Filed 3–13–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2008–N0349; 91200–1231–5BBC–K3]

Availability of Birds of Conservation Concern 2008

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We announce the availability of *Birds of Conservation Concern 2008*. This publication identifies species, subspecies, and populations of migratory and nonmigratory birds in need of additional conservation actions. We hope to stimulate coordinated and collaborative proactive conservation actions among Federal, State, tribal, and private partners.

DATES: Individuals wishing to comment on the process used in developing *Birds of Conservation Concern 2008*, especially to provide recommendations for improving future versions of the document, may direct their written comments to the Chief, Division of Migratory Bird Management (listed below under **ADDRESSES**). All comments received will be filed for use in developing the next version of the list. Comments will be accepted until the time that work begins on the next edition of this report (approximately 5 years).

ADDRESSES: Printed copies of *Birds of Conservation Concern 2008* may be obtained by writing to the Chief, Branch of Bird Conservation, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610, ATTN: BCC 2008. This document is also available for downloading on the Division of Migratory Bird Management's World Wide Web page at *http://migratorybirds.fws.gov*.

FOR FURTHER INFORMATION CONTACT: Marcia Maslonek, Chief, Branch of Bird Conservation, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610; phone: (703) 358–2021; fax: (703) 358–2272.

SUPPLEMENTARY INFORMATION: The 1988 amendment to the Fish and Wildlife Conservation Act (FWCA) of 1980 (Pub.L. 100–653, Title VIII) requires the Secretary of the Interior, through the U.S. Fish and Wildlife Service, to ''identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act [ESA] of 1973.'' *Birds of Conservation Concern 2008* fulfills that mandate and supersedes *Birds of Conservation Concern 2002*. The species that appear in *Birds of Conservation Concern 2008* are deemed to be the highest priority for conservation actions. We anticipate that the document will be consulted by Federal agencies and their partners prior to undertaking cooperative research, monitoring, and management actions that might directly or indirectly affect migratory birds. Our goal in publishing this document is to stimulate coordinated and collaborative proactive conservation actions among Federal, State, tribal, and private partners.

To serve as a broad early-warning system in the context of the FWCA, this document includes all of the species that we have some basis to consider to be of conservation concern. Our objective in publishing this list is to focus conservation attention on bird species of concern well in advance of a possible or plausible need to consider them for listing under the ESA. Inclusion on this list does not constitute a finding that listing under the ESA is warranted, or that substantial information exists to indicate that listing under the ESA may be warranted. Many of the species on this list will probably never have to be considered for ESA listing, even if no additional conservation actions are taken.

Authority: The Fish and Wildlife Conservation Act of 1980, as amended (16 U.S.C. 2901 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Act of 1956; as amended (16 U.S.C. 742a *et seq.*); and 16 U.S.C. 701.

Dated: February 27, 2009.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–5548 Filed 3–13–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2009–N0001; BAC 4311–K9; S3]

Umbagog (Formerly ''Lake Umbagog'') National Wildlife Refuge, Coos County, NH and Oxford County, ME

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision and availability of record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the decision and availability of the record of decision (ROD) for the final comprehensive conservation plan (CCP) and environmental impact statement (EIS) for the Umbagog (formerly ''Lake Umbagog'') National Wildlife Refuge (NWR). The refuge is located in Coos County, New Hampshire, and Oxford County, Maine. We completed a thorough analysis of the environmental, social, and economic considerations and presented it in our final CCP/EIS, which we released to the public through a **Federal Register** notice on December 3, 2008. The ROD documents our decision to adopt and implement the final CCP/EIS Alternative B, Management for Particular Habitats and Focal Species as the CCP for Umbagog NWR. Alternative B was identified as the Service-preferred alternative in the final CCP/EIS. The Regional Director, U.S. Fish and Wildlife Service, Northeast Region, signed the ROD on January 9, 2009.

ADDRESSES: You may view or obtain copies of the ROD and final CCP/EIS by any of the following methods:

Agency Web site: Download a copy of the documents at *http://www.fws.gov/northeast/planning/Lake%20Umbagog/ccphome.html.*

Electronic mail: northeastplanning@fws.gov. Include ''Umbagog NWR ROD'' in the subject line of the message.

Mail: Paul Casey, Refuge Manager, Umbagog NWR, P.O. Box 240, Route 16 North, Errol, NH 03579.

In-Person Viewing or Pickup: Phone to make an appointment at refuge headquarters during regular business hours; 603–482–3415 (phone).

Local Libraries: The final documents are available for review at the libraries listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Paul Casey, Refuge Manager, Umbagog NWR, P.O. Box 240, Route 16 North, Errol, New Hampshire 03579; (603) 482–3415 (phone); *paul_casey@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Umbagog NWR (formerly ''Lake Umbagog'' NWR). The CCP will guide us in managing and administering the refuge for the next 15 years. We started this process in a **Federal Register** notice (67 FR 46682; July 16, 2002). We released the draft CCP/EIS to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (72 FR 37041; July 6, 2007). We extended the public comment period through another **Federal Register** notice (72 FR 45044; August 10, 2007). The full public review period lasted 77 days. We announced the availability of the final CCP/EIS in the **Federal Register** (73 FR 73661; December 3, 2008). Public review of that document lasted 33 days.

Umbagog NWR is a 21,650-acre refuge, which lies in Coos County, New Hampshire, and Oxford County, Maine. It contains widely diverse upland and wetland habitat types surrounding the 8,500-acre Umbagog Lake. The refuge was established to provide long-term protection to unique wetlands, threatened and endangered species, and migratory birds of conservation concern, and to sustain regionally significant concentrations of wildlife. Since establishing the refuge in 1992, we have focused our management emphasis on conserving lands within the approved boundary; monitoring the occupancy and productivity of common loon, bald eagle, and osprey nesting sites and protecting them from human disturbance; conducting baseline biological inventories; and providing wildlife-dependent recreational opportunities.

In accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements, this notice announces our decision and the availability of the ROD for the final CCP/EIS for Umbagog NWR. We evaluated three alternatives and completed a thorough analysis of the environmental, social, and economic considerations in the final CCP/EIS. The ROD documents our selection of Alternative B, Management for Particular Habitats and Focal Species, which we modified in the final document in response to public comments we received on the draft document. The ROD details those modifications made in the final document. Alternative B, as we describe in the ROD and final CCP/EIS, now serves as the foundation for the approved CCP.

Background

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Basis for Selected Alternative

Both our draft and final CCP/EIS identified 18 major issues generated by the public, other state or federal agencies, and the planning team. To address those issues, we developed and evaluated three alternatives in detail: Alternative A, Current Management; Alternative B, Management for Particular Habitats and Focal Species (Service-preferred alternative); and, Alternative C, Management to Create Natural Landscape Composition, Patterns, and Processes. Alternative B was identified as the Service-preferred alternative in both the draft and final CCP/EIS. Although the alternatives differ in many ways, they also share some similarities. Both their common elements and their distinctions were most recently outlined in the final CCP/EIS Summary document available at *http://www.fws.gov/northeast/planning/Lake%20Umbagog/ccphome.htm.*

Our decision is to adopt Alternative B, as described in the ROD and final CCP/EIS. The ROD details the basis of our decision, which we made after considering the following: The impacts identified in Chapter 4 of the draft and final CCP/EIS; the results of public and other agency comments; how well the alternative addresses the relevant issues, concerns, and opportunities identified during the planning process; and other relevant factors, including fulfilling the purposes for which the refuge was established, contributing to the mission

and goals of the NWRS, and statutory and regulatory guidance. We have determined that Alternative B also includes the suite of activities that best achieves the stated purpose and need for action and the seven goals presented in the final CCP/EIS Chapter 1. Compared to the other two alternatives, Alternative B meets those needs and goals through the most balanced and integrated approach, considering both the biological and human environment. It will also provide the means to better respond to changing ecological and socioeconomic conditions within the surrounding environment using an adaptive management approach.

In summary, Alternative B was selected for implementation because it provides the greatest number of opportunities for the refuge to make a significant contribution to the conservation of fish, wildlife, and habitat needs in the region, as well as make a positive contribution to the local and regional communities.

Public Availability of Documents

In addition to the methods in **ADDRESSES**, you can view or obtain documents at the following locations:

Our Web site: *http://www.fws.gov/northeast/planning/Lake%20Umbagog/ccphome.html.*

At the following libraries:

Library	Address	Phone No.
Errol Public Library	Route 26, Errol, NH 03579	603–482–7720
Berlin Public Library	270 Main Street, Berlin, NH 03570	603–752–5210
White Mountains Community College	2020 Riverside Drive Berlin, NH 03570	603–752–1113
Gorham Public Library	35 Railroad Street, Gorham, NH 03581	603–466–2525
Bethel Public Library	5 Broad Street, Bethel, ME 04217	207–824–2520

Dated: January 9, 2009.

Marvin E. Moriarty,

Regional Director, U.S. Fish and Wildlife Service, Hadley, MA 01035.

[FR Doc. E9–5592 Filed 3–13–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[10120–1113–0000–C4; FWS–R1–ES–2009–N0028]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of 103 Species in Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year reviews for 103 species in Hawaii under the Endangered Species Act of 1973, as amended (Act). We request any new information on these species that may have a bearing on their classification as endangered or threatened. Based on the results of these 5-year reviews we will determine whether these species are properly classified under the Act.

DATES: To ensure consideration in our review, we are requesting submission of new information no later than May 15, 2009. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For the species under review, submit information or direct questions to: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Room 3–122, Box 50088, Honolulu, HI 96850. Information or questions can also be submitted by e-mail to: *pifwo-5yr-review@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Marilet Zablan, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**), 808–792–9400. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at (800) 877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Why Do We Conduct 5-Year Reviews?

Under the Endangered Species Act (Act) (16 U.S.C. 1531 et seq.), we maintain a List of Endangered and Threatened Wildlife and Plants (List) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. These actions must be supported by the best scientific and commercial data available. Delisting a species is considered only if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)). Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the 103 species listed in Table 1.

TABLE 1—SPECIES FOR WHICH WE ARE INITIATING A STATUS REVIEW TO DETERMINE IF THEY ARE APPROPRIATELY LISTED UNDER THE U.S. ENDANGERED SPECIES ACT

Common name	Scientific name	Status	Where listed	Final listing rule
Animals:				
Bat, Hawaiian hoary	*Lasiurus cinereus semotus*	E	U.S.A. (HI)	35 FR 16047; 10/13/1970.
Finch, Nihoa	*Telespyza ultima*	E	U.S.A. (HI)	32 FR 4001; 03/11/1967.
Goose, Hawaiian (= Nene)	*Branta (=Nesochen) sandvicensis*	E	U.S.A. (HI)	32 FR 4001; 03/11/1967.
Honeycreeper, crested	*Palmeria dolei*	E	U.S.A. (HI)	32 FR 4001; 03/11/1967.
Parrotbill, Maui	*Pseudonestor xanthophrys*	E	U.S.A. (HI)	32 FR 4001; 03/11/1967.
Petrel, Hawaiian dark-rumped	*Pterodroma phaeopygia sandwichensis*	E	U.S.A. (HI)	32 FR 4001; 03/11/1967.
Snail, Oahu tree	*Achatinella abbreviate*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella apexfulva*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella bellula*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.

TABLE 1—SPECIES FOR WHICH WE ARE INITIATING A STATUS REVIEW TO DETERMINE IF THEY ARE APPROPRIATELY LISTED UNDER THE U.S. ENDANGERED SPECIES ACT—Continued

Common name	Scientific name	Status	Where listed	Final listing rule
Snail, Oahu tree	*Achatinella buddii*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella bulimoides*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella byronii*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella caesia*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella casta*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella cestus*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella concavospira*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella curta*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella decipiens*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella decora*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella dimorpha*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella elegans*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella fulgens*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella fuscobasis*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella juddii*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella juncea*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella lehuiensis*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella leucorraphe*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella lila*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella livida*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella lorata*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella mustelina*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella papyracea*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella phaeozona*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella pulcherrima*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella pupukanioe*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella rosea*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella sowerbyana*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella spaldingi*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella stewartii*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella swiftii*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella taeniolata*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella thaanumi*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella turgida*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella valida*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella viridans*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella vittata*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Snail, Oahu tree	*Achatinella vulpina*	E	U.S.A. (HI)	46 FR 3178; 01/13/1981.
Plants:				
ʻAhinahina	*Argyroxiphium sandwicense* ssp. *macrocephalum.*	T	U.S.A. (HI)	57 FR 20772; 05/15/1992.
ʻAkoko	*Chamaesyce kuwaleana*	E	U.S.A. (HI)	56 FR 55770; 10/29/1991.
ʻAkoko	*Chamaesyce rockii*	E	U.S.A. (HI)	61 FR 53089; 10/10/1996.
ʻAwikiwiki	*Canavalia molokaiensis*	E	U.S.A. (HI)	57 FR 46325; 10/08/1992.
ʻOha wai	*Clermontia oblongifolia* ssp. *brevipes*	E	U.S.A. (HI)	57 FR 46325; 10/08/1992.
ʻOha wai	*Clermontia oblongifolia* ssp. *mauiensis*	E	U.S.A. (HI)	57 FR 20772; 05/15/1992.
ʻOha wai	*Clermontia samuelii*	E	U.S.A. (HI)	64 FR 48307; 09/03/1999.
ʻOheʻohe	*Tetraplasandra gymnocarpa*	E	U.S.A. (HI)	59 FR 14482; 03/28/1994.
Alani	*Melicope balloui*	E	U.S.A. (HI)	59 FR 62346; 12/05/1994.
Alani	*Melicope ovalis*	E	U.S.A. (HI)	59 FR 62346; 12/05/1994.
Alani	*Melicope reflexa*	E	U.S.A. (HI)	57 FR 46325; 10/08/1992.
Alani	*Melicope saint-johnii*	E	U.S.A. (HI)	61 FR 53089; 10/10/1996.
Aupaka	*Isodendrion longifolium*	T	U.S.A. (HI)	61 FR 53089; 10/10/1996.
Geranium, Hawaiian red-flowered	*Geranium arboreum*	E	U.S.A. (HI)	57 FR 20589; 05/13/1992.
Haʻiwale	*Cyrtandra crenata*	E	U.S.A. (HI)	59 FR 14482; 03/28/1994.
Haʻiwale	*Cyrtandra munroi*	E	U.S.A. (HI)	57 FR 20772; 05/15/1992.
Haha	*Cyanea copelandii* ssp. *haleakalaensis*	E	U.S.A. (HI)	64 FR 48307; 09/03/1999.
Haha	*Cyanea glabra*	E	U.S.A. (HI)	64 FR 48307; 09/03/1999.
Haha	*Cyanea grimesiana* ssp. *grimesiana*	E	U.S.A. (HI)	61 FR 53108; 10/10/1996.
Haha	*Cyanea humboldtiana*	E	U.S.A. (HI)	61 FR 53089; 10/10/1996.
Haha	*Cyanea lobata*	E	U.S.A. (HI)	57 FR 20772; 05/15/1992.
Haha	*Cyanea mannii*	E	U.S.A. (HI)	57 FR 46325; 10/08/1992.
Honohono	*Haplostachys haplostachya*	E	U.S.A. (HI)	44 FR 62468; 10/30/1979.
Ihiʻihi	*Marsilea villosa*	E	U.S.A. (HI)	57 FR 27863; 06/22/1992.
Kauila	*Colubrina oppositifolia*	E	U.S.A. (HI)	59 FR 10305; 03/04/1994.
Koʻokoʻolau	*Bidens micrantha* ssp. *kalealaha*	E	U.S.A. (HI)	57 FR 20772; 05/15/1992.
Koʻokoʻolau	*Bidens wiebkei*	E	U.S.A. (HI)	57 FR 46325; 10/08/1992.
Koʻoloaʻula	*Abutilon menziesii*	E	U.S.A. (HI)	51 FR 34412; 09/26/1986.
Kokiʻo keʻokeʻo	*Hibiscus arnottianus* ssp. *immaculatus*	E	U.S.A. (HI)	57 FR 46325; 10/08/1992.
Loʻulu	*Pritchardia munroi*	E	U.S.A. (HI)	57 FR 46325; 10/08/1992.
Love grass, Fosberg's	*Eragrostis fosbergii*	E	U.S.A. (HI)	61 FR 53089; 10/10/1996.

TABLE 1—SPECIES FOR WHICH WE ARE INITIATING A STATUS REVIEW TO DETERMINE IF THEY ARE APPROPRIATELY LISTED UNDER THE U.S. ENDANGERED SPECIES ACT—Continued

Common name	Scientific name	Status	Where listed	Final listing rule
Nehe	*Lipochaeta lobata* var. *leptophylla*	E	U.S.A. (HI)	56 FR 55770; 10/29/1991.
Nehe	*Lipochaeta tenuifolia*	E	U.S.A. (HI)	56 FR 55770; 10/29/1991.
No common name	*Abutilon sandwicense*	E	U.S.A. (HI)	56 FR 55770; 10/29/1991.
No common name	*Diellia falcata*	E	U.S.A. (HI)	56 FR 55770; 10/29/1991.
No common name	*Diellia unisora*	E	U.S.A. (HI)	59 FR 32932; 06/27/1994.
No common name	*Gouania hillebrandii*	E	U.S.A. (HI)	49 FR 44753; 11/09/1984.
No common name	*Lobelia niihauensis*	E	U.S.A. (HI)	56 FR 55770; 10/29/1991.
No common name	*Lobelia oahuensis*	E	U.S.A. (HI)	59 FR 14482; 03/28/1994.
No common name	*Lysimachia lydgatei*	E	U.S.A. (HI)	57 FR 20772; 05/15/1992.
No common name	*Phyllostegia mannii*	E	U.S.A. (HI)	57 FR 46325; 10/08/1992.
No common name	*Sanicula purpurea*	E	U.S.A. (HI)	61 FR 53108; 10/10/1996.
No common name	*Schiedea haleakalensis*	E	U.S.A. (HI)	57 FR 20772; 05/15/1992.
No common name	*Schiedea hookeri*	E	U.S.A. (HI)	61 FR 53108; 10/10/1996.
No common name	*Schiedea lydgatei*	E	U.S.A. (HI)	57 FR 46325; 10/08/1992.
No common name	*Schiedea sarmentosa*	E	U.S.A. (HI)	61 FR 53130; 10/10/1996.
No common name	*Tetramolopium remyi*	E	U.S.A. (HI)	56 FR 47686; 09/20/1991.
No common name	*Tetramolopium rockii*	T	U.S.A. (HI)	57 FR 46325; 10/08/1992.
No common name	*Vigna o-wahuensis*	E	U.S.A. (HI)	59 FR 56333; 11/10/1994.
No common name	*Viola oahuensis*	E	U.S.A. (HI)	61 FR 53089; 10/10/1996.
Nohoanu	*Geranium multiflorum*	E	U.S.A. (HI)	57 FR 20772; 05/15/1992.
Opuhe	*Urera kaalae*	E	U.S.A. (HI)	56 FR 55770; 10/29/1991.
Panicgrass, Carter's	*Panicum fauriei* var. *carteri*	E	U.S.A. (HI)	48 FR 46328; 10/12/1983.
Sandalwood, Lanai (='iliahi)	*Santalum freycinetianum* var. *lanaiense*	E	U.S.A. (HI)	51 FR 3182; 01/24/1986.
Wahane	*Pritchardia aylmer-robinsonii*	E	U.S.A. (HI)	61 FR 41020; 08/07/1996.
Wawae'iole	*Huperzia mannii*	E	U.S.A. (HI)	57 FR 20772; 05/15/1992.

What Information Do We Consider in the Review?

A 5-year review considers all new information available at the time of the review.

In conducting these reviews, we consider the best scientific and commercial data that has become available since the listing determination or most recent status review, such as:

- Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;
- Habitat conditions including, but not limited to, amount, distribution, and suitability;
- Conservation measures that have been implemented that benefit the species;
- Threat status and trends (see five factors under heading ''How Do We Determine Whether a Species Is Endangered or Threatened?''); and
- Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A.The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Our assessment of these factors is required, under section 4(b)(1) of the Act, to be based solely on the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find information concerning the 103 species listed in Table 1 indicating that a change in classification may be warranted, we may propose a new rule to: (a) Reclassify the species from threatened to endangered; (b) reclassify the species from endangered to threatened; or (c) remove the species from the List. If we find that a change in classification is not warranted, the species will remain on the List under its current status.

Public Solicitation of New Information

To ensure that these 5-year reviews are complete and based on the best available scientific and commercial information, we solicit new information from the public, governmental agencies, Tribes, the scientific community, environmental entities, industry, and any other interested parties concerning the status of the species.

If you wish to provide information for any species included in these 5-year reviews, submit your comments and materials to the Field Supervisor of the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

You may submit information on the species in this notice by U.S. mail, e-mail, or hand-delivery, to the address in the **ADDRESSES** section above. You may also view information we receive in response to this notice, as well as other public documentations in our files, at the Pacific Islands Fish and Wildlife Office (See **ADDRESSES** section above) during normal business hours.

Completed and Active Reviews

A list of all species under active 5-year review, for which the Pacific Region of the Service is the lead region,

including those we are initiating under this Notice, are available at: *http://www.fws.gov/pacific/ecoservices/endangered/recovery/5yearactive.html.* Completed 5-year reviews, for which the Pacific Region of the Service is the lead region, are available at: *http://www.fws.gov/pacific/ecoservices/endangered/recovery/5yearcomplete.html.*

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 24, 2009.

Theresa E. Rabot,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E9–5523 Filed 3–13–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–F–2009–N0004; 97600–9424–0000–7e]

TakeMeFishing.org Web Site Advertising Guidelines

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of adoption of final guidelines.

SUMMARY: The Recreational Boating & Fishing Foundation (RBFF) will sell advertising on its *http://TakeMeFishing.org* Web site to help generate revenue from non-Federal funds to expand its outreach program. RBFF has adopted final advertising guidelines to determine who can advertise and how the advertising sales will be operated.

FOR FURTHER INFORMATION CONTACT: RBFF Project Officer *Mary_Burke@fws.gov* (e-mail) or (703) 358–2435.

SUPPLEMENTARY INFORMATION: Recreational boating and fishing participation rates have declined over the past 5 years. Recreational boating and fishing related activities contribute to conserving aquatic resources through excise taxes collected from sales of fishing equipment and motorboat fuel that fund the Federal Aid in Sport Fish Restoration Program. This program, coupled with fishing license sales, makes up more than 80 percent of the funding for conservation and protection of aquatic resources in the United States. To address the declining participation of recreational boating and fishing, Congress passed the Sportfishing and Boating Safety Act of 1998, which called for Federal appropriations to be used for the National Outreach and Communication Program. The Sport Fishing and Boating Partnership Council developed the ''Strategic Plan for the National Outreach and Communication Program,'' and the Secretary of the Interior approved the Strategic Plan in February 1999.

RBFF is a nonprofit organization created to carry out the National Outreach and Communication Program, whose mission is to increase participation in recreational angling and boating and, through those experiences, increase the public's awareness of and appreciation for the need for conserving and protecting America's aquatic natural resources. RBFF is funded through the Sport Fish Restoration and Boating Trust Fund. This fund is composed of Federal taxes collected on the sale of motorboat fuel and of excise taxes paid by manufacturers of fishing tackle. The U.S. Fish and Wildlife Service (Service) administers RBFF's funding via a cooperative agreement between the Service and RBFF, in the form of a Memorandum of Understanding signed by the Service, the Sport Fishing and Boating Partnership Council, the Association of Fish and Wildlife Agencies, and RBFF.

The Strategic Plan, which RBFF was created to implement, specifically calls for the implementing organization not to be operated as a ''grants-in-aid'' organization. The Plan also calls for RBFF to ''create an industry 'hard dollar' fund mechanism to promote, extend and expand the outreach program.'' In response, RBFF will sell advertising on its *http://TakeMeFishing.org* Web site to generate revenue from non-Federal funds to expand its outreach program.

On October 20, 2008, the Service published in the **Federal Register** (73 FR 62310) a notice of availability of RBFF's draft advertising guidelines and requested public comments on those draft guidelines. RBFF designed draft guidelines to determine who can advertise and how the advertising sales will operate. The Service received three comments during the comment period.

RBFF is adopting, without change, the advertising guidelines that the Service published in the **Federal Register** on October 20, 2008 (73 FR 62310). Please refer to that notice for the guidelines, or contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Paul R. Schmidt,

Acting Deputy Director.

[FR Doc. E9–5589 Filed 3–13–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–21901–01, F–21901–02, F–21901–04, F–21901–05, F–21901–24, F–21901–25, F–21904–41, F–21904–49, F–21904–64, F–21904–69, F–21904–71, F–21904–85, F–21904–86, F–21905–19, F–21905–20, F–21905–21, F–21905–25, F–21905–26, F–21905–27, F–21905–33, F–21905–36, F–21905–63, F–21905–64, F–21905–75, F–21905–84, F–21905–85; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Chicken, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 1 N., R. 26 E.,
Secs. 1 to 24, inclusive;
Containing approximately 15,326 acres.

T. 2 N., R. 26 E.,
Secs. 4 and 9;
Secs. 16, 17, and 18.
Containing approximately 2,402 acres.

T. 1 N., R. 27 E.,
Secs. 1 to 24, inclusive;
Containing approximately 15,328 acres.

T. 2 N., R. 27 E.,
Secs. 1 to 18, inclusive;
Secs. 21 to 28, inclusive;
Secs. 33 to 36, inclusive.
Containing approximately 19,134 acres.

T. 1 N., R. 28 E.,
Secs. 1 to 26, inclusive;
Secs. 35 and 36.
Containing approximately 17,888 acres.

T. 2 N., R. 28 E.,
Secs. 7 to 10, inclusive;
Secs. 13 to 36, inclusive.
Containing approximately 17,832 acres.

T. 1 N., R. 29 E.,
Secs. 1 to 36, inclusive;
Containing approximately 22,964 acres.

T. 2 N., R. 29 E.,
Secs. 19 and 20;
Secs. 27 to 36, inclusive.

Containing approximately 7,634 acres.

T. 1 S., R. 29 E.,
Secs. 1 to 18, inclusive;

Containing approximately 11,383 acres.

T. 4 S., R. 29 E.,
Secs. 13 to 17, inclusive;
Secs. 23 and 24.

Containing approximately 4,480 acres.

T. 5 S., R. 29 E.,
Secs. 1 to 28, inclusive;
Secs. 33 to 36, inclusive.

Containing approximately 19,944 acres.

T. 4 S., R. 30 E.,
Secs. 3 to 10, inclusive;
Secs. 14 to 23, inclusive;
Secs. 26 and 27.

Containing approximately 12,768 acres.

T. 5 S., R. 30 E.,
Secs. 7, 18 and 19;
Secs. 25 to 36, inclusive.

Containing approximately 9,395 acres.

T. 4 S., R. 31 E.,
Secs. 1 to 5, inclusive;
Secs. 9 to 16, inclusive;
Secs. 21 to 28, inclusive;
Secs. 33 to 36, inclusive.

Containing approximately 16,000 acres.

T. 5 S., R. 31 E.,
Secs. 1, 2, and 3;
Secs. 10 to 17, inclusive;
Secs. 20 to 36, inclusive.

Containing approximately 17,804 acres.

T. 6 S., R. 31 E.,
Secs. 1 to 36, inclusive.

Containing approximately 22,860 acres.

T. 4 S., R. 32 E.,
Secs. 19, 20, and 21;
Secs. 28 to 33, inclusive.

Containing approximately 5,751 acres.

T. 5 S., R. 32 E.,
Secs. 1 to 35, inclusive.

Containing approximately 21,688 acres.

T. 6 S., R. 32 E.,
Secs. 3 to 9, inclusive
Secs. 17 to 20, inclusive;
Secs. 29 to 33, inclusive;

Containing approximately 9,550 acres.

T. 7 S., R. 32 E.,
Sec. 6;
Secs. 31, 32, and 33.

Containing approximately 2,524 acres.

T. 4 S., R. 33 E.,
Secs. 19 to 36, inclusive.

Containing approximately 11,870 acres.

T. 5 S., R. 33 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 20, inclusive.
Sec. 30.

Containing approximately 6,627 acres.

Aggregating approximately 291,153 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 15, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jason Robinson,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9–5576 Filed 3–13–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–40202; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Wiseman, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 29 N., R. 13 W.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive.

Containing approximately 5,760 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 15, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9–5617 Filed 3–13–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–21901–29, F–21901–30, F–21901–32, F–21905–57, F–21904–65, F–21904–90, F–21905–88, F–40205; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Healy Lake, Alaska, and are located in:

Copper River Meridian, Alaska

T. 28 N., R. 8 E.,
Secs. 31 to 36, inclusive.

Containing approximately 3,750 acres.

T. 27 N., R. 10 E.,
Secs. 1, 12, and 13.

Containing approximately 1,920 acres.

T. 28 N., R. 10 E.,
Sec. 36.

Containing approximately 631 acres.

Fairbanks Meridian, Alaska

T. 6 S., R. 18 E.,
Secs. 4 to 9, inclusive;
Secs. 16, 17, and 18.

Containing approximately 5,661 acres.

T. 8 S., R. 19 E.,
Secs. 1 to 36, inclusive.
Containing approximately 23,004 acres.
T. 8 S., R. 20 E.,
Secs. 1 to 36, inclusive.
Containing approximately 23,004 acres.
T. 8 S., R. 22 E.,
Secs. 24 to 27, inclusive;
Secs. 34, 35, and 36.
Containing approximately 4,480 acres.
Aggregating approximately 62,450 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 15, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9–5445 Filed 3–13–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID100000–L10200000–PH0000]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC) and RAC Sub-Committee, will meet as indicated below.

DATES: The RAC has formed a Sub-Committee to come up with ideas and suggestions on management of the Broken Wing Ranch, which will be one alternative in the proposed Thompson Creek Mine expansion and land exchange. Their first meeting will be in Challis, Idaho on June 2–3, 2009. The meeting will be held at the Challis Field Office, 1151 Blue Mountain Road, Challis, Idaho with a field trip to the Broken Wing Ranch. The meeting will start at 10 a.m. on June 2 and end around 3 p.m. on June 3.

The RAC will next meet in Challis, Idaho on June 23–24, 2009 for a two day meeting. The first day will start at 10 a.m. at the Challis Field Office, 1151 Blue Mountain Road, Challis, Idaho with a short meeting followed by a tour of the Thompson Creek Mine and Broken Wing Ranch. The second day will be at the same location starting at 8:30 a.m. with a tour of L&W Stone. Other topics will be scheduled as appropriate.

The RAC will also have a meeting on September 22–23, 2009 in Pocatello, Idaho. The first day will start at 10 a.m. at the Pocatello Field Office, 4350 Cliffs Drive, Pocatello, Idaho with a short meeting followed by tours for the remainder of the day and on September 23 to the Soda Hills area, phosphate mine sites and Blackfoot River area. Topics of discussion include recreation, fisheries, mining and fuels. Other topics will be scheduled as appropriate. All meetings are open to the public.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Joanna Wilson, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524–7550. E-mail: *Joanna_Wilson@blm.gov*.

Dated: March 4, 2009.

Joanna Wilson,

RAC Coordinator, Public Affairs Specialist.

[FR Doc. E9–5577 Filed 3–13–09; 8:45 am]

BILLING CODE 4310–GG–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 3 p.m., Thursday, March 19, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from Citadel Federal Credit Union for a Community Charter Expansion.

2. Proposed Rule—Parts 741, 748 and 749 of NCUA's Rules and Regulations, Credit Union Reporting.

3. Proposed Rule—Part 707 of NCUA's Rules and Regulations, Truth in Savings Act Disclosures.

4. Final Rule—Part 742 of NCUA's Rules and Regulations, Regulatory Flexibility Program.

5. Insurance Fund Report.

RECESS: 4 p.m.

TIME AND DATE: 4:15 p.m., Thursday, March 19, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Insurance Appeal. Closed pursuant to Exemption (6).

2. Consideration of Supervisory Activities (2). Closed pursuant to Exemptions (8), (9)(A)(ii) and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304

Mary Rupp,

Board Secretary.

[FR Doc. E9–5739 Filed 3–12–09; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08940; NRC–2009–0113]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Source Materials License No. STB–1504, for Termination of the License and Unrestricted Release of the Alpha Q, Incorporated Facility in Colchester, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Todd Jackson, CHP, Commercial and R & D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, PA, 19406; telephone (610) 337–5308; fax number (610) 337–5269; or by e-mail: *Todd.Jackson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. STB–1504. This license is held by Alpha Q, Inc. (the Licensee) for its facility located at Colchester Industrial Park, 87 Upton Road, Colchester, Connecticut (the Facility). Issuance of the amendment would authorize release of the facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated November 20, 2008. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, *Code of Federal Regulations* (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's November 20, 2008, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. STB–1504 was issued on April 21, 1987, pursuant to 10 CFR Part 40, and has been amended periodically since that time. This license authorized the Licensee to possess, store, and use thorium in precision machining of magnesium-thorium castings, and chemical treatment of filings.

The Facility is comprised of a building approximately 35,000 square feet in size, consisting of office space and machine shops situated on approximately 10 acres of land. The Facility is located in a commercial area within the town of Colchester, New London County, Connecticut. Within the Facility, use of licensed materials was confined to machining areas of approximately 28,500 square feet.

In August 2001, the Licensee ceased licensed activities and subsequently initiated a survey of the Facility. A final survey, designed using the guidance contained in the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM), was conducted on August 26 and 29, 2008. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved operating radiation safety procedures, were required after licensed activities were stopped. The Licensee was not required to submit a decommissioning plan to the NRC because cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information in a letter to the NRC, dated November 20, 2008, to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for license termination.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved machining of castings made of thorium-magnesium metal, as well as activities related to handling of the turnings (waste fragments) from machining. Thorium is a radioactive material with half-life greater than 120 days. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by this radionuclide.

The Licensee conducted a final status survey on August 26 and 29, 2008. The NRC inspected the Facility on August 26, 2008, and observed portions of the final status survey while in progress (ML090200015). The final status survey covered the 28,500 square feet of machining areas in the building where licensed materials may have been used. In addition, the licensee surveyed outside waste storage areas of the facility where containers that may have held licensed materials were temporarily stored. Waste materials generated from licensed activities had previously been disposed of by the Licensee. No airborne or liquid effluents containing licensed materials were expected to have occurred from the Facility and review of records did not identify any such releases. The final status survey report was submitted to the NRC along with the Licensee's amendment request dated November 20, 2008 (ML083330496).

The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using a modified version of the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee modified the radionuclide-specific derived concentration guideline levels (DCGLs), which comply with the dose criterion in 10 CFR 20.1402. The sole modification to these screening criteria for thorium-232 plus progeny in equilibrium consisted of a change to the resuspension factor (RFo*) in the DandD computer code to a value of 1.00E–6, which was approved in advance by NRC as an acceptable change to the default screening approach (ML081710745). The thorium-232 DCGL defines the maximum amount of residual radioactivity on building surfaces, equipment, and materials that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were less than the DCGL and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492,

ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment. The NRC thus finds that the Licensee's final status survey results are acceptable to support free release of the Facility for unrestricted use and for termination of the NRC license.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 40.42(d), requiring that decommissioning of source material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Connecticut Department of Environmental Protection for review on January 22, 2009. On February 17, 2009, the Connecticut Department of Environmental Protection responded. The Connecticut Department of Environmental Protection agreed with the conclusions of the EA and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Letter from Alpha Q to NRC dated April 21, 2008, submitting a proposed final site status survey plan (ML081350674);
2. Letter from NRC to Alpha Q dated June 19, 2008, approving a modification to the default DCGLs and requesting additional information regarding the proposed final survey plan (ML081710745);
3. Letter from Alpha Q to NRC dated June 30, 2008, providing additional information regarding the proposed final status survey plan (ML082000589);
4. Letter from NRC to Alpha Q approving final survey plan, dated July 11, 2008 (ML081960062);
5. Letter from Alpha Q to NRC submitting final survey results and requesting license termination, dated November 20, 2008 (ML083330496);
6. NRC Inspection Record dated January 9, 2009 (ML090200015);
7. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
8. Title 10 *Code of Federal Regulations,* Part 20, Subpart E, ''Radiological Criteria for License Termination;''
9. Title 10, *Code of Federal Regulations,* Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;'' and
10. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities.''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia, PA this 6th day of March 2009.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E9–5601 Filed 3–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0110]

Interim Staff Guidance on Disposition of Review of Evaluation To Address Adverse Flow Effects in Equipment Other Than Reactor Internals

AGENCY: Nuclear Regulatory Commission.

ACTION: Solicitation of public comment.

SUMMARY: The NRC is soliciting public comment on its Proposed Interim Staff Guidance (ISG) DC/COL–ISG–010 (Agencywide Documents Access and Management System (ADAMS)

Accession No. ML090510728). The purpose of this ISG is to modify and provide additional clarity in the guidance for the review of analyses of adverse flow effects in equipment other than reactor internals performed by Combined License (COL) and Design Certification (DC) applicants. This ISG would revise the staff guidance previously issued in March 2007 in the Standard Review Plan (SRP) NUREG–0080, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' Section 3.9.2, ''Dynamic Testing and Analysis of Systems, Structures, and Components,'' Section 3.9.5, ''Reactor Pressure Vessel Internals,'' and Regulatory Guide 1.20, ''Comprehensive Vibration Assessment Program for Reactor Internals During Pre-operational and Initial Startup Testing.'' The NRC staff issues DC/COL–ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for DCs and COLs by the Office of New Reactors. The NRC staff will also incorporate the approved DC/COL–ISG–010 into the next revision of the SRP and related guidance documents.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted to: Chief, Rulemaking, Directives, and Editing Branch, Office of Administration, Mail Stop TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, and should cite the publication date and page number of the **Federal Register** notice.

The NRC ADAMS provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *PDR.Resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Dixon-Herrity, Chief, Engineering Mechanics Branch 2, Division of Engineering, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–2967 or e-mail at *jennifer.dixon-herrity@nrc.gov*.

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*). The NRC staff is issuing this notice to solicit public comments on proposed DC/COL–ISG–010. After the NRC staff considers any public comments, it will make a determination regarding proposed DC/COL–ISG–010.

Dated at Rockville, Maryland, this 9th day of March 2009.

For the Nuclear Regulatory Commission.

William F. Burton,

Branch Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9–5604 Filed 3–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on April 1, 2009, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 1, 2009–8:30 a.m.–12:30 p.m.

The Subcommittee will discuss the license renewal application for the Susquehanna Steam Electric Station, Units 1 and 2 and the associated Safety Evaluation Report (SER) with Open Items prepared by the staff. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, PPL Susquehanna, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Peter Wen (telephone (301) 415–2832 five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 10, 2009.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–5600 Filed 3–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Planning and Procedures

Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 1, 2009, Room T2–B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, April 1, 2009, 12 p.m.–1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Sam Duraiswamy (Telephone: 301–415–7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: March 10, 2009.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–5613 Filed 3–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the Subcommittee on Plant License Renewal

Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on April 1, 2009, Room T–2B3, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 1, 2009—1:30 p.m. until 5 p.m.

The Subcommittee will discuss the Three Mile Island License Renewal Application and the associated Safety Evaluation Report (SER) with Open Items prepared by the staff. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Exelon Generation Company, LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Christopher Brown (telephone 301–415–7111) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 10, 2009.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–5622 Filed 3–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 2–4, 2009, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 6, 2008, (73 FR 58268–58269).

Thursday, April 2, 2009, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: License Renewal Application and Final Safety Evaluation Report (SER) for the Vogtle Nuclear Plant (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Southern Nuclear Operating Company (SNC) regarding the Vogtle Nuclear Plant License Renewal Application, the associated NRC staff's final SER, and related matters.

10:15 a.m.–12 p.m.: Digital Instrumentation and Control (I&C) Interim Staff Guidances (ISGs) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Digital I&C ISGs on: Highly Integrated Control Room—Human Factors, Licensing Process Issues, and related matters.

1 p.m.–2:30 p.m.: License Renewal Application and Final Safety Evaluation Report for the National Institute of Standards and Technology (NIST) Reactor (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and NIST regarding the License Renewal Application for the NIST Reactor, the associated NRC staff's final SER, and related matters.

2:45 p.m.–4:15 p.m.: Draft Final Regulatory Guide 1.211—''Qualification of Safety-Related Cables and Field Splices for Nuclear Power Plants'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Utility Group on Equipment Qualification (NUGEQ) regarding Draft Final Regulatory Guide 1.211 and related matters.

4:30 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting, as well as a proposed report on the Draft Final Revision 2 to Regulatory Guide 1.200, ''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities.''

Friday, April 3, 2009, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Risk Metrics for New Light-Water Reactor Risk-Informed Applications (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding risk metrics for new light-water reactor risk-informed applications and related matters.

10:45 a.m.–11 a.m.: Subcommittee Reports (Open)—The Committee will hear reports by and hold discussions with the Chairman of the Plant License Renewal Subcommittee regarding interim reviews of the Three Mile Island Unit 1 and the Susquehanna Steam Electric Station License Renewal Applications, and the associated NRC staff's Safety Evaluation Reports with Open Items. The Committee will also hear a report by and hold discussions with the Chairman of the Reliability and PRA Subcommittee regarding revisions to NUREG–1855, Appendix A, ''Example Implementation of the Process for the Treatment of PRA Uncertainty in a Risk-Informed Regulatory Application.''

11 a.m.–11:45 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future ACRS meetings and other matters related to the conduct of the ACRS.

[*Note:* A portion of this session may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

11:45 a.m.–12 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, April 4, 2009, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

1 p.m.–1:15 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268–58269). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it may be necessary to close a portion of this meeting noted above to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(2) and (6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Girija Shukla, Cognizant ACRS staff (301–415–6855), between 7:15 a.m. and 5 p.m. (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m.—and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: March 10, 2009.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E9–5610 Filed 3–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–315; License No. DPR–58; NRC–2009–0111]

Indiana Michigan Power Company; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated December 16, 2008, Mr. David Lochbaum (petitioner) has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the licensee for the Donald C. Cook Nuclear Power Plant, Unit 1. The petitioner requests that the NRC issue a demand for information requiring the licensee to docket information regarding the following four issues at least 30 days before restarting the reactor from the current outage:

(1) The vibration levels experienced in the control room, turbine building, and other structures during the September 20, 2008, event;

(2) The vibration levels assumed in these locations during the safe-shutdown earthquake (SSE);

(3) In locations where the vibration levels during the September 20, 2008, event exceeded the vibration levels assumed for an SSE, the extent to which piping and pipe supports were replaced or repaired because of potential stress damage and the bases for not replacing other structures, systems, and components exposed to greater than SSE loading; and

(4) In locations where the vibration levels during the September 20, 2008, event did not exceed the vibration levels assumed for an SSE, the extent of the measures taken to protect against spurious equipment operation and the bases for concluding that the as-left configuration will not pose a public health hazard in event of an SSE.

As the basis for this request, the petitioner states that the event caused significant vibration levels that caused spurious operation of standby equipment and may have contributed to a breach that seriously impaired the fire protection system. The petitioner further states that the information being sought in the petition is needed to apply the proper lessons from the event to the future operation of the Donald C. Cook Nuclear Plant, Unit 1. The petitioner states that without this information, the NRC cannot be assured of, and the public is therefore not adequately protected from, significant adverse safety implications of an SSE causing spurious actuation of equipment.

The NRC is treating the request pursuant to Title 10, Section 2.206, ''Requests for Action under This Subpart,'' of the *Code of Federal Regulations* (10 CFR 2.206). The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, the NRC will take appropriate action on this petition within a reasonable time. A copy of the petition is available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville,

MD. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov*.

Dated at Rockville, Maryland, this 6th day of March 2009.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E9–5614 Filed 3–13–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act; Correction

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; correction.

SUMMARY: The United States Trade Representative (USTR) published a document in the **Federal Register** of August 4, 2006, concerning a determination under the African Growth and Opportunity Act (AGOA) in respect of Burkina Faso. The document did not expressly include a modification to list Burkina Faso in note 2(d) to Subchapter XIX of chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS).

FOR FURTHER INFORMATION CONTACT: Elizabeth Baltzan, Office of the General Counsel, Office of the United States Trade Representative, (202) 395–3582.

Correction

In the **Federal Register** Notice of August 4, 2006, the USTR determined that Burkina Faso had met certain customs requirements under the AGOA. President Bush had by Proclamation 7853 previously designated Burkina Faso as a lesser developed beneficiary country for purposes of what was then Section 112(b)(3)(B) of the AGOA. U.S. Note 2(d) to Subchapter XIX of chapter 98 of the HTSUS provides that countries qualifying for designation as a lesser developed beneficiary country shall be enumerated therein. The **Federal Register** notice reflecting the USTR's determination in respect of Burkina Faso did not expressly modify that Note to include Burkina Faso. Accordingly, Note 2(d) to subchapter XIX of chapter 98 of the HTSUS is modified by inserting ''Burkina Faso'' in alphabetical sequence in the list of countries.

Peter F. Allgeier,

Acting United States Trade Representative.

[FR Doc. E9–5595 Filed 3–13–09; 8:45 am]

BILLING CODE 3190–W9–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the Review of Country Practice Petitions for the 2008 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) accepted petitions in the context of earlier GSP Annual Reviews, which are continuing to be evaluated in the 2008 GSP Annual Review, to modify the GSP status of certain GSP beneficiary developing countries because of country practices. This notice sets forth the schedule for comment and public hearings on these petitions, for requesting participation in the hearings, and for submitting pre-hearing and post-hearing briefs and comments. This notice also announces the continued evaluation for acceptance of certain country practice petitions submitted in the 2008 Annual Review. The list of country practice petitions currently under review as well as those petitions submitted in the 2008 GSP Annual Review, is available at: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/GSP_2008_Annual_Review/Section_Index.html*.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 1724 F Street, NW., Room F–214, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the e-mail address is *Tameka_Cooper@ustr.eop.gov*.

DATES: The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a **Federal Register** notice. The current schedule for accepted country practice petitions follows.

April 2, 2009: Pre-hearing briefs and comments, requests to appear at the GSP Subcommittee Public Hearing, and hearing statements must be submitted by 5 p.m. EDT.

April 24, 2009: GSP Subcommittee Public Hearing on all country practice petitions accepted for the 2008 GSP Annual Review in Rooms 1 and 2, 1724 F Street, NW., Washington, DC 20508 beginning at 9 a.m. EDT.

May 8, 2009: Post-hearing briefs and comments must be submitted by 5 p.m. EDT.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of eligible articles when imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the 1974 Act), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Pursuant to 15 CFR 2007.0(b), the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has recommended the acceptance and continuation of the review of, and the TPSC has accepted and continued the review of, several country practice petitions: Petitions regarding worker rights in Bangladesh, Niger, the Republic of the Philippines, and Uzbekistan; and petitions regarding protection of intellectual property in Lebanon, Russia, and Uzbekistan. For additional information, see the ''List of 2008 Annual Review Country Practice Petitions under Further Review'' posted on the USTR Web site and available at: *http://www.regulations.gov/*, docket number USTR–2009–0009. Acceptance of a petition for review does not indicate any opinion with respect to the disposition on the merits of the petition. Acceptance indicates only that the petition has been found eligible for review by the TPSC and that such review will take place.

A **Federal Register** notice dated January 21, 2009, 74 FR 3657, indicated that the decision whether to accept the country practice petitions with respect to worker rights in Iraq and Sri Lanka that were submitted for inclusion in the 2008 Annual Review, and a country practice petition submitted regarding the Republic of the Philippines, which has since been withdrawn, was expected to be announced no later than March 15, 2009. The decision whether to accept the country practice petitions for Iraq and Sri Lanka in the GSP 2008 Annual Review has been further deferred. Once a decision is made, it

will be published in a future **Federal Register** notice.

Notice of Public Hearing

The GSP Subcommittee of the TPSC will hold a hearing on April 24, 2009, for country practice petitions accepted for the 2008 GSP Annual Review, beginning at 9 a.m. at the Office of the U.S. Trade Representative, Rooms 1 and 2, 1724 F Street, NW., Washington, DC 20508. The hearing will be open to the public, and a transcript of the hearing will be available for public inspection or for purchase from the reporting company. No electronic media coverage will be allowed.

Submission of Requests To Testify at the Public Hearing and Hearing Statements

All interested parties wishing to testify at the hearing must submit, by 5 p.m. EDT, April 2, 2009, a (1) ''Notice of Intent to Testify,'' that includes the witness' or witnesses' name, address, telephone number, fax number, e-mail address, pertinent Case Number and country name; and (2) ''Hearing Statement'' to *http://www.regulations.gov*, docket number USTR–2009–0009 (following the procedures indicated in ''Requirements for Submissions''). Oral testimony before the GSP Subcommittee will be limited to one, ten-minute presentation in English. If those testifying intend to submit a longer ''Hearing Statement'' for the record, it must accompany the ''Notice of Intent to Testify'' to be submitted by 5 p.m. EDT on April 2, 2009.

Opportunities for Public Comment and Inspection of Comments

In addition to holding a public hearing, the GSP Subcommittee of the TPSC invites briefs and comments in support of or in opposition to any country practice petition that has been accepted for the 2008 GSP Annual Review. Parties not wishing to appear at the public hearing but wishing to submit pre-hearing briefs or statements must do so by 5 p.m. EDT., April 2, 2009 to *http://www.regulations.gov,* docket number USTR–2009–0009. Post-hearing briefs or statements will be accepted if they conform with the ''Requirements for Submissions'' cited below and are submitted by 5 p.m EDT., May 8, 2009. All submissions should comply with 15 CFR Part 2007, except as modified below.

Requirements for Submissions

Submissions of pre-hearing and post-hearing briefs and comments, as well as ''Notices of Intent to Testify'' and ''Hearing Statements'' provided in response to this notice, with the exception of business confidential submissions, must be submitted electronically using *http://www.regulations.gov,* docket number USTR–2009–0009. Hand-delivered submissions will not be accepted. Submissions must be submitted in English by the applicable deadlines set forth in this notice.

For additional information on using the *http://www.regulations.gov* Web site or for any technical assistance relating to a submission, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page. Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov.* The tracking number will be the submitter's confirmation that the submission was received into *http://www.regulations.gov.* The confirmation should be kept for the submitter's records. USTR is not responsible for any delays in a submission due to technical difficulties, nor is it able to provide any technical assistance for the Web site.

To make a submission using *http://www.regulations.gov,* enter docket number USTR–200–0009 on the home page and click ''go.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a ''General Comments'' field or by attaching a document. Given the detailed nature of the information sought by the GSP Subcommittee, it is expected that most comments and submissions will be provided in an attached document. If a document is attached, (1) type the seven-digit case number, as appropriate; (2) indicate whether the attachment is ''Written Comments,'' ''Notice of Intent to Testify,'' ''Pre-hearing brief,'' or ''Post-hearing brief,'' and (3) type in ''See attached'' in the ''General Comments'' field. The total submission must not exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Submissions must include, on the first page (if an attachment) or at the beginning of the submission, the following text (in bold and underlined): (1) 2008 GSP Annual Review; (2) the Case Number; (3) the country name; and (4) as appropriate, ''Written Comments,'' ''Notice of Intent to Testify,'' ''Hearing Statement,'' ''Pre-hearing brief,'' or ''Post-hearing brief.'' The case number and country name are found on the ''List of 2008 Annual Review Country Practice Petitions under Further Review'' on the USTR Web site and at *http://www.regulations.gov.*

Submissions will be placed in the docket and open to public inspection pursuant to 15 CFR 2007.6. Submissions may be viewed on the *http://www.regulations.gov* Web site by entering the docket number USTR–2009–0009 in the search field at *http://www.regulations.gov.*

Business Confidential Submissions

Persons wishing to submit business confidential information must submit that information by electronic mail to *FR0807@ustr.eop.gov.* Business confidential submissions will not be accepted at *http://www.regulations.gov;* however, public or non-confidential submissions that accompany business confidential submissions should be submitted at *http://www.regulations.gov.* For any document containing business confidential information submitted as a file attached to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC.'' The ''BC'' should be followed by the name of the party (government, company, union, association, etc.) that is making the submission.

Persons wishing to submit a business confidential submission must also follow each of these steps: (1) Provide a written explanation of why the information should be protected in accordance with 15 CFR 2007.7(b), which must be submitted along with the business confidential version of the submission; (2) clearly mark the business confidential submission ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page of the submission; (3) indicate using brackets what information in the document is confidential; and (4) submit a non-confidential version of the submission, marked ''Public'' at the top and bottom of each page, that also indicates, using asterisks, where business confidential information was redacted or deleted from the applicable sentences to *http://www.regulations.gov.* Business confidential submissions that are submitted without the required markings or are not accompanied by a properly marked non-confidential version, as set forth above, might not be

accepted or may be considered public documents. The non-confidential summary will be placed in the docket and open to public inspection.

Public versions of all documents relating to this review will be made available for public viewing at *http://www.regulations.gov* upon completion of processing and no later than approximately two weeks after the relevant due date.

Marideth Sandler,

Executive Director, Generalized System of Preferences (GSP) Program, Office of the U.S. Trade Representative.

[FR Doc. E9–5541 Filed 3–13–09; 8:45 am]

BILLING CODE 3190–W9–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Glenda Haendschke, Acting Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between December 1, 2008, and December 31, 2008. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of September 30 is published each year.

Schedule A

No Schedule A appointments were approved for December 2008.

Schedule B

No Schedule B appointments were approved for December 2008.

Schedule C

The following Schedule C appointments were approved during December 2008.

Executive Office of the President

Department of State

DSGS69758 Foreign Affairs Officer to the Ambassador-At-Large (War Crimes). Effective December 10, 2008.

Department of the Interior

DIGS01132 Special Assistant—Scheduling and Advance to the Director of Scheduling and Advance. Effective December 02, 2008.

United States International Trade Commission

TCGS60100 Staff Assistant (Legal) to a Commissioner. Effective December 09, 2008.

Department of Transportation

DTGS60462 Associate Director for Public Affairs to the Deputy Director for Public Affairs. Effective December 10, 2008.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Kathie Ann Whipple,

Acting Director.

[FR Doc. E9–5585 Filed 3–13–09; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59539; File No. SR–CBOE–2009–015]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Two Pilot Programs

March 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE rules relating to two pilot programs. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to delete reference to two existing pilot programs in CBOE's rules that CBOE no longer utilizes and which are scheduled to expire on March 14, 2009.

One pilot program allows a Market-Maker, Off-Floor DPM, Off-Floor LMM or an e-DPM to have an affiliated Market-Maker physically present in the trading crowds where it operates as a Market-Maker, Off-Floor DPM, Off-Floor LMM, or e-DPM, respectively. The second pilot program allows a CBOE member or member firm to have multiple aggregation units operating as separate Market-Makers within the same class, provided they satisfy certain criteria set forth in Rule 8.3(c)(vi).[5]

CBOE notes that these pilot programs were initially adopted, in part, due to CBOE's usage of an algorithm that allocates electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or offer—specifically CBOE's ultimate matching algorithm ''UMA.'' In January 2008,

[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] These pilot programs previously were extended for one year until March 14, 2009. *See* Rel. No. 57519 (March 18, 2008), 73 FR 15805 (March 25, 2008) (immediate effectiveness of SR–CBOE–2008–29).

CBOE determined to utilize a pro-rata algorithm, instead of UMA, as the applicable matching algorithm in all Hybrid classes. As a result, these pilot programs are no longer being utilized and CBOE proposes to delete reference to them in its rules in connection with their expiration on March 14, 2009.

As amended, Rule 8.3(c)(vi) states that a Market-Maker may not hold an appointment and submit electronic quotations in any class in which an affiliated DPM, LMM or e-DPM is appointed, or in which an affiliated Market-Maker holds an appointment and submits electronic quotations, if CBOE uses in that class an allocation algorithm that allocates electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or offer. However, Rule 8.3(c)(vi) also notes that: (i) The foregoing restriction does not apply if CBOE uses in a particular options class an allocation algorithm that does not allocate electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or offer; and (ii) there is no restriction on affiliated Market-Makers holding an appointment in the same class for purposes of trading in open outcry. These exceptions are currently contained in Rule 8.3(c)(vi)(3).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act [6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest, in that deleting reference to two existing pilot programs in CBOE's rules that CBOE no longer utilizes and which are scheduled to expire on March 14, 2009 clarifies the rules that members are obligated to comply with.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] 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 such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–015. 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 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–CBOE–2009–015 and should be submitted on or before April 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5566 Filed 3–13–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to 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 this requirement.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59546; File No. SR–CBOE–2009–016]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Hybrid Rule Pertaining to Orders Represented in Open Outcry

March 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent the pilot program in Rule 6.45A(b) relating to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System (''Hybrid''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 2005 the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.[5] Among other things, Rule 6.45A(b), pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, Rule 6.45A(b) was amended to limit the duration of paragraph (b) of Rule 6.45A until September 14, 2005 to allow for an analysis of the application of Section 11(a)(1) of the Securities Exchange Act of 1934 to trading conducted pursuant to paragraph 6.45A(b). The duration of this paragraph was thereafter extended through March 31, 2009.[6] The Exchange now proposes to make paragraph (b) of Rule 6.45A permanent.

In connection with the elimination of subparagraph (iii) of Rule 6.45A(b) (elimination of the language providing that the effectiveness of 6.45A(b) is temporary), the Exchange will issue a regulatory circular providing members guidance on the application of Section 11(a)(1) to trading on the Hybrid System.[7] The regulatory circular is attached as Exhibit 5 to the 19b–4 filing. The circular describes Section 11(a)(1) and certain of the exemptions to Section 11(a)(1) as well as the application of the ''(G) Order'' exemption and the ''Effect vs. Execute'' exemption (Rule 11a2–2(T)) to trading on the Hybrid System.

2. Statutory Basis

Making the rule permanent will allow the Exchange to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. Accordingly, CBOE believes the proposed rule change is consistent with the Act [8] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay to the extent necessary. The Commission believes that waiver of

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR–CBOE–2004–75).

[6] *See* Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (extension through December 14, 2005), 52957 (December 15, 2005), 70 FR 76085 (December 22, 2005) (extension through March 14, 2006), 53524 (March 21, 2006), 71 FR 15235 (March 27, 2006) (SR–CBOE–2006–22) (extension through July 14, 2006), 54164 (July 17, 2006), 71 FR 42143 (July 25, 2006) (SR–CBOE–2006–60) (extension through October 31, 2006), 54680 (November 1, 2006), 71 FR 65554 (November 8, 2006) (SR–CBOE–2006–86) (extension through January 31, 2007), 55219 (February 1, 2007), 72 FR 6305 (February 9, 2007) (SR–CBOE–2007–10) (extension through April 30, 2007), 55676 (April 27, 2007), 72 FR 25348 (May 4, 2007) (SR–CBOE–2007–40) (extension through July 31, 2007), 56177 (August 1, 2007), 72 FR 44194 (August 7, 2007) (SR–CBOE–2007–89) (extension through December 31, 2007), 57054 (December 27, 2007), 73 FR 899 (January 4, 2008) (SR–CBOE–2007–149) (extension through June 30, 2008) and 58048 (June 27, 2008) 73 FR 39355 (July 9, 2008) (SR–CBOE–2008–65) (extension through December 31, 2008), 73 FR 79956 (December 30, 2008) (SR–CBOE–2008–126) (extension through March 31, 2009).

[7] In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of CBOE Rule 6.45A(b), members are also required to comply with the requirements of Section 11(a)(1) of the Securities Exchange Act of 1934 (the ''Act''), 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. The Exchange has issued regulatory circulars to members informing them of the applicability of these Section 11(a)(1) requirements each time the duration of the Rule was extended. *See* CBOE Regulatory Circulars RG05–103 (November 2, 2005), RG06–001 (January 3, 2006), RG06–34 (April 7, 2006), RG06–79 (July 31, 2006), RG06–115 (November 8, 2006), RG07–21 (February 8, 2007), RG07–53 (May 17, 2007), RG07–88 (August 15, 2007), RG08–08 (January 9, 2008) and RG08–83 (July 10, 2008).

[8] 15 U.S.C. 78a *et seq.*

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78(f)(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to 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 this requirement.

the operative delay is consistent with the protection of investors and the public interest because such waiver will enable CBOE Rule 6.45A(b) to continue without interruption. The Commission notes that the rule has been in effect on a pilot basis since March 14, 2005 [13] and therefore does not raise any novel or significant regulatory issues. Therefore, the Commission designates the proposed rule change as operative upon filing.[14]

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–CBOE–2009–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–016. 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 the filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–016 and should be submitted on or before April 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5572 Filed 3–13–09; 8:45 am]

BILLING CODE 8011–01–P

[13] *See infra* notes 5 and 6.

[14] For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59540; File No. SR–DTC–2009–05]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating To Expanding the Scope and Timing To Collect and Pass-Through Fees Owed by Participants to American Depositary Receipt Agents

March 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 25, 2009, The Depository Trust Company (''DTC'') 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 prepared primarily by DTC. 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

DTC proposes to expand the scope and timing that DTC can collect and pass-through fees owed by participants to American Depositary Receipt (''ADR'') agents.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

On June 12, 2006, the Commission approved a rule filing for DTC to establish a mechanism for DTC to collect and pass through custody fees owed by DTC participants to ADR agents for issues that do not pay periodic dividends.[2] Currently, DTC collects custody fees, called Depository Service Fees (''DSF''), from participants once a year per CUSIP. DTC collects DSFs at the request of the depositary bank and only for issues that have not paid a dividend in the last 12 months. In addition to collecting the DSF, DTC charges its participants three percent (3%) of the ADR agent fee up to a maximum of $10,000 per CUSIP (''collection charge'') in order to cover costs incurred in collecting and passing through DSFs.[3]

Based on the experience to date and with increased challenges due to the rapid growth of unsponsored ADRs, the depositary banks and DTC have discussed expanding and refining the current DSF collection process. With this rule filing, DTC proposes to collect all allowable DSFs, dividend fees,[4] pass-through expenses, or other special fees as governed by the ADR agreement.[5] Additionally, DTC is proposing to increase the maximum collection charge to $20,000 per CUSIP. In order to collect

[2] Securities Exchange Release Act No. 53970 (June 12, 2006), 71 FR 34974 (June 16, 2006) (File No. SR–DTC–2006–08).

[3] *See* Securities Exchange Release Act No. 55306 (Feb. 15, 2007) 72 FR 8217 (Feb. 23, 2007) (File No. SR–DTC–2006–21) (modifying the fees from the original filing).

[4] Dividend fees will continue to be collected through the current rate adjustment process. The dividend fee is incorporated into the final rate paid on the dividend by the agent on payment date and covers their cost for servicing the dividend payment.

[5] ADR agreements are filed with the Commission and are usually posted on the depositary bank's Web site. All fees discussed herein are collectively termed ''ADR agent fees.''

the ADR agent fees, the ADR depositary banks will be required to notify DTC thirty calendar days prior to the record date that a DSF or other fee is due and payable.[6] Moreover, DTC will require that the ADR depositary bank submit an attestation that the specific fee(s) is allowable under the ADR agreement with the issuer. The attestation will be in a form prescribed by DTC and may be changed periodically to address operational issues. If a participant asks DTC to substantiate the fee, DTC may require the ADR depositary to provide DTC with a copy of the ADR agreement with the issuer and highlight the fee schedule. DTC may at its discretion provide copies of the agreement to its participants to substantiate the fee.

As a result of this rule filing, the fee schedule for assessing ADR agent fees will be revised. First, ADR agent fees will apply to all fees permitted under the ADR agreement; the reference to ''issues not paying periodic dividends'' would be deleted. Second, as discussed above, the maximum ADR agent fee would be increased to $20,000 from $10,000.

DTC has discussed this proposal with The Securities Industry and Financial Markets Association's (''SIFMA'') Operations Committee and Dividend Division and with various participants. The SIFMA Operations Committee endorsed DTC's plan to collect ADR agent fees, and the Dividend Division and DTC participants did not object to DTC moving forward. DTC states that the proposed ADR agent fee collection process will eliminate invoice and check processing for DTC participants and the depositary banks because ADR depositaries will no longer have to mail invoices and reminders to participants holding ADR securities at DTC. Participants will also have a more transparent view into upcoming ADR agent fees and a centralized source for information about the ADR agent fee and the collection process. DTC expects to begin collecting ADR agent fees as expanded by this rule filing in the first full month following the approval of this filing.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because it updates DTC's fee schedule and provides for the equitable allocation of fees among its participants.

[6] Fees may be collected multiple times in any given calendar year depending on the terms of the ADR agreement.

[7] 15 U.S.C. 78q–1.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comment@sec.gov*. Please include File No. SR–DTC–2009–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–DTC–2009–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. to 3 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–DTC–2009–05 and should be submitted on or before April 6, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5567 Filed 3–13–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59548; File No. SR–ISE–2009–10]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Obvious Error Rules

March 10, 2009.

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 February 25, 2009, 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 prepared by the self-regulatory organization. The Exchange

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Rule 720 regarding obvious errors. The text of the proposed rule change is as follows, with deletions in [brackets] and additions in italics:

Rule 720. Obvious Errors

* * * * *

Supplementary Material to Rule 720

.01–.04 No Change.

.05 Buyers of options with a zero bid [and $.05 offer (i.e., a Theoretical Price of $.05)] may request that their execution be busted if at least the [three] *two* strikes below (for calls) or above (for puts) in the same options class were quoted with a zero bid [and $.05 offer] at the time of the execution. Such buyers must follow the procedures of paragraph (b)(1) above.

.06–.08 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend ISE Rule 720 regarding obvious errors. Under the current rule, transactions in options series quoted no bid at a nickel, *i.e.*, $0.05 offer, may be nullified provided at least three strikes below (for calls) or above (for puts) in the same options class was quoted zero bid at a nickel at the time of execution. A ''no bid'' or ''zero bid'' option refers to an option where the bid price is $0.00. Series of options quoted no bid are usually deep out-of-the-money series that are perceived as having little if any chance of expiring in-the-money. For this reason, relatively few transactions occur in these series and those that do are usually the result of a momentary pricing error.

The proposed rule change would eliminate the portion of the current rule that requires quotes to have a nickel offer and instead only require that the option series be quoted no bid.[5] The proposed rule change would also reduce from three to two the number of strikes above or below the options series in question in which there also must be no bid.[6] The reason for this change is that options that are priced at no bid, regardless of the offer, are usually deep-out-of-the-money series that are perceived as having little if any chance of expiring in-the-money. This is especially the case when multiple series below (for calls) or above (for puts) in the same option class are quoted no bid. In this regard, the offer price is irrelevant. Therefore, transactions in series that are quoted no bid at a dime, for example, are just as likely to be the result of an obvious error as are transactions in series that are quoted no bid at a nickel when multiple series below (for calls) or above (for puts) in the same option class are quoted no bid.

As is currently required, buyers must notify ISE's market operations group within the designated timeframe to seek relief.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (''Exchange Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the proposed rule change provides for the nullification of certain trades that result from an inaccurate pricing anomaly.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days 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 Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b–4(f)(6).[7] The proposed rule change will permit the Exchange to nullify certain trades that result from an inaccurate pricing anomaly. Further, the proposed rule change is similar to the rules of NYSE Arca currently in effect. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 of the Act, as it does not raise any new, unique or substantive issues, and is beneficial for competitive purposes and to promote a free and open market for the benefit of investors.

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 the 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,

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange notes that this proposed change is similar to the ''no bid'' provision in NYSE Arca Rule 6.87 Commentary .04.

[6] The Exchange notes that this proposed change differs from NYSE Arca Rule 6.87 Commentary .04 in that it proposes to look to two strikes above or below the options series in question in which there also must be no bid whereas the NYSE Arca rule looks to only one strike above or below the options series in question in which there also must be no bid.

[7] 17 CFR 240.19b–4(f)(6).

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–2009–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–10. 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–ISE–2009–10 and should be submitted on or before April 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5593 Filed 3–13–09; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59553; File No. SR–ISE–2009–11]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enable the Listing and Trading of Options on Managed Fund Shares

March 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2009, 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 prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 502(h) to enable the listing and trading of options on Managed Fund Shares. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise ISE Rule 502 to enable the listing and trading of options on managed fund shares (''Managed Fund Shares'') that are listed and traded on a national securities exchange and are considered to be an ''NMS Stock'' (as defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934 (the ''Act'')).

Managed Fund Shares represent an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity. Unlike traditional exchange traded funds Managed Fund Shares are actively managed. Managed Fund Shares, although, based upon a publicly disclosed portfolio of securities, each trade as a single exchange-listed equity security.

Accordingly, the rules pertaining to the listing and trading of standardized equity options will apply to Managed Fund Shares.

Listing Criteria

The Exchange will consider listing and trading options on Managed Fund Shares provided the Managed Fund Shares meet (1) the criteria for underlying securities set forth in ISE Rule 502(a) and (b)[5], or the Managed Fund Shares are available for creation and redemption each business day as set forth in ISE Rule 502(h)(A)(ii).

The Exchange proposes that Managed Fund Shares deemed appropriate for options trading represent an interest in an open-end management investment company or similar entity, as described below:

- *Managed Fund Shares* are securities that represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and

[5] *See* ISE Rule 502(a) and (b), which collectively require minimum requirements for the underlying security that include, but are not limited to: (1) The security be registered and be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Exchange Act; (2) the security be characterized by a substantial number of outstanding shares that are widely held and actively traded; (3) 7,000,000 underlying shares, (4) 2,000 shareholders; and (4) trading volume of 2,400,000 shares in the preceding 12 months.

policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV.

Continued Listing Requirements

Options on Managed Fund Shares will be subject to all Exchange rules governing the trading of equity options and furthermore, the rules pertaining to position and exercise limits [6] or margin [7] shall apply. The current continuing or maintenance listing standards for options traded on ISE will continue to apply.

The Exchange will utilize its existing surveillance procedures applicable to options on exchange traded funds (which will include Managed Fund Shares) to monitor trading. In addition, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Managed Fund Shares, including adequate comprehensive surveillance sharing agreements (''CSSA'') with markets trading in non-U.S. components,[8] as applicable. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') [9] from other exchanges who are members or affiliates of the ISG. ISE represents that these procedures will be adequate to properly monitor Exchange trading of options on these the securities and to deter and detect violations of Exchange rules.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. The Exchange believes that proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange provided the Commission with written notice of its intention to file the proposed rule change at least five business days before its filing. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] The proposed rule change will permit the Exchange to trade options on Managed Fund Shares thus providing investors additional opportunities to hedge their positions. Further, this proposed rule change is identical to one recently approved by the Commission.[12] For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 of the Act.

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–ISE–2009–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–11. 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.

[6] Pursuant to ISE Rule 412(a)(1) and 412(d), Managed Fund Shares are subject to the same position limits applicable to options on stocks and Exchange-Traded Fund Shares. ISE Rule 414 stipulates that exercise limits for options on stocks and other securities, including Managed Fund Shares shall be the same as the position limits applicable under ISE Rule 412.

[7] *See* ISE Rules 1200—1204, the Exchange's rules governing margin.

[8] *See* ISE Rule 502(h)(B), the Exchange's rule governing the applicable CSSA requirements for options on exchange-traded funds. The Exchange notes that any non-U.S. component securities (including fixed-income) in an index or portfolio of securities on which the Fund Shares are based that are not subject to comprehensive surveillance agreements may in the aggregate represent an amount equal to 50% of the weight of the index or portfolio.

[9] A complete list of the current members of the ISG is available at *http://www.isgportal.org*.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* Securities Exchange Act Release Nos. 59004 (November 24, 2008), 73 FR 72882 (December 1, 2008) (SR–NYSEArca–2008–108); 59006 (November 24, 2008), 73 FR 72879 (SR–NYSEALTR–2008–08).

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–2009–11 and should be submitted on or before April 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5594 Filed 3–13–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59537; File No. SR–Phlx–2009–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto by NASDAQ OMX PHLX, Inc. To Amend the Exchange's Fee Schedule Relating to the Market Access Provider Subsidy

March 9, 2009.

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 February 25, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On March 3, 2009, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of fees to remove certain subsidies that are available to qualifying Phlx member organizations that offer to customers automated order routing systems and electronic market access to U.S. options markets (''Market Access Providers'' or ''MAPs''). Specifically, the Exchange proposes to amend the Market Access Provider Subsidy section of its fee schedule by deleting the following subsidies: (i) A $0.01 per contract incentive above the previously established per-contract subsidy rate upon the renewal of a MAP Agreement; (ii) a $50,000 per month bonus payment (the ''Monthly MAP Volume Bonus'') for each month in which the number of contracts routed to the Exchange exceeds a defined number of contracts; and (iii) a $25,000 per month marketing subsidy (the ''MAP Marketing Subsidy''), as defined below.

The proposed rule change is filed for immediate effectiveness and will be effective for trades settling on or after March 1, 2009.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 purpose of the proposed rule change is to manage Exchange expenses by removing certain subsidies from the Exchange's fee schedule.

Market Access Provider

In August, 2007, the Exchange amended its fee schedule to provide a per contract Subsidy (the ''Subsidy'') for certain Exchange members known as MAPs.[4] A MAP is an Exchange member organization that offers to customers automated order routing systems and electronic market access to U.S. options markets. The Exchange pays a per-contract MAP Subsidy to any Exchange member organization that qualifies as a MAP (an ''Eligible MAP'')[5] who elects to participate by submitting any application(s) and/or form(s) required by the Exchange, and complying with other conditions.

A MAP must enter into and maintain an Agreement (a ''MAP Agreement'') with the Exchange to function as an Eligible MAP and be in compliance with all terms thereof.

MAP Subsidy

The Exchange currently pays a Subsidy to Eligible MAPs on a monthly basis, of $0.10 (the ''Subsidy Rate'') for each Eligible Contract (as defined below) executed in the immediately preceding calendar month above the particular Eligible MAP's Baseline Order Flow (as defined below).

''Eligible Contracts'' means contracts that result from the execution on the Exchange of: (1) Equity option orders (other than crosses) sent electronically to an Eligible MAP (and routed to the Exchange electronically by the Eligible MAP) by its customers; and (2) MAP Routing Orders (other than crosses) sent electronically by the Eligible MAP.

''Baseline Order Flow'' for an Eligible MAP means the higher of: (1) 500,000 contracts; or (2) the average contracts per month, calculated for the 3-month period immediately preceding the Eligible MAP entering into an agreement with the Exchange, that resulted from the execution on the Exchange of equity option orders (other than crosses) routed to Phlx electronically by such Eligible MAP.

In addition, the Exchange pays an additional $0.01 per contract above the previously established per-contract Subsidy Rate upon the renewal of a MAP Agreement.[6]

The Exchange proposes to delete the additional $0.01 per contract payment provision respecting extended MAP Agreements from the Market Access Provider Subsidy section of its fee schedule. The Exchange believes that it would benefit both parties to negotiate the terms of any MAP Agreement extension on a case-by-case basis, rather than having fixed terms already in

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarified that if there is any change to the status of the Monthly MAP Volume Bonus and/or the MAP Marketing Subsidy, or if the Exchange negotiates any MAP Agreement extension, the Exchange will file a proposed rule change with the Commission.

[4] *See* Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR–Phlx–2007–54).

[5] The term ''Eligible MAP'' is defined in current footnote 5(b) of the Market Access Provider Subsidy section of the Exchange's fee schedule.

[6] A MAP Agreement is typically in effect for a period of one year, and the Exchange may, by giving written notice to the Eligible MAP, elect to extend it for additional one year terms, in which case the per contract Subsidy payable during any extension period for that Eligible MAP is $0.01 per contract greater than the Subsidy Rate then in effect at the date of renewal. *See supra* note 4.

place. In that way, the parties can evaluate their current business situation and negotiate an extension, if any, that is reasonable and appropriate under then-existing conditions existing within each party, and under then-existing market and economic situations as a whole.[7]

Monthly MAP Volume Bonus

The Exchange pays each Eligible MAP $50,000 per month (the ''Volume Bonus'') for each month in which the Eligible Contracts of such Eligible MAP in the immediately preceding calendar month exceed the higher of: (1) 1,500,000; or (2) three times the Baseline Order Flow of such Eligible MAP. The Volume Bonus is in addition to the amount for any Subsidy that is payable.

The Exchange proposes to delete the monthly MAP Volume Bonus from the Market Access Provider Subsidy section of its fee schedule in order to be in a better position to manage its allocation of costs.

Marketing Subsidy

Currently, the Exchange pays a MAP Marketing Subsidy of $25,000.00 per month, for a maximum of three months (totaling $75,000.00) to Eligible MAPs, in addition to the per-contract Subsidy.

The MAP Marketing Subsidy is intended to be used by the Eligible MAP to: (i) Promote the Subsidy program; (ii) provide technical assistance and information to its customers on the equity options order routing functionality that pertains to the Subsidy program; and (iii) analyze the volume based usage of such order routing functionality by the Eligible MAP and its customers, in each case with a view towards the successful launch of the Eligible MAP's participation in the Subsidy for Eligible MAPs.

The Exchange proposes to delete the Marketing Subsidy from the Market Access Provider Subsidy section of its fee schedule. The Exchange intends to attract new participants into the MAP program using more of a variable cost rather than a fixed cost.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Sections 6(b)(4) of the Act[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members by deleting standardized volume bonuses and marketing subsidies, thus enabling the Exchange to manage its costs relating to MAPs.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and paragraph (f)(2) of Rule 19b–4[11] thereunder. 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–Phlx–2009–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–19. 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 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–Phlx–2009–19 and should be submitted on or before April 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5564 Filed 3–13–09; 8:45 am]

BILLING CODE 8011–01–P

[7] In the event that there is any change to the status of the Monthly MAP Volume Bonus and/or the MAP Marketing Subsidy, or if the Exchange negotiates any MAP Agreement extension, the Exchange will file a proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(2) thereunder.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59538; File No. SR–Phlx–2009–17]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Nomination and Election of Candidates for Governor and Independent Governor

March 9, 2009.

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 February 23, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or the ''Exchange'') filed with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, proposes to amend its By-Laws to: (i) Replace the current ''Nominating, Elections and Governance Committee'' with a newly named ''Nominating Committee'' and a ''Member Nominating Committee''; (ii) modify the processes for nominating candidates for Governor and Designated Independent Governor; (iii) modify the procedures for Member Organization Representatives to vote for Designated Governor nominees and the procedures for meetings of Members and Member Organizations; (iv) modify the procedures for filling vacancies on the Board of Governors; (v) modify the definitions of ''Independent Governor'', ''Trust Agreement'' and add the following definitions: ''Industry Member'', ''Non-Industry Member'', ''Public Member'', ''Member Representative member'', ''Contested Vote'', ''List of Candidates'', ''Member Voting Record Date'' and ''Voting Date''; and (vi) amend the Certificate of Incorporation and By-Laws to eliminate the Vice Chair and PBOT Governor positions from the Board of Governors.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 purpose of the proposed rule change is to streamline the processes related to the nomination and election of candidates for Governor and Designated Independent Governor positions and to conform the NASDAQ OMX PHLX, Inc. governance structure to that of The NASDAQ Stock Market LLC.[3] To that end, the proposal establishes independent Nominating and Member Nominating Committees, modifies the process for nominating candidates for Governor and Designated Independent Governor and the procedures for Member Organization Representatives[4] to vote for Designated Governor nominees and eliminates the Vice Chair and PBOT Governor positions on the Board similar to The NASDAQ Stock Market LLC, structure.

Nominating and Election of Governors

Current Nominating Process

Currently, the Nominating, Elections and Governance Committee is comprised of five members including four Independent Governors[5] (one of whom must be a Designated Independent Governor[6]) and one Member Governor[7]. The Nominating, Elections and Governance Committee submits nominations for the positions of Designated Governors from candidates selected in accordance with Exchange By-Law Article III, Section 3–4 and 3–6 concerning qualifications and recommendations received at open meetings and in writing by the Secretary of the Exchange. The Nominating, Elections and Governance Committee holds at least two (2) open meetings to receive recommendations for the positions of Designated Independent Governors or Member Governor.[8] Recommendations may be made by any Member, participant or Member Organization Representative or by any Member of the Nominating, Elections or Governance Committee then in office and may be submitted in writing or in person.[9] Independent nominations for the positions of Designated Governors may be made by a written petition by Member Organization Representatives and filed with the Secretary of the Exchange in a sealed envelope within two (2) weeks after the posting of the report of the Nominating, Elections and Governance Committee to the Member Organization Representatives.[10] Nominations are valid only when signed by Member Organization Representatives representing not less than fifty (50) votes.[11]

At the annual meeting of Members and Member Organizations, Member Organization representatives elect the Designated Governors, who are then elected at the annual Stockholders meeting by the holder of the Series A

[3] The NASDAQ Stock Market LLC is a subsidiary of NASDAQ OMX GROUP, Inc., the parent company of NASDAQ OMX PHLX, Inc. On July 24, 2008, The NASDAQ OMX GROUP, Inc. acquired the Philadelphia Stock Exchange, Inc. *See* Securities Exchange Act Release No. 58098 (July 17, 2008), 73 FR 42850 (July 23, 2008) (SR–NASDAQ–2008–035) [*sic*]. Currently, the process for selection of Governors differs between NASDAQ OMX PHLX, Inc. and The NASDAQ Stock Market LLC. *See* Securities Exchange Act Release No. 57757 (May 1, 2008), 73 FR 26159 (May 8, 2008) (SR–BSE–2008–23) (Pursuant to a merger with The NASDAQ OMX Group, Inc., the Boston Stock Exchange, Inc. proposed to adopt By-Laws similar in all material respects to the By-Laws of The NASDAQ Stock Market LLC so that the exchanges could be operated with similar governance structures.)

[4] Pursuant to By-Law Article I, Section 1–1(w), the term ''Member Organization Representative'' means the officer (or person in a similar position) of a Member Organization designated by such Member Organization as such Member Organization's Member Organization Representative, who shall have the sole authority, with respect to the selection or removal of Designated Nominees as defined in Section 3–2(a) to exercise any and all rights and to take any and all actions on behalf of such Member Organization and each Member who has designated such Member Organization as his primary affiliation.

[5] By-Law Article I, Section 1–1(p) defines an Independent Governor as ''* * * a Governor who must satisfy the definition of Independent as set forth herein and is duly elected to fill one of the vacancies on the Board of Governors allocated to the Independent Governors.'' By-Law Article I, Section 1–1(o) defines Independent as ''The term ''Independent'' when used in the context of Governors or committee members, shall mean persons affirmatively determined by the Board as having no Material Relationship with the Exchange or any affiliate of the Exchange, any Member of the Exchange or any affiliate of such Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange.''

[6] By-Law Article I, Section 1–1(f) defines a Designated Independent Governor as, ''* * * those * * * who are elected by the holder of the Series A Preferred Stock in accordance with Article SIXTH of the Certificate of Incorporation.''

[7] By-Law Article I, Section 1–1(u) defines a Member Governor as, ''* * * a Governor who is a Member or a general partner or an executive officer (vice-president and above) of a Member Organization and is duly elected to fill the one (1) vacancy on the Board of Governors allocated to the Member Governor.''

[8] *See* By-Law Article III, Section 3–6.

[9] *See* By-Law Article III, Section 3–6.

[10] *See* By-Law Article III, Section 3–7.

[11] *See* By-Law Article III, Section 3–7. Further, ''[a] Member Organization Representative shall not endorse more than one (1) nominee per vacancy; provided, however, that the Member Organization Representatives representing not less than seventy-five (75) votes may, by petition, propose an entire ticket, or any portion thereof, for the vacancies of Designated Governors on the Board of Governors to be filled at the ensuing election.''

Preferred Stock.[12] At the annual meeting of stockholders, the Holder of Common Stock presents for nomination to the Nominating, Elections and Governance Committee the candidates for Vice Chair, Stockholder Governor and Independent Governors for placement on the ballot for election by the Holder of Common Stock.[13]

Proposed Nominating Process

Under the proposed rule change, By-Law Article III, Sections 3–4, 3–6, 3–7 and 3–16, Article X, Sections 10–1 and 10–19, Article XI, Section 11–1 and Article XXVIII, Sections 28–3, 28–8 and 28–12 would be amended to replace the current ''Nominating, Elections and Governance Committee'' with a newly named ''Nominating Committee'' and a ''Member Nominating Committee'' as well as modify the processes for nominating candidates for Governor and Designated Independent Governor. Further, By-Law Article III, Sections 3–2, 3–3, 3–4, 3–6, 3–7, 3–8, 3–11, 3–12, 3–13 and 3–14, and Article XXVIII, Section 28–2 would be amended to modify the procedures for Member Organization Representatives to vote for Designated Governor nominees and the procedures for meetings of Members and Member Organizations. These proposed amendments would conform the NASDAQ OMX PHLX, Inc. By-Laws to those of The NASDAQ Stock Market LLC.

The proposed rule change amends By-Law Article III, Sections 3–2 and 3–7 so that Designated Governors would be elected to the Board of Governors on an annual basis.[14] For each annual election, the Board of Governors would select a Member Voting Record Date [15] and a Voting Date.[16] The Member Voting Record Date would be at least 10 days but not more than 60 days prior to the Voting Date.[17] The Member Nominating Committee would create a list of one or more candidates for each Designated Governor position on the Board to be elected by the Series A Preferred Stock Holders at the annual meeting of Stockholders or a special meeting in lieu thereof.[18] Promptly after selection of the Voting Date, in a notice transmitted to Member Organization Representatives and in a prominent location on a publicly accessible Web site, the Exchange (i) shall announce the Voting Date and the List of Candidates,[19] and (ii) shall describe the procedures for Member Organization Representatives to nominate candidates for election at the next annual meeting of Stockholders. In the event of a Contested Vote,[20] the Exchange shall also send Member Organization Representatives formal notice, which notice shall be sent by the Exchange at least 10 days but no more than 60 days prior to the Voting Date to the Member Organization Representatives of persons that were Member Organizations on the Member Voting Record Date, by any means, including electronic transmission, as determined by the Board of Governors or committee thereof.[21] The notice shall indicate by appropriate designation whether each person on the List of Candidates is a Member or a foreign currency options participant of the Exchange or is a non-member or non-foreign currency options participant of the Exchange who is a general partner or executive officer (vice-president or above) of a Member Organization or participant organization of the Exchange or is nominated to be a Designated Independent Governor.

An additional candidate may be added to the List of Candidates by a Member Organization Representative that submits a timely and duly executed written nomination to the Secretary of the Exchange. To be timely, a Member Organization Representative's notice would be delivered to the Secretary at the principal executive offices of the Exchange not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's Voting Date, provided however that in the event that the Voting Date is more than 30 days before or more than 70 days after such anniversary date, notice by the Member Organization Representative must be so delivered not earlier than the close of business on the 120th day prior to such Voting Date and not later than the close of business on the later of the 90th day prior to such Voting Date or the tenth day following the day on which public announcement of such Voting Date is first made by the Exchange.[22] Such Member Organization Representative's notice shall set forth: (i) As to the person whom the Member Organization Representative proposes to nominate for election as a Designated Governor, all information relating to that person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act and the rules thereunder (and such person's written consent to be named in the List of Candidates as a nominee and to serving as a Governor if elected); (ii) a petition in support of the nomination duly executed by the Member Organization Representatives of 10% or more of all Member Organizations; and (iii) the name and address of the Member Organization Representative making the nomination.[23] The Exchange may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Designated Governor.[24]

If by the date on which a Member Organization Representative may no longer submit a timely nomination, there is only one candidate for each Designated Governor position to be voted on the Voting Date, the candidates on the List of Candidates shall be the ''Designated Nominees,'' which the holder of the Series A Preferred Stock shall be required to elect as Designated Governors in accordance with the Certificate of Incorporation at Article Six as well as the Trust Agreement. In the event of a Contested Vote, the Exchange would conduct a vote to determine the Designated Nominees in accordance with proposed Article III, Section 3–7.[25]

If there is a Contested Vote, the Designated Nominees would be selected through a balloting process but without a formal meeting of the Members and

[12] *See* Phlx By-Laws, Article III, Section 3–2(a) and Article XXVIII, Section 28–2. On February 22, 2007, the Philadelphia Stock Exchange, Inc. (now NASDAQ OMX PHLX, Inc.) entered into a Third Amended and Restated Trust Agreement with Wilmington Trust Company. The Exchange issued to the Trust one share of Series A Preferred Stock, which share has the exclusive right to elect and remove Designated Governors. Wilmington Trust is the Trustee of the Trust pursuant to the agreement.

[13] *See* By-Law Article XXVIII, Section 28–3.

[14] *See* similar provision in The NASDAQ Stock Market LLC By-Laws at Article II, Section 1. Currently, Governors are elected for terms of one year.

[15] A Member Voting Record Date definition is proposed herein under the section titled Definitions.

[16] A Voting Date definition is proposed herein under the section titled Definitions.

[17] *See* similar provision in The NASDAQ Stock Market LLC By-Laws at Article II, Section 1.

[18] This provision is similar to Exchange By-Law Article III, Section 3–2 in that the Series A Preferred Stock Holder would continue to be the mechanism to elect the Member nominees. Moreover, it is similar to The NASDAQ Stock Market LLC By-Law Article II, Section 1, in that the Member Nominating Committee creates the List of Candidates.

[19] A List of Candidates definition is proposed herein under the section titled Definitions.

[20] A Contested Vote definition is proposed herein under the section titled Definitions.

[21] *See* similar provision in The NASDAQ Stock Market LLC By-Laws at Article II, Section 1.

[22] *See* similar provision in The NASDAQ Stock Market LLC By-Laws at Article II, Section 1.

[23] *See* similar provision in The NASDAQ Stock Market LLC By-Laws at Article II, Section 1.

[24] *See* similar provisions in The NASDAQ Stock Market LLC By-Laws at Article II, Section 1, which relates to the nomination of alternate candidates.

[25] *See* similar provisions in The NASDAQ Stock Market LLC By-Laws at Article II, Section 1.

Member Organizations. A formal notice of the Voting Date and the List of Candidates would be sent by the Exchange at least 10 days but no more than 60 days prior to the Voting Date to the Member Organization Representatives of persons that were Member Organizations on the Member Voting Record Date, by any means, including electronic transmission, as determined by the Board of Governors or committee thereof.[26] The notice would indicate whether each person on the List of Candidates was a Member or foreign currency options participant of the Exchange or a non-member or non-foreign currency options participant of the Exchange who is a general partner or executive officer of a Member Organization or participant organization of the Exchange or is nominated to be a Designated Independent Governor.

Votes would be cast by written ballot, electronic submission, or any other means as set forth in a notice to the Member Organization Representatives sent by the Exchange prior to the Voting Date. Only votes received prior to 11:59 p.m. Eastern Time on the Voting Date would count for the election of a Designated Nominee.[27] The vote would not be valid unless a majority of the Member Organization Representatives entitled to vote cast a vote; if a quorum is lacking, the Board of Governors would declare a subsequent Voting Date and Member Voting Record Date for the purpose of selecting Designated Nominees and would again follow the procedures for conducting a Contested Election. These voting provisions replace the current secret written ballot provisions in Article III, Section 3–12. Minor technical amendments were made to Exchange By-Law Article III, Section 3–13 related to quorums for meetings of Members and Member Organizations.

The persons on the List of Candidates receiving the highest number of votes for the category of Governor for which they were nominated would be declared the Designated Nominees for their respective positions as Designated Governors. In the case of a tie, the names of the proposed Designated Governors involved in such tie would be referred to the Member Nominating Committee, which would make the selection as to who among such tying proposed Designated Governors would be nominated as the Designated Nominees for election at the Annual Meeting of Stockholders.

Except as provided in these By-Laws, the Exchange shall not be required to hold meetings of Members, Member Organizations, or Member Organization Representatives. If such a meeting is held, however, the By-Laws currently state that any notice of the meeting shall be in writing and state the place, date, hour and purpose of such meeting and shall not be given less than ten days before the date of the meeting nor more than fifty days before the date of the meeting. Exchange By-Law Article III, Section 3–11 is proposed to be amended to provide that the notice shall not be given less than ten days before the date of the meeting nor more than sixty days before the date of the meeting. Also, language is proposed to be added to that By-Law to state that notice may be sent via mail or electronic transmission and if notice is sent via electronic transmission, notice is given when sent to the e-mail address of the Member Organization Representative as it appears on the books and records of the Exchange.

Composition of Nominating Committee

This proposed rule change would amend Exchange By-Law Article X, Section 10–19 to create a Nominating Committee which would nominate candidates for all other vacant or new Governor positions on the Board of Governors that are not nominated by the Member Nominating Committee. The Nominating Committee would consist of no fewer than six (6) and no more than nine (9) members and the number of Non-Industry members would equal or exceed the number of Industry members on the Committee. If the Nominating Committee consists of six (6) members, at least two (2) shall be Public Members. If the Nominating Committee consists of seven (7) or more members, at least three shall be Public members. Also, no officer or employee of the Company shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry members shall be current Governors. Finally, a Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board of Governors unless such member is in his or her final year of service on the Board of Governors and following that year, that member may not stand for election to the Board of Governors until such time as he or she is no longer a member of the Nominating Committee. Members of this Committee would be appointed annually and may be removed by a majority vote of the Board of Governors.[28] The Exchange's proposed amendments to the Nominating Committee's composition and number of members attempts to fairly represent the various interests of the membership and trading community, including investors. Also the public governors should bring diverse experience to the nominating process.

Composition of Member Nominating Committee

The proposal would amend Exchange By-Law Article X, Section 10–19 to create a Member Nominating Committee which would nominate candidates for each Designated Governor position on the Board of Governors and also nominate candidates for appointment by the Board for each vacant or new position on any committee that is to be filled with a Member Representative member. The Member Nominating Committee would consist of no fewer than three (3) and no more than six (6) members. All members of the Member Nominating Committee would be a current associated person of a current Member Organization. The Board of Governors would appoint such individuals after consultation with Member Organization Representatives. Members of this Committee would be appointed annually and may be removed by a majority vote of the Board of Governors.[29]

By-Law Article X, Section 10–19 proposes to add language that the Secretary shall collect from each nominee for Governor such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as a Member Governor, Stockholder Governor, or Independent Governor, or Designated Governor, if applicable, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee each nominee's classification, if applicable. Governors would update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary.

Board of Governor Vacancies and Resignations

Under the proposed rule change, By-Law Article III, Section 3–8, Article IV,

[26] *See* similar provisions in The NASDAQ Stock Market LLC By-Laws at Article II, Section 1.

[27] *See* similar provision in The NASDAQ Stock Market LLC By-Laws at Article II, Section 1 [*sic*].

[28] The provisions related to the Nominating Committee are similar to the provisions in The NASDAQ Stock Market LLC By-Laws at Article III, Section 6.

[29] The provisions related to the Member Nominating Committee are similar to the provisions in The NASDAQ Stock Market LLC By-Laws at Article III, Section 6.

Sections 4–6 and 4–7 and Article XXVIII, Section 28–4 would be amended to modify the procedures for filling vacancies on the Board of Governors. Currently, vacancies are filled by the Nominating, Elections and Governance Committee, subject to the approval by a majority of the Governors then in office, although less than a quorum, or by a sole remaining Governor.[30] The proposed rule change would provide that in the event of a vacancy on the Board occurring between annual meetings, the appropriate nominating committee would nominate, and the Board would appoint, a replacement Governor to fill the vacancy.[31]

Amendments are also proposed to Exchange By-Law Article IV, Section 4–6 to modify the timeframes associated with submitting Board resignations. Currently a Board member may resign at any time by submitting a written resignation to the Exchange which shall take effect at the time of its receipt by the Exchange unless another time is fixed in the resignation.[32] In the event of a merger, consolidation or other acquisition, the Board member is currently required to notify the Chair of the Board of Governors of their resignation by the first day of the January preceding the next annual meeting of Stockholders. This proposal seeks to revise the timeframe in the event of a merger, consolidation or other acquisition to state that a Board member is required to notify the Chair of the Board of Governors of their resignation by the first day of the following month of their resignation. Similarly, in the event of a change in occupational category or Member Organization or participant organization, such Governor is currently required to notify the Chair of the Board of Governors of his resignation by the first day of the January preceding the next annual election. This proposal seeks to amend this language to similarly state that the Board member shall notify the Chair in the event of an occupational category or Member Organization or participant organization by the first day of the following month. Additionally, Article IV, Section 4–6 indicates that as related to resignations in the event of a merger, consolidation, or other acquisition or because of a change in occupational category, the resignations shall become effective no later than the expiration of the term of the outgoing class of Governors. This language is being deleted as it is no longer applicable. By providing a shorter time period to provide notification, the Exchange is ensuring that the Board members will continue to be qualified to serve on the Board in their respective positions as opposed to a longer notification period.

Definitions

The Exchange proposes to amend the definitions of ''Independent Governor'', and ''Trust Agreement'' and add the definitions for ''Industry Member'', ''Non-Industry Member'' and ''Public Member.'' The proposed rule change would amend the definition of Independent Governor as follows: The term ''Independent Governor'' shall mean a Governor who has no material relationship with the Exchange or any affiliate of the Exchange, any Member of the Exchange or any affiliate of such Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange and is duly elected to fill one of the vacancies on the Board of Governors allocated to the Independent Governors. The term ''material relationship'' will be defined as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the Governor.[33] Also, the Exchange proposes to amend By-Law Article I, Section 1–1–(dd) to modify the definition of Trust Agreement to include language that indicates that such agreement may be amended from time to time.[34]

The Exchange proposes adding the following definition to Article I, Section 1–1, ''Industry Member'', ''Non-Industry Member'' and ''Public Member'' as these amendments correspond to the proposed amendments to the election process of Designated Governors. The term ''Industry Member'' is proposed to be added to Article I, Section 1–1(pp) and shall mean a member of any committee appointed by the Board of Governors who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.[35]

The term ''Non-Industry Member'' is proposed to be added at Article I, Section 1–1(rr) and shall mean a member of any committee appointed by the Board of Governors who is (i) a Public member; (ii) an officer, director, or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry member.[36] The term ''Public Member is proposed to be added at Article I, Section 1–1(ss) and shall mean a member of any committee appointed by the Board of Governors who has no material business relationship with a broker or dealer, the Exchange, or its affiliates.[37]

The term ''Member Representative member'' is proposed to be added at Article I, Section 1–1(qq) and shall mean a member of any committee appointed by the Board of Governors who has been elected or appointed after

[30] *See* By-Law Article IV, Section 4–7.

[31] *See* similar provisions in The NASDAQ Stock Market LLC By-Laws at Article II, Section 3.

[32] *See* By-Law Article IV, Section 4–6.

[33] *See* footnote 5 for current Independent Governor and Independent definitions.

[34] The term ''Trust Agreement'' is currently defined as the Third Amended and Restated Trust Agreement, dated as of February 22, 2007, between the Exchange and the trustee under such Trust Agreement.

[35] This definition is substantially similar to the same term found in The NASDAQ Stock Market LLC By-Laws at Article I.

[36] This definition is substantially similar to the same term in The NASDAQ Stock Market LLC By-Laws at Article I.

[37] This definition is substantially similar to the same term found in The NASDAQ Stock Market LLC By-Laws at Article I.

having been nominated by the Member Nominating Committee pursuant to these By-Laws.[38] The term ''Contested Vote'' is proposed to be added at Article I, Section 1–1(mm) and shall mean a process for selection of one or more Designated Governors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected by the holder of the Series A Preferred Stock.[39] The term ''List of Candidates'' is proposed to be added at Article I, Section 1–1(nn) and shall mean the list of candidates for Designated Governor positions to be voted upon by Member Organization Representatives on a Voting Date.[40] The term ''Member Voting Record Date'' '' is proposed to be added at Article I, Section 1–1(oo) and shall mean a date selected by the Board of Governors for the purpose of determining the Member Organization Representatives entitled to vote for Designated Governors on a Voting Date in the event of a Contested Vote.[41] Finally, the term ''Voting Date'' is proposed to be added at Article I, Section 1–1(tt) and shall mean a date selected by the Board of Governors for Member Organization Representatives to vote with respect to Designated Governors in the event of a Contested Vote.[42]

The amended and newly added definitions are necessary to effectuate the amendments proposed herein related to the nominating process to elect Designated Governors.

Vice Chair and PBOT Governor Elimination

The Exchange's proposed rule change seeks to amend the Certificate of Incorporation and delete By-Law Article V, Section 5–3 to delete the Vice Chair position as well as amend By-Law Article 1, Section 1–1, Article III, Section 3–16, Article IV, Sections 4–1 and 4–14, Article X, Sections 10–14 and 10–15 and Article XXVIII, Sections 28–3 and 28–12 to eliminate references to the Vice Chair position.[43]

After integration and a period of time functioning under a global holding company structure, the Exchange has determined that eliminating this position would streamline the governance structure. The NASDAQ Stock Market does not have a Vice Chair. References to the Vice Chair are being deleted, including a description of who may serve as Vice Chair, which appears in the Certificate of Incorporation and By-laws, as well as the current function of the Vice Chair to preside over Board meetings in the absence of the Chair of the Board of Governors.

The Exchange proposes to amend the Certificate of Incorporation and By-Law Article I, Sections 1–1(e) and 1–1(aa), Article IV, Section 4–1 and Article V, Section 5–3 [*sic*] to delete the position of PBOT Governor. Since the Philadelphia Board of Trade, Inc (''PBOT'')[44] now has the status of one of multiple subsidiaries within a global holding company structure, it is no longer appropriate to provide its members special representation on the Exchange board, which is likewise a NASDAQ OMX subsidiary. The PBOT Governor position would be replaced with a Designated Independent Governor. The Exchange's proposed changes will continue to provide for a fair representation of its members on the Board of Governors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[45] in general, and furthers the objectives of: (1) Section 6(b)(1) of the Act,[46] which requires a national securities exchange to be so organized and have the capacity to carry out purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; (2) Section 6(b)(3) of the Act,[47] which requires that the rules of a national securities exchange assume the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer (the ''fair representation requirement''); and Section 6(b)(5) of the Act,[48] in that it is designed, among other things, 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. Specifically, Members will continue to be represented on the Board and on key standing committees, and will have a voice in the selection of Governors through the Member Nominating Committee and the ability to nominate alternate candidates and thereby cause a Contested Vote in which all Member Organization Representatives may vote.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–17 on the subject line.

[38] This definition is substantially similar to the same term found in The NASDAQ Stock Market LLC By-Laws at Article I.

[39] This definition is substantially similar to that of Contested Election found in The NASDAQ Stock Market LLC By-Laws at Article I.

[40] This definition is substantially similar to the same term found in The NASDAQ Stock Market LLC By-Laws at Article I.

[41] This definition is substantially similar to that of Record Date found in The NASDAQ Stock Market LLC By-Laws at Article I.

[42] This definition is substantially similar to that of Election Date found in The NASDAQ Stock Market LLC By-Laws at Article I.

[43] The Vice Chair is elected by the Holder of Common Stock and does not effect the fair representation requirement.

[44] PBOT recently changed its corporate name to NASDAQ OMX Futures Exchange, Inc.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78(b)(1). [*sic*]

[47] 15 U.S.C. 78(b)(3). [*sic*]

[48] 15 U.S.C. 78f(b)(5).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

All submissions should refer to File Number SR–Phlx–2009–17 and should be submitted on or before April 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Florence E. Harmon,

Deputy Secretary.

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[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59545; File No. SR–Phlx–2009–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Elimination of Sector Index Options From Monthly Firm Cap

March 9, 2009.

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 February 25, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the sector index options from the Monthly Firm Cap.[3] Additionally, the Exchange proposes minor amendments to its fee schedule to clean up the formatting of its fee schedule and correct a typographical error.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Firm Proprietary Options Transaction Charges for equity and sector index options, in the aggregate, for one billing month can not exceed $75,000 per month, per member organization, except for orders of joint back-office participants.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to no longer include the options transaction charge associated with the sector index options in the $75,000 Firm-Related Equity Option and Index Option Cap calculation. The Exchange believes that it can continue to attract this business without offering the cap, which should also help to raise revenue. Specifically, ''firm-related'' charges include equity option firm proprietary transaction charges and index option firm proprietary transaction charges (''Monthly Firm Cap''). Currently, such firm-related charges for equity option and index options, in the aggregate for one billing month, would not exceed $75,000 per month per member organization. The Monthly Firm Cap excludes orders of joint back-office participants.[4]

Additionally, the Exchange proposes the following clean-up amendments to its Fee Schedule: (1) Removal of the date from the first page of the Fee Schedule; (2) removal of page numbers from the Table of Contents to be replaced by section numbers; and (3) removal of underlining from all section headers on each page of the Fee Schedule.[5] The Exchange believes that these amendments will provide for ease of motion in amending the Fee Schedule.

The Exchange also proposes to amend a typographical error related to its Examinations Fee. In filing SR–Phlx–2009–08[6], the Exchange inadvertently indicated that the Examinations Fee for the number of Off-Floor Traders, in the same Member Organization, that exceeded 200 in number is $12,000 per month.[7] This fourth tier should have stated that the Examinations Fee for the number of Off-Floor Traders, in the same Member Organization, that exceeded 200 in number is $12,500 per month. The Exchange proposes to amend this tier of the Examinations Fee

[4] *See* Securities Exchange Act Release No. 59393 (February 11, 2009), 74 FR 7721 (February 19, 2009) (SR–Phlx–2009–12) (increasing the Firm-Related Equity Option and Index Option Cap to $75,000 and exclude JBO participants).

[5] *See* Securities Exchange Act Release No. 59402 (February 13, 2009), 74 FR 8134 (February 23, 2009) (SR–Phlx–2009–08) (a proposal to create a more user-friendly fee schedule).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 54941 (December 14, 2006), 71 FR 77079 (December 22, 2006) (SR–Phlx–2006–70) (adopting a tiered Examinations Fee).

to properly reflect the amount previously filed with the Commission.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the amendment to the Monthly Firm Cap is equitable in that it proposes to eliminate all section index options. Additionally, the proposed amendments to the formatting of the fee schedule will create a more user friendly fee schedule. The proposal to correct the typographical error in the Examination Fee should eliminate confusion among members as to the amount of the fee.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and paragraph (f)(2) of Rule 19b–4 [11] thereunder. 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 proposal 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 No. SR–Phlx–2009–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2009–20. 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 changes 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2009–20 and should be submitted on or before April 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5571 Filed 3–13–09; 8:45 am]

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59543; File No. SR–NYSE–2008–132]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Order Approving Proposed Rule Change To Introduce a NYSE Order Imbalance Information Fee

March 9, 2009.

I. Introduction

On December 19, 2008, the New York Stock Exchange, LLC (''NYSE'' or the ''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 introduce a fee for access to its NYSE Order Imbalance Information datafeed. The proposed rule change was published for comment in the **Federal Register** on January 13, 2009.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to make the NYSE Order Imbalance Information datafeed available as a stand-alone market data product, separate and apart from NYSE OpenBook, and proposes to charge recipients of the NYSE Order Imbalance Information datafeed $500 per month.

Currently, NYSE makes available to recipients of NYSE OpenBook an additional datafeed containing Order Imbalance Information. NYSE Order Imbalance Information is a datafeed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the close of trading on the Exchange. These orders are subject to execution at the market's opening or closing price, as the case may be, and represent issues that are likely to be of particular trading interest at the opening or closing. The Exchange distributes information about these imbalances in real-time at specified intervals prior to the opening and closing auctions. NYSE Order Imbalance Information also includes the imbalance information that the Exchange is required to disseminate under NYSE Rule 123C(5), as well as automated real-time streaming order imbalance information at specified intervals.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59202 (January 6, 2009), 74 FR 1744.

The Exchange believes that by making NYSE Order Imbalance Information datafeed available as a stand-alone market data product it would enable all investors to gain access to information regarding opening and closing imbalances on the Exchange, especially because the Exchange is not imposing end-user fees, is not requiring end-users to sign contracts and is making vendor receipt and use of the information inexpensive and very few administrative burdens (*e.g.*, no reporting requirements and no end-user contracts). Currently, many investors have not been able to access this data because they do not subscribe to the NYSE OpenBook services. The Exchange anticipates that this will provide important information to millions of investors.

Initially, the Exchange proposes to make order imbalance information available at the following intervals.

For Opening Order Imbalances

- Every five minutes between 8:30 a.m. EST and 9 a.m. EST.
- Every one minute between 9 a.m. EST and 9:20 a.m. EST.
- Every 15 seconds between 9:20 a.m. EST and the opening (or 9:35 a.m. EST if the opening is delayed).

For Closing Order Imbalances

- Every fifteen seconds between 3:40 p.m. EST and 3:50 p.m. EST.
- Every five seconds between 3:50 p.m. EST and 4 p.m. EST.

If the Exchange were to change these intervals, it would notify NYSE Order Imbalance Information recipients in advance and/or post the changes on the Exchange's Web.site.

The Fee

The proposed fee of $500 per month for recipients of the NYSE Order Imbalance Information datafeed applies whether the recipient receives the datafeed directly from the Exchange or indirectly from an intermediary. The fee entitles the datafeed recipient to make displays of that information available to an unlimited number of subscribers for no extra charge. The Exchange is not proposing to impose an end-user or display device fee on those subscribers.

The fee would allow vendors to redistribute NYSE Order Imbalance Information: (i) Without having to differentiate between professional subscribers and nonprofessional subscribers; (ii) without having to account for the extent of access to the data; (iii) without having to procure contracts with its subscribers for the benefit of the Exchange; and (iv) without having to report the number of its subscribers.

By establishing the access fee at what it terms as an inexpensive rate and declining to impose an end-user fee on the consumption of NYSE Order Imbalance Information, the Exchange states that it seeks to enable all investors to gain access to information regarding opening and closing imbalances on the Exchange. The Exchange believes that the fee enables the investment community that has an interest in the receipt of order imbalance information to contribute to the Exchange's operating costs in a manner that is appropriate for this market data product.

Continued Distribution Through NYSE OpenBook

The Exchange would continue to permit NYSE OpenBook datafeed recipients to receive the NYSE Order Imbalance Information datafeed as part of the NYSE OpenBook package without having to pay the $500 fee or any other additional charge. Those NYSE OpenBook datafeed recipients may then redistribute the NYSE Order Imbalance Information to any of their subscribers, whether or not the subscriber also receives NYSE OpenBook information. The Exchange imposes no end-user charge on those subscribers.

Contracts

The Exchange proposes to provide the NYSE Order Imbalance Information datafeed available under the same contracting arrangement that the Commission has approved for the receipt and use of market datafeeds under the CTA and CQ Plans. That arrangement contemplates that each datafeed recipient enter into the Commission-approved standard form of ''Agreement for Receipt and Use of Market Data'' that Network A uses for data redistributors and other parties that use the data for purposes other than interrogation.[4] Exhibit A to each of those agreements would need to be updated to reflect the receipt and use of NYSE Order Imbalance Information. The Exchange states that this arrangement would not require an end-user of the information (other than a data feed recipient) to enter into any agreement.

III. Discussion

The Commission has reviewed carefully the proposed rule change and 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, it is consistent with Section 6(b)(4) of the Act,[5] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[7] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[8] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[9]

The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[10] In the NYSE Arca

[4] The Participants in the CTA and CQ Plans first submitted the Consolidated Vendor Form to the Commission for immediate effectiveness in 1990. *See* Release No. 34–28407 (September 6, 1990); 55 FR 37276 (September 10, 1990) (File No. 4–281). The Commission approved a revised version of it in 1996 in conjunction with the participants' restatement of the CTA and CQ Plans. *See* Release No. 34–37191 (May 9, 1996); 61 FR 24842 (May 16, 1996) (File No. SR–CTA/CQ–96–1).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(8).

[8] 17 CFR 242.603(a).

[9] NYSE is an exclusive processor of NYSE data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

[10] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (''NYSE Arca Order''). In the NYSE Arca Order, the Commission describes a variety of competitive factors that apply to exchanges when distributing non-core market data products. The Commission hereby incorporates

Order, the Commission stated that ''when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.'' [11] It noted that the ''existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [12] If an exchange ''was subject to significant competitive forces in setting the terms of a proposal,'' the Commission will approve a proposal unless it determines that ''there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.'' [13]

As noted in the NYSE Arca Order, the standards in Section 6 of the Act and Rule 603 of Regulation NMS do not differentiate between types of data and therefore apply to exchange proposals to distribute both core data and non-core data.[14] Core data is the best-priced quotations and comprehensive last-sale reports of all markets that the Commission, pursuant to Rule 603(b), requires a central processor to consolidate and distribute to the public pursuant to joint-SRO plans.[15] In contrast, individual exchanges and other market participants distribute non-core data voluntarily.[16] The mandatory nature of the core data disclosure regime leaves little room for competitive forces to determine products and fees.[17] Non-core data products and their fees are, by contrast, much more sensitive to competitive forces.[18] The Commission therefore is able to use competitive forces in its determination of whether an exchange's proposal to distribute non-core data meets the standards of Section 6 and Rule 603. Because NYSE's instant proposal relates to the distribution of non-core data, the Commission will apply the market-based approach set forth in the NYSE Arca Order.

The proposed rule change should benefit investors by facilitating wider availability of NYSE Order Imbalance Information. The proposal would allow market participants that are currently not subscribers to the NYSE OpenBook market data product to receive NYSE Order Imbalance Information as a stand-alone product. Vendors would be allowed to redistribute the Order Imbalance Information to an unlimited number of subscribers for no extra charge. The Commission notes that under the proposal even though NYSE Order Imbalance Information would be sold as a stand-alone product, that NYSE OpenBook datafeed recipients would continue to receive the Order Imbalance datafeed without having to pay any additional charge. In addition, the Commission notes that those NYSE OpenBook datafeed recipients would then be able to redistribute without charge the NYSE Order Imbalance Information to any of their subscribers, whether or not the subscriber also receives NYSE OpenBook information.

The NYSE Open Imbalance Information product that is before the Commission is a non-core data product and, as in the Commission's NYSE Arca Order analysis, at least two broad types of significant competitive forces applied to NYSE in setting the terms of this proposal: (i) NYSE's compelling need to attract order flow from market participants; [19] and (ii) the availability to market participants of alternatives to purchasing NYSE's data.

Attracting order flow is the core competitive concern of any equity exchange, including NYSE. Attracting order flow is an essential part of an NYSE's competitive success. If NYSE cannot attract order flow to its market, it will not be able to execute transactions. If NYSE cannot execute transactions on its market, it will not generate transaction revenue. If NYSE cannot attract orders or execute transactions on its market, it will not have market data to distribute, for a fee or otherwise, and will not earn market data revenue and thus not be competitive with other exchanges that have this ability.

Table 1 below provides a useful recent snapshot of the state of competition in the U.S. equity markets in the month of January 2009: [20]

TABLE 1—REPORTED SHARE VOLUME IN U.S-LISTED EQUITIES DURING JANUARY 2009 (%)

Trading venue	All stocks	NYSE-listed	NASDAQ-listed
NASDAQ	27.1	20.5	39.9
All Non-Exchange	26.7	26.2	31.0
NYSE Arca	17.9	15.7	15.8
NYSE	14.8	26.2	0.0
BATS	10.7	9.0	10.8
International Stock Exchange	1.3	1.4	1.4
National Stock Exchange	0.6	0.7	0.7
Chicago Stock Exchange	0.4	0.4	0.3
CBOE Stock Exchange	0.2	0.0	0.1
NYSE Alternext	0.1	0.0	0.0
NASDAQ OMX BX	0.0	0.0	0.0

The market share percentages in Table 1 strongly indicate that NYSE must compete vigorously for order flow to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on

by reference the data and analysis from the NYSE Arca Order into this order.

[11] *Id.* at 74771.

[12] *Id.* at 74782.

[13] *Id.* at 74781.

[14] *Id.* at 74779.

[15] *Id. See* 17 CFR 242.603(b). (''Every national securities exchange on which an NMS stock is traded and national securities association shall act jointly pursuant to one or more effective national market system plans to disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks. Such plan or plans shall provide for the dissemination of all consolidated information for an individual NMS stock through a single plan processor.'').

[16] NYSE Arca Order, *supra* note 10, at 74779.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 74782. (''Attracting order flow is the core competitive concern of any equity exchange—it is the ''without which, not'' of an exchange's competitive success. If an exchange cannot attract orders, it will not be able to execute transactions. If it cannot execute transactions, it will not generate transaction revenue. If an exchange cannot attract orders or execute transactions, it will not have market data to distribute, for a fee or otherwise, and will not earn market data revenue.'').

[20] Source: ArcaVision (available at *http://www.arcavision.com*).

NYSE to act reasonably in setting its fees for NYSE market data, particularly given that the market participants that must pay such fees often will be the same market participants from whom NYSE must attract order flow. These market participants particularly include the large broker-dealer firms that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one trading venue to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. Specifically with respect to trading prior to the open and close, for example, the Commission notes that exchanges other than the NYSE currently offer, or could easily offer, trading services that compete with the NYSE open and close.

In addition to the need to attract order flow, the availability of alternatives to NYSE's Order Imbalance Information significantly affect the terms on which NYSE can distribute this market data.[21] In setting the fees for its NYSE OpenBook data, NYSE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. The various self-regulatory organizations, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data are all sources of competition. Accordingly, a variety of alternative sources of information impose significant competitive pressures on the NYSE in setting the terms for distributing its market data. The Commission believes that the availability of those alternatives, as well as the NYSE's compelling need to attract order flow, imposed significant competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis, nor were there any comments on this filing, so no one raised any issues under this portion of the test. For example, the proposal does not unreasonably discriminate among types of users. The proposed fee entitles the datafeed recipient to make displays of the information available to an unlimited number of subscribers at no extra charge.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NYSE–2008–132) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

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[21] *See* Richard Posner, *Economic Analysis of Law* § 9.1 (5th ed., 1998) (discussing the theory of monopolies and pricing). *See also* U.S. Dep't of Justice & Fed'l Trade Comm'n, Horizontal Merger Guidelines § 1.11 (1992), as revised (1997) (explaining the importance of alternatives to the presence of competition and the definition of markets and market power). Courts frequently refer to the Department of Justice and Federal Trade Commission merger guidelines to define product markets and evaluate market power. *See, e.g., FTC* v. *Whole Foods Market, Inc.,* 502 F. Supp. 2d 1 (D.D.C. 2007); *FTC* v. *Arch Coal, Inc.,* 329 F. Supp. 2d 109 (D.D.C. 2004). In considering antitrust issues, courts have recognized the value of competition in producing lower prices. *See, e.g., Leegin Creative Leather Products* v. *PSKS, Inc.,* 127 S. Ct. 2705 (2007); *Atlanta Richfield Co.* v. *United States Petroleum Co.,* 495 U.S. 328 (1990); *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.,* 475 U.S. 574 (1986); *State Oil Co.* v. *Khan,* 522 U.S. 3 (1997); *Northern Pacific Railway Co.* v. *U.S.,* 356 U.S. 1 (1958).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59544; File No. SR–NYSE–2008–131]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Order Approving Proposed Rule Change To Introduce a NYSE OpenBook Nonprofessional Subscriber Fee and To Revise the Unit of Count That Determines the Device Fees Payable by Data Recipients

March 9, 2009.

I. Introduction

On December 18, 2008, the New York Stock Exchange, LLC (''NYSE'' or the ''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 introduce a nonprofessional subscriber fee for its NYSE OpenBook product offerings and to revise the unit of count that determines the device fees payable by data recipients. The proposed rule change was published for comment in the **Federal Register** on January 12, 2009.[3] The Commission received two comment letters on the proposal.[4] NYSE responded to the comment letters on February 25, 2009.[5] This order approves the proposed rule change.

II. Description of the Proposal

A. Unit of Count

As part of a one-year pilot and a wider initiative to simplify and modernize market data administration, the Exchange proposes to redefine some of the basic ''units of measure'' that Vendors are required to report to the Exchange and on which the Exchange bases its fees for its NYSE OpenBook product packages. NYSE believes the proposal is designed to be more closely aligned with current data consumption, reduce costs for the Exchange's customers, and potentially serve as a model for additional pricing efficiencies.

NYSE OpenBook is a packaged suite of data feed products. It includes: (i) NYSE OpenBook Realtime, by which the Exchange makes NYSE OpenBook Realtime available on a snapshot basis, with updates distributed in real-time at intervals of one second; and (ii) NYSE OpenBook Ultra, by which the Exchange updates NYSE OpenBook information upon receipt of each displayed limit order, or upon an event that removes limit orders from NYSE OpenBook (*i.e.*, cancellation or execution). For no additional charge, the Exchange makes available to recipients of NYSE OpenBook additional data feeds containing: (i) NYSE BestQuote,[6] which allows customers to see NYSE's best bid and offer as made available through the Consolidated Quotation System, and which may contain additional market interest that is not displayed in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59198 (January 5, 2009), 74 FR 1268.

[4] *See* February 2, 2009 letter from Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), to Elizabeth M. Murphy, Secretary, Commission (''SIFMA Letter''); February 2, 2009 letter from Jeffrey T. Brown, Senior Vice President, Charles Schwab Corporation (''Schwab''), to Florence Harmon, Deputy Secretary, Commission, (''Schwab Letter'').

[5] *See* February 25, 2009 letter from Janet M. Kissane, Senior Vice President—Legal & Corporate Secretary, Office of the General Counsel, NYSE, to Elizabeth M. Murphy, Secretary, Commission (''NYSE Letter'').

[6] NYSE added NYSE BestQuote to the NYSE OpenBook Realtime package in October 2006. *See* Securities Exchange Act Release No. 54594 (October 12, 2006); 71 FR 61819 (October 19, 2006) (SR–NYSE–2006–81).

NYSE limit order book and that, therefore, is not available in NYSE OpenBook; and (ii) Order Imbalance Information, which includes information regarding order imbalances prior to the market opening and closing auctions.

Currently, an end-user of NYSE OpenBook pays (or its Vendor pays on its behalf) the monthly per-terminal NYSE OpenBook device fee of $60. In addition, a NYSE OpenBook data feed recipient pays a monthly $5,000 access fee for NYSE OpenBook, plus the per-terminal fee if the data feed recipient also displays the data. These fees currently apply regardless of whether the recipient receives NYSE OpenBook Realtime or NYSE OpenBook Ultra and whether the subscriber is a professional subscriber or a nonprofessional subscriber. The recipients receive NYSE Order Imbalance Information and NYSE BestQuote for no additional charge.

Under the proposal, the Exchange will no longer define the Vendor-Subscriber relationship based on the manner in which a Data Feed Recipient or Subscriber receives data (*i.e.*, through controlled displays or through data feeds). Instead, the Exchange proposes to adopt more objective billing criteria. The following basic principles underlie this proposal.

i. Vendors

• ''Vendors'' are market data vendors, broker-dealers, private network providers and other entities that control Subscribers' access to data through Subscriber Entitlement Controls.

ii. Subscribers

• ''Subscribers'' are unique individual persons or devices to which a Vendor provides data. Any individual or device that receives data from a Vendor is a Subscriber, whether the individual or device works for or belongs to the Vendor, or works for or belongs to an entity other than the Vendor.

• Only a Vendor may control Subscriber access to data.

• Subscribers may not redistribute data in any manner.

iii. Subscriber Entitlements

• A Subscriber Entitlement is a Vendor's permitting a Subscriber to receive access to data through an Exchange-approved Subscriber Entitlement Control.

• A Vendor may not provide data access to a Subscriber except through a unique Subscriber Entitlement.

• The Exchange will require each Vendor to provide a unique Subscriber Entitlement to each unique Subscriber.

• At prescribed intervals (normally monthly), the Exchange will require each Vendor to report each unique Subscriber Entitlement.

iv. Subscriber Entitlement Controls

• A Subscriber Entitlement Control is the Vendor's process of permitting Subscribers' access to data.

• Prior to using any Subscriber Entitlement Control or changing a previously approved Subscriber Entitlement Control, a Vendor must provide the Exchange with a demonstration and a detailed written description of the control or change and the Exchange must have approved it in writing.

• The Exchange will approve a Subscriber Entitlement Control if it allows only authorized, unique end-users or devices to access data or monitors access to data by each unique end-user or device.

• Vendors must design Subscriber Entitlement Controls to produce an audit report and make each audit report available to the Exchange upon request. The audit report must identify:

A. Each entitlement update to the Subscriber Entitlement Control;

B. The status of the Subscriber Entitlement Control; and

C. Any other changes to the Subscriber Entitlement Control over a given period.

• Only the Vendor may have access to Subscriber Entitlement Controls.

The Exchange recognizes that each Vendor and Subscriber may use NYSE OpenBook data differently and that the Exchange is one of many markets with whom Vendors and Subscribers may enter into arrangements for the receipt and use of data. Accordingly, the Exchange does not propose to restrict how Vendors may use NYSE OpenBook data in their display services and encourages Vendors to create and promote innovative uses of NYSE OpenBook information. For instance, a Vendor may use NYSE OpenBook data to create derived information displays, such as displays that aggregate NYSE OpenBook data with data from other markets.[7] The proposal does not discriminate among data recipients and users, as the new ''unit of measure'' concepts would apply equally to everyone.

Under the proposed rule change, the Exchange would require Vendors to count every Subscriber Entitlement, whether it be an individual person or a device. Thus, the Vendor would have to include in the count every person and device that has access to the data, regardless of the purposes for which the individual or device uses the data. The proposal eliminates current exceptions to the device-reporting obligation in order to subject the count to a more objective process and simplify the reporting obligation for Vendors. For instance, the Exchange previously has not required Vendors to report certain programmers and other individuals who receive access to data for certain specific, non-trading purposes. These exceptions require the Exchange to monitor the manner end-users consume data, which in turn adds cost for both the Exchange and customers.

To simplify the process, the Exchange will require Vendors to report all entitlements in accordance with the following:

i. In connection with a Vendor's external distribution of NYSE OpenBook data, the Vendor should count as one Subscriber Entitlement each unique Subscriber that the Vendor has entitled to have access to the Exchange's market data. However, where a device is dedicated specifically to a single individual, the Vendor should count only the individual and need not count the device.

ii. In connection with a Vendor's internal distribution of NYSE OpenBook data, the Vendor should count as one Subscriber Entitlement each unique individual (but not devices) that the Vendor has entitled to have access to the Exchange's market data.

iii. The Vendor should identify and report each unique Subscriber. If a Subscriber uses the same unique Subscriber Entitlement to gain access to multiple market data services, the Vendor should count that as one Subscriber Entitlement. However, if a unique Subscriber uses multiple Subscriber Entitlements to gain access to one or more market data services (*e.g.,* a single Subscriber has multiple passwords and user identifications), the Vendor should report all of those Subscriber Entitlements.

iv. Vendors should report each unique individual person who receives access through multiple devices as one Subscriber Entitlement so long as each device is dedicated specifically to that individual.

v. The Vendor should include in the count as one Subscriber Entitlement devices serving no entitled individuals. However, if the Vendor entitles one or more individuals to use the same device, the Vendor should include only

[7] In the case of derived displays, the Vendor is required to: (1) Pay the Exchange's device fees (described below); (2) include derived displays in its reports of NYSE OpenBook usage; and (3) use reasonable efforts to assure that any person viewing a display of derived data understands what the display represents and the manner in which it was derived.

the entitled individuals, and not the device, in the count.

B. Nonprofessional Subscriber Fee and Fee Cap

In addition to the unit of count one-year pilot program, the Exchange also proposes to establish a fee applicable to the receipt and use of NYSE OpenBook data by nonprofessional Subscribers. Currently, the Exchange does not have a separate fee for the receipt of NYSE OpenBook data by nonprofessional Subscribers. Under the present structure, NYSE OpenBook subscribers pay a device fee of $60. In the instant proposal, the Exchange would reduce the NYSE OpenBook device fee to $15 per month for investors who qualify as nonprofessional Subscribers; the fee would be imposed on the Vendor, rather than on the nonprofessional Subscriber.

In establishing a reduced rate for nonprofessional Subscribers, the Exchange proposes to apply the same criteria for qualification as a ''nonprofessional subscriber'' as the CTA and CQ Plan Participants use.[8] Individuals that qualify as nonprofessional subscribers would be eligible to enjoy the lower nonprofessional subscriber rate regardless of whether they receive the NYSE OpenBook service from a Vendor that receives the NYSE OpenBook datafeed directly from the Exchange, or from a Vendor that receives the database indirectly through an intermediary.

The Exchange proposes to introduce a monthly maximum amount (the ''Maximum Amount'') that a broker-dealer would have to pay to provide NYSE OpenBook Realtime or NYSE OpenBook Ultra to any number of nonprofessional Subscribers if such Subscriber maintains a brokerage account with the broker-dealer. The broker-dealer must be registered as a broker/dealer under the Act.

The Exchange proposes to set the Maximum Amount at $25,000 per month for each calendar year subject to an increase or decrease by the percentage increase or decrease in the annual cost-of-living adjustment (''COLA'') that the U.S. Social Security Administration applies to Supplemental Security Income for the calendar year preceding that subsequent calendar year. For example, if the COLA for calendar year 2008 is a two percent increase, then the monthly Maximum Amount for months falling in calendar year 2009 would increase by two percent to $25,500.

The Exchange believes that the maximum monthly payment will benefit broker-dealers that service a large customer base in particular. Under the proposal, these broker-dealers would have to have procedures in place that enable them to: (i) Procure readily the nonprofessional subscriber attestation from each nonprofessional customer, a requirement that is a prerequisite for qualification as a nonprofessional subscriber; and (ii) review periodically the accounts included under their nonprofessional cap to ensure their nonprofessional status. Recognizing that these broker-dealers may have a small number of account-holding customers that technically do not qualify for the nonprofessional Subscriber fee, but whom a broker-dealer may inadvertently include under the cap because of the complexities of managing thousands or even millions of accounts, the Exchange proposes guidelines under which the broker-dealer will not be penalized for using the nonprofessional Subscriber fee cap notwithstanding the inclusion of a limited number of account-holding professional Subscribers.

Specifically, a broker-dealer may include professional Subscribers in the calculation of the monthly maximum amount if:

i. Nonprofessional Subscribers comprise no less than 95 percent of the pool of Subscribers that are included in the calculation;

ii. Each professional Subscriber included in the calculation maintains an active brokerage account directly with the broker-dealer (that is, with the broker-dealer rather than with a correspondent firm of the broker-dealer); and

iii. Each professional Subscriber that is included in the calculation is not affiliated with the broker-dealer or any of its affiliates.[9]

iv. All Subscribers receive access to the identical service, regardless of whether the Subscribers are professional Subscribers or nonprofessional Subscribers.

v. Upon discovery of the inclusion in the cap of an individual that does not qualify as a nonprofessional Subscriber, the broker-dealer takes reasonable action to reclassify and report that individual as a professional Subscriber during the immediately following reporting period.

Notwithstanding clauses (iii) and (v), the broker-dealer may include a professional Subscriber that is affiliated with the broker-dealer or its affiliates (subject to clauses (i) and (ii)) if he or she accesses market data on-line through his or her personal account solely for the non-business purpose of managing his or her own portfolio. Notwithstanding clause (v), professional Subscribers may constitute up to five percent of the pool of Subscribers that the broker-dealer includes in the calculation of the monthly maximum amount if those professional Subscribers can only view data derived from NYSE OpenBook Ultra through the Subscriber's online brokerage account; and in an inquiry/response per-quote display (*i.e.*, not in a streaming display).

The Exchange proposes this exception to permit broker-dealers that primarily serve non-institutional brokerage account holders to offer a consistent online client experience without undue administrative burdens but guard against potential abuses by monitoring the use of the exception closely and reserving the right to deny application of this exception if a broker-dealer is determined to be misusing it, such as by opening up retail brokerage accounts to disseminate data to institutional clients. The Exchange intends for the Maximum Amount to enable much wider distribution of NYSE OpenBook data to retail investors holding brokerage accounts and further the goal of market transparency for investors. If the $15 per-device fee would allow a broker-dealer to pay less than the Maximum Amount for any month, the broker-dealer may pay the lower amount for that month.

III. Summary of Comments and NYSE Response

The Commission received two comments on the proposed rule change. In general, the commenters supported the proposed changes to the market data fee structure. NYSE responded to the comments.

SIFMA supports several aspects of the proposed rule change. In particular, SIFMA believes that the unit of count

[8] Like the CTA and CQ Plans, classification as a nonprofessional subscriber is subject to Exchange review and requires the subscriber to attest to his or her nonprofessional subscriber status. A ''nonprofessional subscriber'' is a natural person who uses the data solely for his personal, non-business use and who is neither (i) registered or qualified with the SEC, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association, (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that act), nor (iii) employed by a bank or other organization exemption from registration under Federal and/or State securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such function for an organization not so exempt.

[9] A professional Subscriber is ''affiliated'' with a broker-dealer if he or she is an officer, partner, member, or employee of the broker dealer or an affiliate of the broker-dealer or enjoys a similar status with the broker-dealer or affiliate.

pilot holds the promise of simplified and fairer market date fee administration that would avoid duplicate counting of an individual using multiple devices.[10] In addition, SIFMA supports the nonprofessional subscriber fee and fee cap.

Schwab supports NYSE's proposal to introduce nonprofessional fees and fee cap for nonprofessional recipients of the NYSE's OpenBook product. Schwab believes that the proposal should for the first time allow retail customers to obtain affordable depth-of-book market data.[11] Schwab notes that before this proposal, NYSE OpenBook would have cost $60 million a month to distribute across the firm. The proposal would limit the charges to $25,000 per month for Schwab to distribute NYSE OpenBook to its nonprofessional clients. In addition, Schwab commented that NYSE's changes in the way users of data are counted will make the market data billing process more efficient and less burdensome.[12]

The commenters noted their objection to the Commission's approach for reviewing and evaluating market data proposals. SIFMA and Schwab objected to the application of the test set forth in the NYSE Arca Order for determining whether specific market data fee proposals are consistent with the Exchange Act.[13] SIFMA also stated that NYSE ''erroneously applies'' the competitive factors test enumerated in the NYSE Arca Order.[14]

NYSE appreciated SIFMA's and Schwab's strong support and positive feedback regarding the nonprofessional subscriber fee and the changes to the unit of count policies. In addition, the Exchange clarified that it intended to file a proposed rule change with the Commission to amend the pilot program to retroactively cap the fees payable by a vendor in respect of the use of data for administrative purposes to $1500 per month. The Exchange also clarified the terms and conditions applicable to the NYSE Open Book Ultra ''five percent'' exception. Finally, NYSE addressed SIFMA's disagreement with Commission's application of the NYSE Arca Order approach. In this regard, NYSE noted that the SIFMA letter did not provide a basis for its claim that the Exchange failed to comply with the competitive forces test set forth in the NYSE Arca Order. In addition, the Exchange noted its substantive analysis of the application of the test to this proposal. The Exchange also reasserted that it is subject to significant competitive forces and this proposal, which reduces fees, is in part a response to such competition.

IV. Discussion

The Commission has reviewed carefully the proposed rule change, the comment letters, and NYSE's response to the comment letters, and 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, it is consistent with Section 6(b)(4) of the Act,[15] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[17] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[18] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[19]

The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[20] In the NYSE Arca Order, the Commission stated that ''when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.''[21] It noted that the ''existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.''[22] If an exchange ''was subject to significant competitive forces in setting the terms of a proposal,'' the Commission will approve a proposal unless it determines that ''there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.''[23]

As noted in the NYSE Arca Order, the standards in Section 6 of the Act and Rule 603 of Regulation NMS do not differentiate between types of data and therefore apply to exchange proposals to distribute both core data and non-core data. Core data is the best-priced quotations and comprehensive last-sale reports of all markets that the Commission, pursuant to Rule 603(b), requires a central processor to consolidate and distribute to the public pursuant to joint-SRO plans.[24] In

[10] SIFMA Letter at 2.

[11] Schwab Letter at 1.

[12] Schwab Letter at 2.

[13] SIFMA Letter at 1 and Schwab Letter at 2. SIFMA continues to object for the reasons set forth in prior SIFMA comment letters. *See* January 17, 2007 letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA to Nancy M. Morris, Secretary, Commission; August 1, 2007 letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, to Nancy M. Morris, Secretary, Commission; August 16, 2007 letter from Marc E. Lackritz, President and CEO, SIFMA, to Nancy M. Morris, Secretary, Commission; November 7, 2007 letter from Melissa MacGregor, Vice President & Assistant General Counsel, SIFMA, to Dr. Erik R. Sirri, Director, Division of Market Regulation, Commission; February 7, 2008 letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, to Nancy M. Morris, Secretary, Commission; February 14, 2008 letter from Christopher Gilkerson and Gregory Babyak, Market Data Subcommittee Co-Chairs to Nancy M. Morris, Secretary, Commission; July 10, 2008 letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA to Florence Harmon, Deputy Secretary, Commission; November 17, 2008 letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA to Florence Harmon, Deputy Secretary, Commission.

[14] SIFMA Letter at 3.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(8).

[18] 17 CFR 242.603(a).

[19] NYSE is an exclusive processor of NYSE depth-of-book data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

[20] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (''NYSE Arca Order''). In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

[21] *Id.* at 74771.

[22] *Id.* at 74782.

[23] *Id.* at 74781.

[24] *See* 17 CFR 242.603(b). (''Every national securities exchange on which an NMS stock is

Continued

contrast, individual exchanges and other market participants distribute non-core data voluntarily.[25] The mandatory nature of the core data disclosure regime leaves little room for competitive forces to determine products and fees.[26] Non-core data products and their fees are, by contrast, much more sensitive to competitive forces. The Commission therefore is able to use competitive forces in its determination of whether an exchange's proposal to distribute non-core data meets the standards of Section 6 and Rule 603.[27] Because NYSE's instant proposal relates to the distribution of non-core data, the Commission will apply the market-based approach set forth in the NYSE Arca Order.

The Exchange proposes to modify the manner that it imposes fees for the NYSE OpenBook product packages. The proposal rule change would simplify the way the Exchange charges for NYSE OpenBook by changing the methodology for the Unit of Count. It also would introduce a nonprofessional Subscriber fee, as well as the Maximum Amount a broker-dealer would have to pay for nonprofessional Subscribers. Collectively, these changes should reduce the fees and administrative costs related to the receipt and distribution of NYSE OpenBook packages.

The proposal before the Commission relates to fees for NYSE OpenBook products which are non-core, depth of book market data products, and as in the Commission's NYSE Arca Order analysis at least two broad types of significant competitive forces applied to NYSE in setting the terms of this proposal: (i) NYSE's compelling need to attract order flow from market participants; and (ii) the availability to market participants of alternatives to purchasing NYSE's depth-of-book order data.

Attracting order flow is the core competitive concern of any equity exchange, including NYSE. Attracting order flow is an essential part of an NYSE's competitive success. If NYSE cannot attract order flow to its market, it will not be able to execute transactions. If NYSE cannot execute transactions on its market, it will not generate transaction revenue. If NYSE cannot attract orders or execute transactions on its market, it will not have market data to distribute, for a fee or otherwise, and will not earn market data revenue and thus not be competitive with other exchanges that have this ability. Table 1 below provides a useful recent snapshot of the state of competition in the U.S. equity markets in the month of January 2009:[28]

TABLE 1—REPORTED SHARE VOLUME IN U.S-LISTED EQUITIES DURING JANUARY 2009

[%]

Trading venue	All stocks	NYSE-listed	NASDAQ-listed
NASDAQ	27.1	20.5	39.9
All Non-Exchange	26.7	26.2	31.0
NYSE Arca	17.9	15.7	15.8
NYSE	14.8	26.2	0.0
BATS	10.7	9.0	10.8
International Stock Exchange	1.3	1.4	1.4
National Stock Exchange	0.6	0.7	0.7
Chicago Stock Exchange	0.4	0.4	0.3
CBOE Stock Exchange	0.2	0.0	0.1
NYSE Alternext	0.1	0.0	0.0
NASDAQ OMX BX	0.0	0.0	0.0

The market share percentages in Table 1 strongly indicate that NYSE must compete vigorously for order flow to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on NYSE to act reasonably in setting its fees for NYSE market data, particularly given that the market participants that must pay such fees often will be the same market participants from whom NYSE must attract order flow. These market participants particularly include the large broker-dealer firms that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one trading venue to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival.[29]

In addition to the need to attract order flow, the availability of alternatives to NYSE's OpenBook data significantly affect the terms on which NYSE can distribute this market data.[30] In setting the fees for its NYSE OpenBook data, NYSE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data.[31] Of course, the most basic source of information generally available at an exchange is the complete record of an exchange's transactions that is provided in the core data feeds.[32] In this respect, the core data feeds that include an exchange's own transaction information

traded and national securities association shall act jointly pursuant to one or more effective national market system plans to disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks. Such plan or plans shall provide for the dissemination of all consolidated information for an individual NMS stock through a single plan processor.'').

[25] *See* NYSE Arca Order at 74779.

[26] *Id.*

[27] *Id.*

[28] *Source:* ArcaVision (available at *http://www.arcavision.com*).

[29] *See* NYSE Arca Order at 74783.

[30] *See* Richard Posner, *Economic Analysis of Law* § 9.1 (5th ed. 1998) (discussing the theory of monopolies and pricing). *See also* U.S. Dep't of Justice & Fed'l Trade Comm'n, Horizontal Merger Guidelines § 1.11 (1992), as revised (1997) (explaining the importance of alternatives to the presence of competition and the definition of markets and market power). Courts frequently refer to the Department of Justice and Federal Trade Commission merger guidelines to define product markets and evaluate market power. *See, e.g., FTC* v. *Whole Foods Market, Inc.,* 502 F. Supp. 2d 1 (D.D.C. 2007); FTC v. *Arch Coal, Inc.,* 329 F. Supp. 2d 109 (D.D.C. 2004). In considering antitrust issues, courts have recognized the value of competition in producing lower prices. *See, e.g., Leegin Creative Leather Products* v. *PSKS, Inc.,* 127 S. Ct. 2705 (2007); *Atlanta Richfield Co.* v. *United States Petroleum Co.,* 495 U.S. 328 (1990); *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.,* 475 U.S. 574 (1986); *State Oil Co.* v. *Khan,* 522 U.S. 3 (1997); *Northern Pacific Railway Co.* v. *U.S.,* 356 U.S. 1 (1958).

[31] *See* NYSE Arca Order at 74783.

[32] *Id.*

are a significant alternative to the exchange's market data product.[33]

For more specific information concerning depth, market participants can choose among products offered by the various exchanges and ECNs.[34] The various self-regulatory organizations, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data are all sources of competition. In addition, market participants can assess depth with tools other than market data, such as ''pinging'' orders that search out both displayed and nondisplayed size at all price points within an order's limit price.[35]

In sum, there are a variety of alternative sources of information that impose significant competitive pressures on the NYSE in setting the terms for distributing its depth-of-book order data. The Commission believes that the availability of those alternatives, as well as the NYSE's compelling need to attract order flow, imposed significant competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. Neither commenter raised concerns with regard to a substantial countervailing basis that the terms of the proposal failed to meet the requirements of the Act or the rules thereunder. Further, an analysis of the proposal does not provide such a basis.

The Exchange proposes to switch from a per-device fee to a Subscriber Entitlement fee. The Exchange is also proposing to introduce a nonprofessional Subscriber Fee that is subject to a monthly maximum amount. This change will lower the fees payable for NYSE OpenBook data for nonprofessional Subscribers from $60 per month to $15 per month per individual and device. The commenters supported NYSE's changes to its market data fee structure. SIFMA believes that the unit of count pilot holds the promise of simplified and fairer market date fee administration that would avoid duplicate counting of an individual using multiple devices.[36] Schwab stated that the changes in how users are of data are counted will make the market data billing process more efficient and reduce administrative burdens.[37] Schwab stated that the proposal would for the first-time allow retail customers obtain affordable depth-of-book market data.[38] The Commission believes that this proposed rule change will provide vendors with the flexibility to manage NYSE market data in a manner that they determine is most useful and efficient to their business operations.[39] In addition, the overall reduction in costs for NYSE OpenBook could lead to a wider distribution of the market data and greater market transparency.[40]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–NYSE–2008–131) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5570 Filed 3–13–09; 8:45 am]

BILLING CODE 8011–01–P

[33] *Id.*

[34] *See* NYSE Arca Order at 74784.

[35] *Id.*

[36] SIFMA Letter at 2.

[37] Schwab Letter at 2.

[38] Schwab Letter at 1.

[39] *See* Schwab Letter at 2 (''[T]he proposal will allow [Vendors] to manipulate the data as we choose and to aggregate this data with data from other exchanges to offer innovative market data displays to our customers.'').

[40] *See* SIFMA Letter at 3 (''SIFMA has long advocated a nonprofessional fee for depth-of-book data to promote market transparency and investor protection'').

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59542; File No. SR–NYSEArca–2009–14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Leverage Factor Applicable to the MacroShares Major Metro Housing Trusts

March 9, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 3, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

Pursuant to the provisions of Section 19(b)(1) of the Act,[4] the Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation'') proposes to modify the representation made in SR–NYSEArca–2008–92 regarding the leverage factor applicable to the MacroShares Major Metro Housing Up Trust (''Up Trust'') and the MacroShares Major Metro Housing Down Trust (''Down Trust'') (collectively, the ''Trusts''), and, specifically, to indicate that the leverage factor to be applied will be 3 rather than 2. The shares of the Up Trust are referred to as the Up MacroShares, and the shares of the Down Trust are referred to as the Down MacroShares (collectively, the ''Shares''). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved pursuant to Section 19(b)(2) of the Act the Exchange's proposal to list and trade the Up MacroShares and the Down MacroShares under NYSE Arca Equities Rule 8.400.[5] As described in the Approval Order and Notice, the Up

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] *See* Securities Exchange Act Release Nos. 58704 (October 1, 2008), 73 FR 59026 (October 8, 2008) (order approving listing and trading on the Exchange of the Trusts (''Approval Order'')); 58469

Continued

Trust and the Down Trust intend to issue Up MacroShares and Down MacroShares, respectively, on a continuous basis. The Up MacroShares and the Down MacroShares represent undivided beneficial interests in the Up Trust and the Down Trust, respectively.

The assets of the Down Trust will consist of an income distribution agreement and settlement contracts entered into with the Up Trust. Similarly, the assets of the Up Trust will consist of an income distribution agreement and settlement contracts entered into with the Down Trust.[6] Each Trust will also hold U.S. Treasuries, repurchase agreements on U.S. Treasuries and cash to secure its obligations under the income distribution agreement and the settlement contracts. The trustee for the Trusts is State Street Bank and Trust Company.

As described in the Notice, the Trusts will make quarterly distributions of net income, if any, on the treasuries and a final distribution of all assets they hold on deposit on the final scheduled termination date, an early termination date or a redemption date. Each quarterly and final distribution will be based on the value of the S&P/Case-Shiller Composite-10 Home Price Index (''Index''), as well as on prevailing interest rates on U.S. Treasury obligations. The last published value of the S&P/Case-Shiller Composite-10 Home Price Index is referred to as the ''Reference Value of the Index'' or ''Reference Value'', as discussed in the Notice.[7]

If the Reference Value rises above its specified starting level, the Up Trust's Underlying Value (as described in the Notice) will increase to include all of its assets plus a portion of the assets of the paired Down Trust. This portion of assets due from the Down Trust will be multiplied by a specified ''leverage factor''. Conversely, if the level of the Reference Value of the Index falls below its starting level on and after the closing date, the Up Trust's Underlying Value will decrease, because a portion of its assets will be included in the Underlying Value of its paired Down Trust, such portion being multiplied by the leverage factor.

Thus, an increase in the Reference Value of the Index results in a proportionate decrease in the Underlying Value of the Down Trust, multiplied by the leverage factor. A decrease in the Reference Value of the Index results in a proportionate increase in the Underlying Value of the Down Trust, multiplied by the leverage factor.

The Notice stated that the leverage factor would be 2, as initially described in the Registration Statements. The Trusts now intend to utilize a leverage factor of 3.[8] The effect of this will be to triple any increase or decrease in the Underlying Value of the Up Trust or the Down Trust, depending upon whether there is an increase or decrease in the Reference Value of the Index. This would make the per share Underlying Value and the market price of Up MacroShares and Down MacroShares more volatile than the housing prices which those shares reference.

With the exception of U.S. Treasuries, repurchase agreements on U.S. Treasuries and cash, the Trusts will not hold assets (*e.g.*, common stocks, swaps or options) upon which payment to investors is based. Rather, the portion of Trust assets due from one Trust to another changes as a result of changes to the Reference Value. This amount will be multiplied by the leverage factor of 3, but applying the leverage factor does not otherwise affect the assets held by the Trusts or the value of the Index.

Additional information relating to the Trusts and Shares is available in the Registration Statements, the Notice and the Approval Order.[9]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[10] of the Act in general and furthers the objectives of Section 6(b)(5)[11] 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 transaction in securities, and, in general, to protect investors and the public interest. The Exchange believes that the proposal will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.400 are intended 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

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

(September 5, 2008), 73 FR 53306 (September 15, 2008) (SR–NYSEArca–2008–92) (notice of proposed rule change to list and trade the Trusts on the Exchange (''Notice'')). The Shares are being offered by the Trusts under the Securities Act of 1933, 15 U.S.C. 77a. On February 17, 2009, the depositor filed with the Commission preliminary Registration Statements on Form S–1 (Amendment No. 3) for the Up MacroShares (File No. 333–151522) and for the Down MacroShares (File No. 333–151523) (''Registration Statements''). The descriptions herein relating to the operation of the Trusts is based on the Registration Statements.

[6] The income distribution agreement and applicable settlement contracts are attached as exhibits to the Registration Statements.

[7] The Reference Value of the Index is the Reference Price for purposes of NYSE Arca Equities Rule 8.400.

[8] With the exception of the proposed change to the leverage factor, and a change in the distribution date from a date in 2018 to a date in 2014, all representations made by the Exchange in the Notice continue to apply.

[9] See note 5, supra.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–14 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–14. 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 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–NYSEArca–2009–14 and should be submitted on or before March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5568 Filed 3–13–09; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2009–0027]

Request for Renewal of Currently Approved Information Collection: Certification of Enforcement of Vehicle Size and Weight Laws

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 15, 2009.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2009–0027 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Nicholas (202 366–2317), Department of Transportation, Federal Highway Administration, Office of Freight Management and Operations, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws.

Background: Title 23, U.S.C., section 141, requires each State, the District of Columbia and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits, each must submit an updated plan for enforcing their size and weight limits to the FHWA at the beginning of each fiscal year. At the end of the fiscal year, they must submit their certifications and sufficient information to verify that their enforcement goals established in the plan have been met. Failure of a State to file a certification, adequately enforce its size and weight laws and enforce weight laws on the Interstate System that are consistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat.2689, 2701) requires each jurisdiction to inventory (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

Respondents: The State Departments of Transportation (or equivalent) in the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Twice annually.

Estimated Average Burden per Response: Each response will take approximately 40 hours.

Estimated Total Annual Burden Hours: The estimated total annual burden for all respondents is 4,160 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: March 9, 2009.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E9–5574 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the California High-Speed Train Project From San Jose to Merced, CA

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: This notice is to advise the public that FRA and the California High-Speed Rail Authority (Authority) will jointly prepare a project Environmental Impact Statement (EIS) and project Environmental Impact Report (EIR) for the San Jose to Merced section of the Authority's proposed California High-Speed Train (HST) System in compliance with relevant state and federal laws, in particular the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

In 2005, the Authority and FRA completed the first tier California High Speed Train Program EIR/EIS and approved the statewide HST system for intercity travel in California between the major metropolitan centers of Sacramento and the San Francisco Bay Area in the north, through the Central Valley, to Los Angeles and San Diego in the south. The approved HST system would be about 800-miles long, with electric propulsion and steel-wheel-on-steel-rail trains capable of maximum operating speeds of 220 miles per hour (mph) on a mostly dedicated system of fully grade-separated, access-controlled steel tracks and with state-of-the-art safety, signaling, communication, and automated train control systems. In approving the HST system, the Authority and FRA also selected preferred corridor alignments and station location options throughout most of the system. In 2008, the Authority and FRA completed a second program EIR/EIS to evaluate alignments and station locations within the broad corridor between and including the Altamont Pass and the Pacheco Pass to connect the Bay Area and Central Valley portions of the HST system. The Authority and FRA selected the Pacheco Pass with San Francisco and San Jose termini network alternative, as well as preferred corridor alignments and station location options. The selected alignment uses the Caltrain rail right-of-way, between San Francisco and San Jose along the San Francisco Peninsula, through the Pacheco Pass and via Henry Miller Road, between San Jose and the Central Valley.

The preparation of the San Jose to Merced HST Project EIR/EIS will involve development of preliminary engineering designs and assessment of environmental effects associated with the construction, operation, and maintenance of the HST system, including track, ancillary facilities and a Gilroy station, along the Caltrain/UPRR corridor from San Jose to Gilroy, through the Pacheco Pass, and via Henry Miller Road in the Central Valley.

DATES: Written comments on the scope of the San Jose to Merced HST Project EIR/EIS should be provided to the Authority by April 10, 2009. Public scoping meetings are scheduled from March 18, 2009 to March 26, 2009, as noted below in Santa Clara and Merced Counties.

ADDRESSES: Written comments on the scope of this EIR/EIS should be sent to Mr. Dan Leavitt, Deputy Director, ATTN: San Jose to Merced, California High-Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, CA 95814, or via e-mail with subject line ''San Jose to Merced HST'' to: *comments@hsr.ca.gov*. Comments may also be provided orally or in writing at the scoping meetings scheduled at the following locations:

- Merced Community Senior Center, 755 W. 15th Street, Merced, California, March 18 from 3 p.m. to 7 p.m. (joint meeting with the Bakersfield to Merced Section)
- Roosevelt Community Center, Community Room B, 901 E Santa Clara Street, San Jose, California, March 25, 2009 from 3 p.m. to 7 p.m.
- Gilroy Hilton Garden Inn Harvest Room, 6070 Monterey Road, Gilroy, California, March 26, 2009 from 3 p.m. to 7 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. David Valenstein, Environmental Program Manager, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE. (Mail Stop 20), Washington, DC 20590; Telephone: (202) 493–6368, or Mr. Dan Leavitt, Telephone: (916) 324–1541 at the above noted address.

SUPPLEMENTARY INFORMATION: The Authority was established in 1996 and is authorized and directed by statute to undertake the planning and development of a proposed statewide HST network that is fully coordinated with other public transportation services. The Authority adopted a Final Business Plan in June 2000, which reviewed the economic feasibility of an 800-mile-long HST capable of speeds in excess of 200 miles per hour on a dedicated, fully grade-separated state-of-the-art track. The Authority released an updated Business Plan in November 2008.

The FRA has responsibility for oversight of the safety of railroad operations, including the safety of any proposed high-speed ground transportation system. For the proposed HST, it is anticipated that FRA would need to take certain regulatory actions prior to operation.

In 2005, the Authority and FRA completed a Final Program EIR/EIS for the Proposed California High Speed Train System (Statewide Program EIR/EIS), as the first phase of a tiered environmental review process. The Authority certified the Final Program EIR under CEQA and approved the proposed HST System, and FRA issued a Record of Decision under NEPA on the Final Program EIS. This statewide program EIR/EIS established the purpose and need for the HST system, analyzed an HST system, and compared it with a No Project/No Action Alternative and a Modal Alternative. In approving the statewide program EIR/EIS, the Authority and FRA selected the HST Alternative, selected certain corridors/general alignments and general station locations for further study, incorporated mitigation strategies and design practices, and specified further measures to guide the development of the HST system at the site-specific project level of environmental review to avoid and minimize potential adverse environmental impacts. In the subsequent Bay Area to Central Valley HST Final Program EIR/EIS, the Authority and FRA selected as the preferred alternative the Caltrain/UPRR corridor between San Jose and Gilroy to connect with the San Francisco to San Jose section, and the Pacheco Pass and Henry Miller Road corridor from Gilroy to Merced to connect with the Central Valley section of the HST system.

The San Jose to Merced HST Project EIR/EIS will tier from the Final Statewide Program EIR/EIS and the Final Bay Area to Central Valley HST Program EIR/EIS in accordance with Council on Environmental Quality (CEQ) regulations, (40 CFR 1508.28) and State CEQA Guidelines (14 C.C.R. Sec. 15168[b]). Tiering will ensure that the San Jose to Merced HST Project EIR/EIS builds upon all previous work prepared for and incorporated in the Statewide

Program EIR/EIS and the Bay Area to Central Valley HST Program EIR/EIS.

This Project EIR/EIS will describe site-specific environmental impacts; will identify specific mitigation measures to address those impacts; and will incorporate design practices to avoid and minimize potential adverse environmental impacts. The FRA and the Authority will assess the site characteristics, size, nature, and timing of proposed site-specific projects to determine whether the impacts are potentially significant and whether impacts can be avoided or mitigated. This project EIR/EIS will identify and evaluate reasonable and feasible site-specific alignment alternatives, and evaluate the impacts from construction, operation, and maintenance of the HST system. Information and documents regarding this HST environmental review process will be made available through the Authority's Internet site: *http://www.cahighspeedrail.gov/*.

Purpose and Need: The purpose of the proposed HST system is to provide a new mode of high-speed intercity travel that would link major metropolitan areas of the state; interface with international airports, mass transit, and highways; and provide added capacity to meet increases in intercity travel demand in California in a manner sensitive to and protective of California's unique natural resources. The need for a high-speed train (HST) system is directly related to the expected growth in population, and increases in intercity travel demand in California over the next twenty years and beyond. With the growth in travel demand, there will be an increase in travel delays arising from the growing congestion on California's highways and at airports. In addition, there will be negative effects on the economy, quality of life, and air quality in and around California's metropolitan areas from a transportation system that will become less reliable as travel demand increases. The intercity highway system, commercial airports, and conventional passenger rail serving the intercity travel market are currently operating at or near capacity, and will require large public investments for maintenance and expansion to meet existing demand and future growth.

Alternatives: The San Jose to Merced HST Project EIR/EIS will consider a No Action or No Project Alternative and an HST Alternative for the San Jose to Merced corridor.

No Action Alternative: The No Action Alternative (No Project or No Build) represents the conditions in the corridor as it existed in 2007, and as it would exist based on programmed and funded improvements to the intercity transportation system and other reasonably foreseeable projects through 2035, taking into account the following sources of information: State Transportation Improvement Program (STIP), Regional Transportation Plans (RTPs) for all modes of travel, airport plans, intercity passenger rail plans, city and county plans.

HST Alternative: The Authority proposes to construct, operate and maintain an electric-powered steel-wheel-on-steel-rail HST system, about 800 miles long, capable of operating speeds of 220 mph on mostly dedicated, fully grade-separated tracks, with state-of-the-art safety, signaling, and automated train control systems. The San Jose to Merced HST corridor selected by the Authority and FRA and the subject of this Project EIR/EIS generally follows the Caltrain/UPRR corridor from San Jose to Gilroy. From Gilroy, the corridor extends east through the Pacheco Pass generally following State Route 152 and then along Henry Miller Road across the valley floor to connect with the Merced to Bakersfield section of the HST system.

Further engineering studies will be undertaken as part of this EIR/EIS process that will examine design options along the Caltrain/UPRR corridor and possible use of portions of parallel transportation corridors. Alignment refinements in the Pacheco Pass area potentially locating the HST line closer to State Route 152 will be reviewed to determine their practicality and their ability to reduce environmental impacts. Alignment variations along Henry Miller Road (both to the north and south) will be identified and evaluated for the purpose of minimizing or avoiding impacts to resources in the Grasslands Ecological Area (GEA).

The entire alignment would be grade separated. The options to be considered for the design of grade-separated roadway crossings would include (1) depressing the street to pass under the rail line; (2) elevating the street to pass over the rail line; (3) leaving the street as-is and constructing rail line improvements to pass over or under the local street; and (4) street closure, if appropriate. In addition, alternative sites for right-of-way maintenance, train storage facilities and a train service and inspection facility will be evaluated in the San Jose to Merced HST project area.

The preferred station location in the City of Gilroy is the current Caltrain Station. This location was selected by the Authority and FRA through the Bay Area to Central Valley HST Final Program EIR/EIS considering the project purpose and need, and the program objectives. Alternative station sites at or near the preferred location may be identified and evaluated in this Project EIR/EIS. There will be no station between Gilroy and Merced and no maintenance and storage facilities considered in the Los Banos area (or in the vicinity of the GEA).

Probable Effects: The purpose of the EIR/EIS process is to explore in a public setting the effects of the proposed project on the physical, human, and natural environment. The FRA and the Authority will continue the tiered evaluation of all significant environmental, social, and economic impacts of the construction and operation of the HST system. Impact areas to be addressed include transportation impacts; safety and security; land use and zoning; agricultural land impacts, land acquisition, displacements, and relocations; cumulative and secondary impacts; cultural resource impacts, including impacts on historical and archaeological resources and parklands/recreation areas; neighborhood compatibility and environmental justice; and natural resource impacts including air quality, wetlands, water resources, noise, vibration, energy, wildlife and ecosystems, including endangered species. Measures to avoid, minimize, and mitigate adverse impacts will be identified and evaluated.

The San Jose to Merced HST Project EIR/EIS will be prepared in accordance with FRA's Procedures for Considering Environmental Impacts (64 FR 28545 [May 26, 1999]) and will address not only NEPA and CEQA but also other applicable statutes, regulations, and executive orders, including the Clean Air Act, Section 404 of the Clean Water Act, Section 106 of the National Historic Preservation Act of 1966, Section 4(f) of the Department of Transportation Act, the Endangered Species Act, and Executive Order 12898 on Environmental Justice.

This EIR/EIS process will continue the NEPA/Clean Water Act Section 404 integration process established through the Statewide Program EIR/EIS process. The EIR/EIS will evaluate project alignment alternatives, station and maintenance facility locations to support a determination of the Least Environmentally Damaging Practicable Alternative (''LEDPA'') by the U.S. Army Corps of Engineers.

Scoping and Comments: FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments are invited from all interested agencies and the public to

ensure the full range of issues related to the proposed action and reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether there are areas of environmental concern where there might be a potential for significant site-specific impacts. Public agencies with jurisdiction are requested to advise FRA and the Authority of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed project. Public agencies are requested to advise FRA if they anticipate taking a major action in connection with the proposed project and if they wish to cooperate in the preparation of the Project EIR/EIS. Public scoping meetings have been scheduled as an important component of the scoping process for both the State and Federal environmental review. The scoping meetings described in this Notice will also be the subject of additional public notification.

FRA is seeking participation and input of all interested Federal, State, and local agencies, Native American groups, and other concerned private organizations and individuals on the scope of the EIR/EIS. Implementation of the San Jose to Merced section of the HST system is a federal undertaking with the potential to affect historic properties. As such, it is subject to the requirements of section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f). In accordance with regulations issued by the Advisory Council on Historic Preservation, 36 CFR part 800, FRA intends to coordinate compliance with section 106 of this Act with the preparation of the EIR/EIS, beginning with the identification of consulting parties through the scoping process, in a manner consistent with the standards set out in 36 CFR 800.8.

Issued in Washington, DC, on March 9, 2009.

Ray LaHood,

Secretary, U.S. Department of Transportation.

[FR Doc. E9–5573 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the California High Speed Train Project From Merced to Bakersfield, CA

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: This notice is to advise the public that FRA and the California High Speed Rail Authority (Authority) will jointly prepare a project Environmental Impact Statement (EIS) and project Environmental Impact Report (EIR) for the Merced-to-Bakersfield section of the Authority's proposed California High-Speed Train (HST) System in compliance with relevant State and Federal laws, in particular the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

In 2001, the Authority and FRA started a tiered environmental review process for the HST system and in 2005, completed the first tier California High Speed Train Program EIR/EIS and approved the statewide HST system for intercity travel in California between the major metropolitan centers of Sacramento and the San Francisco Bay Area in the north, through the Central Valley, to Los Angeles and San Diego in the south. The approved HST system would be about 800-miles long, with electric propulsion and steel-wheel-on-steel-rail trains capable of operating speeds of 220 miles per hour (mph) on a dedicated system of fully grade-separated, access-controlled steel tracks and with state-of-the-art safety, signaling, communication, and automated train control systems. In approving the HST system, the Authority and FRA also selected preferred corridor alignments and station location options throughout most of the system. In 2008, the Authority and FRA completed a second program EIR/EIS to evaluate alignments and station locations within the broad corridor between and including the Altamont Pass and the Pacheco Pass to connect the Bay Area and Central Valley portions of the HST system. The Authority and FRA selected the Pacheco Pass with San Francisco and San Jose termini network alternative, as well as preferred corridor alignments and station location options. The selected alignment uses the Union Pacific (UPRR) railroad corridor through the portion of the Central Valley from just north of Madera to just south of Stockton and the Burlington Northern Santa Fe (BNSF) alignment from Madera to Bakersfield, as selected with the Statewide Program EIR/EIS.

The preparation of the Merced to Bakersfield HST Project EIR/EIS will involve development of preliminary engineering designs and assessment of environmental effects associated with the construction, operation, and maintenance of the HST system, including track, ancillary facilities and stations, along the preferred alternative corridors from Merced to Bakersfield.

DATES: Written comments on the scope of the Merced to Bakersfield HST Project EIR/EIS should be provided to the Authority by April 10, 2009. Public scoping meetings are scheduled from March 18, 2009 to March 26, 2009, as noted below in the cities of Merced, Madera, Fresno, Visalia, and Bakersfield.

ADDRESSES: Written comments on the scope should be sent to Ms. Carrie Pourvahidi, Deputy Director, ATTN. Merced to Bakersfield, California High-Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, CA 95814, or via e-mail with subject line ''Merced to Bakersfield HST'' to: *comments@hsr.ca.gov.* Comments may also be provided orally or in writing at the scoping meetings scheduled as follows:

- *March 18, 2009:* Merced Community Senior Center, from 3 p.m. to 7 p.m.
- *March 19, 2009:* Madera County Fairgrounds, 1850 West Cleveland Avenue, Madera, from 3 p.m. to 7 p.m.
- *March 24, 2009:* Visalia Convention Center, 303 E. Acequia Avenue, Visalia, from 3 p.m. to 7 p.m.
- *March 25, 2009:* Fresno Convention Center (Exhibit Hall), 848 M Street, Fresno, from 3 p.m. to 7 p.m.
- *March 26, 2009:* Rabobank Theater, 1001 Truxtun Avenue, Bakersfield, from 3 p.m. to 7 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. David Valenstein, Environmental Program Manager, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE. (Mail Stop 20), Washington, DC 20590; Telephone: (202) 493–6368, or Ms. Carrie Pourvahidi, Telephone: (916) 324–1541 at the above noted address.

SUPPLEMENTARY INFORMATION: The Authority was established in 1996 and is authorized and directed by statute to undertake the planning and development of a proposed statewide HST network that is fully coordinated with other public transportation

services. The Authority adopted a Final Business Plan in June 2000, which reviewed the economic feasibility of an 800-mile-long HST capable of operating speeds in excess of 200 miles per hour on a dedicated, fully grade-separated state-of-the-art track. The Authority released an updated Business Plan in November 2008.

The FRA has responsibility for oversight of the safety of railroad operations, including the safety of any proposed high-speed ground transportation system. For the proposed HST, it is anticipated that FRA would need to take certain regulatory actions prior to operation.

In 2005, the Authority and FRA completed a Final Program EIR/EIS for the Proposed California High Speed Train System (Statewide Program EIR/EIS), as the first phase of a tiered environmental review process. The Authority certified the Final Program EIR under CEQA and approved the proposed HST System, and FRA issued a Record of Decision under NEPA on the Final Program EIS. This statewide program EIR/EIS established the purpose and need for the HST system, analyzed an HST system, and compared it with a No Project/No Action Alternative and a Modal Alternative. In approving the statewide program EIR/EIS, the Authority and FRA selected the HST Alternative, selected certain corridors/general alignments and general station locations for further study, incorporated mitigation strategies and design practices, and specified further measures to guide the development of the HST system at the site-specific project level of environmental review to avoid and minimize potential adverse environmental impacts. In the subsequent Bay Area to Central Valley HST Final Program EIR/EIS, the Authority and FRA selected the Pacheco Pass alternative, via Henry Miller Road, as the preferred alternative to connect the Bay Area to the Central Valley.

The Merced to Bakersfield HST Project EIR/EIS will tier from the Final Statewide Program EIR/EIS and the Final Bay Area to Central Valley HST Program EIR/EIS in accordance with Council on Environmental Quality (CEQ) regulations, (40 CFR 1508.28) and State CEQA Guidelines (14 C.C.R. 15168[b]). Tiering will ensure that the Merced to Bakersfield HST Project EIR/EIS builds upon all previous work prepared for and incorporated in the Statewide Program EIR/EIS and the Bay Area to Central Valley HST Program EIR/EIS.

This Project EIR/EIS will describe site-specific environmental impacts, will identify specific mitigation measures to address those impacts and will incorporate design practices to avoid and minimize potential adverse environmental impacts. The FRA and the Authority will assess the site characteristics, size, nature, and timing of proposed site-specific projects to determine whether the impacts are potentially significant and whether impacts can be avoided or mitigated. This project EIR/EIS will identify and evaluate reasonable and feasible site-specific alignment alternatives, and evaluate the impacts from construction, operation, and maintenance of the HST system. Information and documents regarding this HST environmental review process will be made available through the Authority's Internet site: *http://www.cahighspeedrail.gov/.*

Purpose and Need: The purpose of the proposed HST system is to provide a new mode of high-speed intercity travel that would link major metropolitan areas of the State; interface with international airports, mass transit, and highways; and provide added capacity to meet increases in intercity travel demand in California in a manner sensitive to and protective of California's unique natural resources. The need for a HST system is directly related to the expected growth in population, and increases in intercity travel demand in California over the next twenty years and beyond. With the growth in travel demand, there will be an increase in travel delays arising from the growing congestion on California's highways and at airports. In addition, there will be negative effects on the economy, quality of life, and air quality in and around California's metropolitan areas from a transportation system that will become less reliable as travel demand increases. The intercity highway system, commercial airports, and conventional passenger rail serving the intercity travel market are currently operating at or near capacity, and will require large public investments for maintenance and expansion to meet existing demand and future growth.

Alternatives: The Merced to Bakersfield HST Project EIR/EIS will consider a No Action or No Project Alternative and an HST Alternative for the Merced to Bakersfield section.

No Action Alternative: The No Action Alternative (No Project or No Build) represents the conditions in the corridor as it existed in 2007, and as it would exist based on programmed and funded improvements to the intercity transportation system and other reasonably foreseeable projects through 2035, taking into account the following sources of information: State Transportation Improvement Program (STIP), Regional Transportation Plans (RTPs) for all modes of travel, airport plans, intercity passenger rail plans, city and county plans.

HST Alternative: The Authority proposes to construct, operate and maintain an electric-powered steel-wheel-on-steel-rail HST system, about 800 miles long, capable of operating speeds of 220 mph on dedicated, fully graded-separated tracks, with state-of-the-art safety, signaling, and automated train control systems. As part of the Bay Area to Central Valley HST Program EIR/EIS, the Authority and FRA selected the Union Pacific (UPRR) railroad alignment through the portion of the Central Valley from just north of Madera to just south of Stockton as the preferred alternative. This Project EIR/EIS will also evaluate the BNSF railroad alignment in this part of the Central Valley because of the uncertainty of negotiating with the UPRR for some of their right-of-way and will continue investigation of alignments/linkages to a potential maintenance facility at Castle AFB. The BNSF alignment from Madera to Bakersfield was selected as the preferred alignment for this portion of the Central Valley in the Statewide Program EIR/EIS. As defined in the Statewide Program EIR/EIS, this alignment would utilize the UPRR corridor through the urban area of Fresno, and would require a new high-speed alignment around the city of Hanford. Alignment alternatives will also be evaluated to serve a potential station in the Visalia/Hanford/Tulare area. The HST would operate in this area at speeds up to 220 mph on tracks separate from the existing BNSF and UP tracks. Further engineering studies to be undertaken as part of this EIR/EIS process will examine and refine alignments in the BNSF and UP corridors. The entire alignment would be grade separated from existing roadways. In addition, alternative sites for right-of-way maintenance, train storage facilities and a heavy maintenance and repair facility will be evaluated in the Merced to Bakersfield HST project area.

The three preferred station locations selected by the Authority and FRA through the Bay Area to Central Valley HST Final Program-Level EIR/EIS will be evaluated in the Merced to Bakersfield HST Project EIR/EIS. These stations are downtown Merced, downtown Fresno, and downtown Bakersfield. Alternative station sites at or near the selected station locations may be identified and evaluated. A potential HST station to serve the

Visalia/Hanford/Tulare area will also be evaluated in this Project EIR/EIS.

Probable Effects: The purpose of the EIR/EIS process is to explore in a public setting the effects of the proposed project on the physical, human, and natural environment. The FRA and the Authority will continue the tiered evaluation of all significant environmental, social, and economic impacts of the construction and operation of the HST system. Impact areas to be addressed include transportation impacts; safety and security; land use and zoning; land acquisition, displacements, and relocations; agricultural land impacts; cumulative and secondary impacts; cultural resource impacts, including impacts on historical and archaeological resources and parklands/recreation areas; neighborhood compatibility and environmental justice; and natural resource impacts including air quality, wetlands, water resources, noise, vibration, energy, wildlife and ecosystems, including endangered species. Measures to avoid, minimize, and mitigate adverse impacts will be identified and evaluated.

The Merced to Bakersfield HST Project EIR/EIS will be prepared in accordance with FRA's Procedures for Considering Environmental Impacts (64 FR 28545 [May 26, 1999]) and will address not only NEPA and CEQA but will also address as necessary other applicable statutes, regulations, and executive orders, including the Clean Air Act, Section 404 of the Clean Water Act, Section 106 of the National Historic Preservation Act of 1966, Section 4(f) of the Department of Transportation Act, the Endangered Species Act, and Executive Order 12898 on Environmental Justice.

This EIR/EIS process will also continue the NEPA/Clean Water Act Section 404 integration process established through the Statewide Program EIR/EIS process. The EIR/EIS will evaluate project alignment alternatives, and station and maintenance facility locations to support a determination of the Least Environmentally Damaging Practicable Alternative (''LEDPA'') by the U.S. Army Corps of Engineers.

Scoping and Comments: FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments are invited from all interested agencies and the public to ensure the full range of issues related to the proposed action and reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether there are areas of environmental concern where there might be a potential for significant site-specific impacts. Public agencies with jurisdiction are requested to advise FRA and the Authority of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed project. Public agencies are requested to advise FRA if they anticipate taking a major action in connection with the proposed project and if they wish to cooperate in the preparation of the Project EIR/EIS. Public scoping meetings have been scheduled as an important component of the scoping process for both the State and Federal environmental review. The scoping meetings described in this Notice will also be the subject of additional public notification.

FRA is seeking participation and input of all interested Federal, State, and local agencies, Native American groups, and other concerned private organizations or individuals on the scope of the EIR/EIS. Implementation of the Merced to Bakersfield section of the HST system is a Federal undertaking with the potential to affect historic properties. As such, it is subject to the requirements of section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f). In accordance with regulations issued by the Advisory Council on Historic Preservation, 36 CFR part 800, FRA intends to coordinate compliance with section 106 of this Act with the preparation of the EIR/EIS, beginning with the identification of consulting parties through the scoping process, in a manner consistent with the standards set out in 36 CFR 800.8.

Issued in Washington, DC, on March 9, 2009.

Ray LaHood,

Secretary, U.S. Department of Transportation.

[FR Doc. E9–5579 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0118; Notice 2]

Continental Tire North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Continental Tire North America, Inc. (Continental), has determined that certain passenger car tires manufactured during December of 2007 and January of 2008 did not fully comply with paragraph S5.5(e) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139 *New Pneumatic Radial Tires for Light Vehicles*. Continental has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Continental 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 30-day public comment period, on June 26, 2008 in the **Federal Register** (73 FR 36371). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2008–0118.''

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5299, facsimile (202) 366–7002.

Affected are approximately 1,925 size 255/60R17 106 H Continental CrossContact LX ETRTO passenger car tires manufactured in Continental's Mount Vernon, Illinois plant during December of 2007 and January of 2008.

Paragraph S5.5(e) of FMVSS No. 139 requires in pertinent part:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches * * *.

(e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire; * * *.

Continental explains that the noncompliance is that the sidewall marking incorrectly identifies the

generic material of the plies in the body of the tire as rayon when they are in fact polyester. Specifically, the tires in question were inadvertently manufactured with ''TREAD 6 PLIES 2 RAYON + 2 STEEL + 2 NYLON SIDEWALL 2 PLIES 2 RAYON'' marked on the sidewall. The labeling should have been ''TREAD 6 PLIES 2 POLYESTER + 2 STEEL + 2 NYLON SIDEWALL 2 PLIES 2 POLYESTER.''

Continental states that it discovered the mold labeling error that caused the non-compliance during a routine quality audit.

Continental makes the argument that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not affect the safety, performance and durability of the tire and that the tires were built as designed and all other sidewall identification markings and safety information are correct.

Continental further states that it performs ongoing compliance testing to assure tire performance, and that all of the subject tires will meet or exceed the performance requirements of FMVSS No. 139. Continental also states its belief that there will be no operational impact on the performance or safety of vehicles on which these tires are mounted.

Continental also points out that NHTSA has previously granted petitions for sidewall marking noncompliances that it believes are similar to the instant noncompliance.

Continental also stated that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In summation, Continental states that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

NHTSA Decision

The agency agrees with Continental that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered. Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.

The agency also believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tire sidewalls are marked correctly for the number of steel plies, this potential safety concern does not exist.

In consideration of the foregoing, NHTSA has decided that Continental has met its burden of persuasion that the subject FMVSS No. 139 labeling noncompliance is inconsequential to motor vehicle safety. Accordingly, Continental's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance 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: March 10, 2009.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E9–5638 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety: Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 15, 2009.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 06, 2009.

Delmer F. Billings,

Director, Office of Materials Hazardous, Special Permits and Approvals.

Application number	Docket number	Applicant	Regulation(s) affected	Nature of special permits thereof
		New Special Permits		
14812–N		National Aeronautics and Space Administration (NASA), Washington, DC.	49 CFR 173.62 Packing Instruction 134.	To authorize the transportation in commerce of certain Division 1.4C cartridge power devices which are installed in a spacecraft and packaged in a non-DOT specification packaging. (mode 1).
14813–N		Organ Recovery Systems, Des Plaines, IL.	49 CFR 175.9(e)(5)	To authorize the transportation of the LifePort Kidney Transporter by air without being accompanied by a person qualified to operate it. (modes 4, 5).
14814–N		National Aeronautics and Space Administration, Houston, TX (NASA).	49 CFR 173.302a	To authorize the transportation in commerce of certain Division 2.2 compressed gases in non-DOT specification cylinders to support the International Space Station Human Research Facility Gas Delivery System. (modes 1, 2, 3, 4, 5).
14817–N		Questar, Inc., North Canton, OH	49 CFR 173.12(b)(2)	To authorize the manufacture, marking, sale and use of a corrugated fiberboard box for use as the outer packaging for lab pack applications in accordance with 49 CFR 173.12(b). (mode 1).
14818–N		Fleck Controls, LLC, Chardon, OH.	49 CFR 173.302a and 173.306(g).	To authorize the transportation in commerce of non-DOT specification cylinders under the exception provided for water pump system tanks under in 49 CFR 173.306(g). (modes 1, 2, 3).
		New Special Permits		
14822–N		Oiltanking Joliet LLC, Channahon, IL.	49 CFR 177.834(i)(3)	To authorize personnel to observe loading and unloading of cargo tanks by viewing video camera monitors in a control center instead of being physically located within 25 feet of the cargo tanks. (mode 1).
14823–N		FedEx Ground Package System, Inc., Moon Township, PA.	49 CFR 172.202; 172.203(c), (k), (m); 172.301; 172.400; 172.302(c).	To authorize the return shipment by motor vehicle of hazardous materials that have been accepted, transported, and subsequently determined to be non-compliant with the Hazardous Materials Regulations shipping paper, marking or labeling requirements. (mode 1).

[FR Doc. E9–5506 Filed 3–13–09; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' demote a modification request. There applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before March 31, 2009.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials

transportation law (49 U.S.C. 5 117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 05, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application number	Docket number	Applicant	Regulation(s) affected	Nature of special permits thereof
6614–M		Auto-Chlor System, Memphis, TN	49 CFR 173.202; 173.203	To modify the special permit to authorize additional marking procedures.
9157–M		Matheson Tn-Gas, Basking Ridge, NJ.	49 CFR 173.314(c); 179.300–7.	To modify the special permit to authorize the transportation in commerce of Division 2.1 and Class 3 hazardous materials.
11379–M		TRW Occupant Safety Systems, Washington, MI.	49 CFR 173.301(h), 173.302.	To modify the special permit to authorize the transportation in commerce of an additional Class 9 hazardous material.
11725–M		ATK Space Systems Inc., Beltsville, MD.	49 CFR 173.34(d); 173.40; 173.301; 173.302(a); 173.304(a)(2); 175.3.	To modify the special permit to authorize the transportation in commerce of an additional Class 9 hazardous material and to remove motor vehicle as a mode of transportation.
13318–M		Worthington Cylinders—Wisconsin LLC, Chilton, WI.	49 CFR 173.301; 177.840	To modify the special permit to authorize the transportation in commerce of additional Division 2.1 hazardous materials.
14384–M		Matheson Tn-Gas, Basking Ridge, NJ.	49 CFR 173.301(f)(1)	To modify the special permit to authorize the transportation in commerce of Division 2.1 hazardous materials.
14784–M		Weldship Corporation, Bethlehem, PA.	49 CFR 180.209(a) and (b).	To modify the special permit to authorize additional Division 2.1 and 2.2 gases and authorize the maximum acceptance flaw size for DOT 3T specification cylinders used for Silane service.

[FR Doc. E9–5508 Filed 3–13–09; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

[Docket: RITA 2008–0002 BTS Paperwork Reduction Notice]

Research and Innovative Technology Administration; Bureau of Transportation Statistics; Agency Information Collection; Activity Under OMB Review; Report of Extension of Credit to Political Candidates—Form 183

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need and usefulness of BTS collecting reports from air carriers on the aggregated indebtedness balance of a political candidate or party for Federal office. The reports are required when the aggregated indebtedness is over $5,000 on the last day of a month.

DATES: Written comments should be submitted by May 15, 2009.

ADDRESSES: You may submit comments identified by DOT Docket ID Number RITA 2008–0002 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: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

Instructions: Identify docket number, BTS 2008–0002, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov*. All comments are posted electronically without charge or edits, including any personal information provided.

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 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access

An electronic copy of this rule, a copy of the notice of proposed rulemaking, and copies of the comments may be downloaded at *http://www.regulations.gov*, by searching docket RITA 2008–0002.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus Office of Airline Information, RTS–42, Bureau of Transportation Statistics, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0016.

Title: Report of Extension of Credit to Political Candidates—Form 183, 14 CFR Part 374a.

Form No.: 183.

Type of Review: Extension of a currently approved collection.

Respondents: Certificated air carriers.

Number of Respondents: 2 (Monthly Average).

Number of Responses: 24.

Estimated Time per Response: 1 hour.

Total Annual Burden: 24 hours.

Needs and Uses: The Department uses this form as the means to fulfill its obligation under the Federal Election Campaign Act of 1971 (the Act). The Act's legislative history indicates that one of its statutory goals is to prevent candidates for Federal political office from incurring large amounts of unsecured debt with regulated transportation companies (*e.g.* airlines). This information collection allows the Department to monitor and disclose the amount of unsecured credit extended by airlines to candidates for Federal office. All certificated air carriers are required to submit this information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on March 10, 2009.

Anne Suissa,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. E9–5616 Filed 3–13–09; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 10, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 15, 2009 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0027.

Type of Review: Extension.

Form: TTB F 5200.14.

Title: Taxable Articles without Payment of Tax.

Description: The tobacco manufacturer or export warehouse proprietor is liable for the tax on tobacco products until execution of the certification by Customs or an authorized receiving officer on TTB F 5200.14, which indicates verification of export or bonded transfer. TTB needs this information to protect the revenue. If this TTB form is not properly completed, TTB will assess the tax on the manufacturer of tobacco products or cigarette papers and tubes or on the proprietor of the export warehouse or customs manufacturing warehouse for products not exported or properly disposed of.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 59,840 hours.

OMB Number: 1513–0051.

Type of Review: Extension.

Form: TTB F 5110.74.

Title: Application for an Alcohol Fuel Producer under 26 U.S.C. 5181.

Description: This form is used by persons who wish to produce and receive spirits for the production of alcohol fuels as a business or for their own use and for State and local registration where required. The form describes the person(s) applying for the permit, location of the proposed operation, type of material used for production, and amount of spirits to be produced.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 394 hours.

OMB Number: 1513–0090.

Type of Review: Extension.

Form: TTB F 5000.25.

Title: Excise Tax Return—Alcohol and Tobacco (Puerto Rico).

Description: Businesses in Puerto Rico report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on TTB F 5000.25. TTB needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 119 hours.

OMB Number: 1513–0013.

Type of Review: Extension.

Form: TTB F 5000.18.

Title: Change of Bond (Consent of Surety).

Description: A Change of Bond (Consent of Surety), TTB F 5000.18, is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities. TTB F 5000.18 is filed with TTB and a copy is retained by TTB as long as it remains current and in force.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 2,000 hours.

OMB Number: 1513–0111.

Type of Review: Revision.

Form: TTB F 5013.2.

Title: COLAs Online Access Request.

Description: The information on this form will be used by TTB to authenticate end users on the system to electronically file Certificates of Label Approval (COLAs). The system will authenticate end users by comparing information submitted to records in multiple databases.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 410 hours.

Clearance Officer: Frank Foote, (202) 927–9347. Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873. Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–5605 Filed 3–13–09; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Suspicious Activity Report by Casinos and Card Clubs

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN invites comment on a renewal without change of an information collection contained in the form, ''Suspicious Activity Report by

Casinos and Card Clubs (SAR–C).'' The form will be used by casinos and card clubs to report suspicious activity to the Department of the Treasury. This request for comments covers 31 CFR 103.21. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before May 15, 2009.

ADDRESSES: Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—SAR–Casinos and Card Clubs Form. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* again with a caption, in the body of the text, ''Attention: PRA Comments—SAR–Casinos and Card Clubs Form.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at 800–949–2732, select option 4.

SUPPLEMENTARY INFORMATION:

Title: Suspicious Activity Report by Casinos and Card Clubs.

OMB Number: 1506–0006.

Form Number: FinCEN Form 102.

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5331, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary of the Treasury to administer the Bank Secrecy Act has been delegated to the Director of the Financial Crimes Enforcement Network. The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions.

The information collected on this form is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.21. This information will be made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel for use in official performance of their duties, for regulatory purposes and in investigations and proceedings involving domestic and international money laundering, tax violations, fraud, and other financial crimes.

Reports filed by casinos required to report suspicious transactions under 31 CFR 103.21, and any reports filed voluntarily by casinos or card clubs will be subject to the protection from liability contained in 31 U.S.C. 5318(g)(3) and the provision contained in 31 U.S.C. 5318(g)(2) which prohibits notification of any person involved in the transaction that a suspicious activity report has been filed. The current SAR–C may be reviewed at *http://www.fincen.gov/forms/files/fin102_sar-c.pdf.*

Type of Review: Renewal without change of a currently approved information collection.

Affected Public: Business or other for-profit institutions.

Frequency: As required.

Estimated Reporting Burden: The reporting average for the form is 60 minutes per response and the recordkeeping average is 2 hours per response for a total of 3 hours. This burden relates to the completion of the form and the recordkeeping burden of 31 CFR 103.21.

Estimated Number of Respondents = 925.

Estimated Total Annual Responses = 11,200.

Estimated Total Annual Reporting and Recordkeeping Burden: 33,600 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 9, 2009.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E9–5533 Filed 3–13–09; 8:45 am]

BILLING CODE 4810–02–P

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the ''USA Patriot Act''), Public Law 107–56.

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Trace Request for Electronic Funds Transfer (EFT) Payment; and Trace Request Direct Deposit

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning forms FMS 150.1 ''Trace Request for Electronic Funds Transfer Payment'' and FMS–150.2 ''Trace Request Direct Deposit.''

DATES: Written comments should be received on or before *May 15, 2009.*

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gavin Jackson, Director, Project Management Division, Room 61 1B, 3700 East-West Highway, Hyattsville, MD 20782, (202) 874–8815.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Trace Request for EFT Payment; and Trace Request Direct Deposit.

OMB Number: 1510–0045.

Form Number: FMS 150.1, FMS 150.2.

Abstract: These forms are used to notify the financial organization that a customer (beneficiary) has claimed non-receipt of credit for a payment. The forms are designed to help the financial organization locate any problems and to keep the customer (beneficiary) informed of any action taken.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 134,783.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 17,971.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Rita Bratcher,

Assistant Commissioner, Payment Management.

[FR Doc. E9–5512 Filed 3–13–09; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: ''Notice of Reclamation, Electronic Funds Transfer, Federal Recurring Payments''; and ''Request for Debit, Electronic Funds Transfer, Federal Recurring Payments''

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning forms FMS–133, ''Notice of Reclamation, Electronic Funds Transfer, Federal Recurring Payments'' and FMS–135, ''Request for Debit, Electronic Funds Transfer, Federal Recurring Payments.''

DATES: Written comments should be received on or before May 15, 2009.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gavin Jackson, Director, Project Management Division, Room 611B, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874–8815.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: ''Notice of Reclamation, Electronic Funds Transfer, Federal Recurring Payments''; and ''Request for Debit, Electronic Funds Transfer, Federal Recurring Payments''.

OMB Number: 1510–0043.

Form Number: FMS 133, FMS 135.

Abstract: Program agencies authorize Treasury to recover payments that have been issued after the death of the beneficiary. FMS Form 133 is used by Treasury to notify financial organizations (FO) of the FO's accountability concerning the funds. When an FO does not respond to the FMS 133, Treasury then prepares FMS 135 and sends it to the Federal Reserve Bank (FRB) to request that the FRB debit the FO's account.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 396,674.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 79,335.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Rita Bratcher,

Assistant Commissioner, Payment Management.

[FR Doc. E9–5514 Filed 3–13–09; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Electronic Transfer Account (ETA) Financial Agency Agreement

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management

Service solicits comments concerning form FMS–111, ''Electronic Transfer Account (ETA) Financial Agency Agreement.''

DATES: Written comments should be received on or before May 15, 2009.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Alexa Urban, Director, EFT Strategy Division, 401—14th Street, SW., Washington, DC 20227, (202) 874–6762

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Electronic Transfer Account (ETA) Financial Agency Agreement.

OMB Number: 1510–0073.

Form Number: FMS 111.

Abstract: Any financial institution that offers the ETA must do so subject to the terms and conditions of the agreement. The agreement incorporates the final features of the account and other account criteria, such as standards for opening and closing accounts.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Federally insured financial institutions.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 40.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 10, 2009.

Rita Bratcher,

Assistant Commissioner, Payment Management.

[FR Doc. E9–5517 Filed 3–13–09; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Pools and Associations—Annual Letter

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the ''Pools and Associations—Annual Letter.''

DATES: Written comments should be received on or before May 15, 2009.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rose Miller, Manager, Surety Bond Branch, Room 632F, 3700 East-West Highway, Hyattsville, MD 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Pools and Associations—Annual Letter.

OMB Number: 1510–0008.

Form Number: None.

Abstract: The information is collected for the determinations of an acceptable percentage for each pool and association to allow Treasury certified companies credit on their Schedule F for authorized ceded reinsurance in determining the companies' underwriting limitations.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour 30 minutes.

Estimated Total Annual Burden Hours: 150.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 10, 2009.

David Rebich,

Acting Assistant Commissioner, Management (CFO).

[FR Doc. E9–5518 Filed 3–13–09; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change: DaimlerChrysler Insurance Company (NAIC #10499)

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 9 to the Treasury Department Circular 570; 2008 Revision, published July 1, 2008, at 73 FR 37644.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: DaimlerChrysler Insurance Company, (NAIC #10499), a Michigan corporation, has formally changed its name to Chrysler Insurance Company, effective

January 1, 2009. The Company was last listed as an acceptable surety on Federal bonds at 73 FR 37644, July 1, 2008.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Chrysler Insurance Company. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $7,612,000 established for the Company as of July 1, 2008, remains unchanged until June 30, 2009.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2008 Revision, to reflect this change.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: March 5, 2009.

Vivian L. Cooper,

Director, Financial Accounting and Services Division.

[FR Doc. E9–5515 Filed 3–13–09; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of amendment to an existing system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''Litigant, Tort Claimant, EEO Complainant and Third Party Recovery Files—VA'' (16VA026) as set forth in full in the **Federal Register** on January 13, 1982 [47 F.R. 1463]. This system was subsequently amended in the **Federal Register** on April 25, 1983 [48 F.R. 17687] to add several new routine uses.

VA is amending the system by revising the routine uses of records maintained in the system, combining three existing uses into one, deleting five old routine uses, and adding five new routine uses. The name of system of records is being changed to ''Litigation Files—VA'' to more closely encompass the complete scope of matters handled in VA litigation and administrative investigations carried out by OGC attorneys. This system contains records of Merit System Protection Board (MSPB) and Federal Labor Relations Authority (FLRA) disputes, contract litigation, Privacy Act and Freedom of Information Act litigation at the appellate level as well as EEO disputes, torts, and third party litigation. VA is republishing the system notice in its entirety.

DATES: Interested persons are invited to submit comments, suggestions, or objections regarding these changes. To assure consideration, written comments on this revised system of records must be postmarked no later than April 15, 2009, and written comments hand delivered to the Department and comments submitted electronically must be received as provided below, no later than 5 p.m. Eastern Time on April 15, 2009. If no public comment is received, the system will become effective April 15, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026; or e-mail to ''*VAregulations@va.gov.*'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Susan Sokoll, Privacy Officer, (202) 461–7623, Office of the General Counsel (026H), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: The system of records, ''Litigation Files—VA'' (16VA026), was amended and published in full January 13, 1982, at 47 **Federal Register** 1460. A subsequent amendment on April 25, 1983, at 48 **Federal Register** 17687, involved publication of proposed new routine uses.

I. Description of the System of Records

The VA Litigation Files contain the working files for OGC attorneys representing the agency in cases involving torts, contracts, personnel and labor issues, patents, real and intellectual property, Veterans' benefits and claims, and administrative investigations.

II. Proposed Amendments to Routine Use Disclosures of Data in the System

VA is amending, deleting, rewriting and reorganizing the order of the routine uses in this system of records. Accordingly, the following changes are made to the current routine uses and are incorporated into the amended system of records notice.

Current routine uses 2 through 4 are being combined and revised into new routine use 4. This routine use is amended to more accurately reflect the conditions under which VA, on its own initiative, may disclose information from this system of records for law enforcement purposes.

New routine use number 2 is being added to authorize disclosure to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code.

New routine use 3 is added to reflect VA's authorization to disclose individually-identifiable information to contractors or other entities that will provide services to VA for which the recipient needs that information in order to perform the services.

Current routine uses 5 through 8 are maintained as they are. In determining whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget (OMB) in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update'' currently posted at *http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf.*

VA is adding a new routine use 9 that authorizes the circumstances, and to whom, VA may disclose records in order to respond to, and minimize possible harm to, individuals as a result of a data breach. This routine use is

promulgated in order to meet VA's statutory duties under 38 U.S.C. 5724 and the Privacy Act, 5 U.S.C. 552a, as amended.

VA is moving existing routine use 9 to routine use 12. This routine use allows VA to disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation.

VA is adding new routine use 11 to disclose information to the Merit Systems Protection Board or the Office of Special Counsel, where officials of those agencies determine, or VA determines the disclosure is necessary to perform duties imposed by 5 U.S.C. Sections 1205 and 1206, or as may be authorized by law.

VA is adding new routine use 13 to disclose information to the Federal Labor relations Authority, where officials of those agencies determine, or VA determines the disclosure is necessary to perform duties imposed by the enabling statutes and legislation of that agency.

Existing routine uses 11 through 15 have been eliminated as they no longer are legally valid.

III. Compatibility of the Proposed Routine Uses

Release of information from these records, pursuant to routine uses, will be made only in accordance with the provisions of the Privacy Act of 1974. The Privacy Act of 1974 permits agencies to disclose information about individuals, without their consent, for a routine use when the information will be used for a purpose for which the information was collected. VA has determined that the disclosure of information for the above purposes in the proposed amendment to routine uses is a proper and necessary use of the information collected by the Litigation Files.

The report of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: February 24, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

SYSTEM NAME:

Litigation Files—VA (16VA026).

SYSTEM LOCATION:

The system of records is located in the Office of the General Counsel, Professional Staff Group VI (026), U.S. Department of Veterans Affairs (VA), 810 Vermont Avenue, NW., Washington, DC 20420.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: (1) Veterans; (2) their beneficiaries and their dependents; (3) VA employees; (4) insurance companies; (5) business entities; (6) Veteran Service Organizations; (7) attorneys representing litigants; and (8) other litigants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) may include (1) pleadings; (2) opinions; (3) briefs; (4) decisions; (5) evidentiary and nonevidentiary matter relating to a case or controversy in an administrative or litigation proceeding.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2651 et seq.; 31 U.S.C. 3911; 28 U.S.C. 1346; 29 CFR 1600–1699; 38 U.S.C. 311.

PURPOSE(S):

This system stores VA litigation and administrative investigations managed by Office of General Counsel, other than Veterans' appeals before the U.S. Court of Appeals for Veterans Claims, from the date of closure of the case to the final expiration of the period during which an appeal could be filed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. VA may disclose information to a congressional office in response to an inquiry from the congressional office on behalf of and at the request of that individual.

2. VA may disclose information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA) as required complying with statutory requirements to disclose information to NARA and GSA for them to perform their statutory records management activities and inspections under authority of title 44, Chapter 29, of the United States Code.

3. VA may disclose information to individuals, organizations, private or public agencies, other entities with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individuals with whom VA has contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

4. VA may disclose on its own initiative any information in this system, except the names, home addresses or other personally identifiable information of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

5. Pleadings, opinions, briefs, decisions and evidentiary and nonevidentiary matters may be disclosed to a Federal agency upon its official request to enable that agency to properly prepare a particular case or controversy regarding an administrative claim filed under the Federal Tort Claims Act or a debt collection proceeding under the Federal Medical Care Recovery Act.

6. Pleadings, opinions, briefs, decisions and evidentiary and nonevidentiary matter may be disclosed to a Federal agency to enable the VA to obtain records necessary for the VA to properly prepare a particular case or controversy under the Federal Tort Claims Act or a proceeding under the Federal Medical Care Recovery Act.

7. Pleadings, opinions, briefs, decisions and evidentiary and nonevidentiary matter may be disclosed to a Federal or a State court to enable the VA to file pleadings, comply with rules and procedures of the court, or to respond to a request from the court in any case or controversy.

8. Pleadings, opinions, briefs, decisions and matters of evidentiary and nonevidentiary matter may be disclosed to a Federal, State, local, or foreign

agency, insurance carriers, other individuals from whom the VA is seeking reimbursement and other parties litigant or having an interest in administrative, prelitigation, litigation and post-litigation phases of a case or controversy, provided, that the name and address of a Veteran can only be disclosed under this routine use if the release is for a VA debt collection proceeding, or if the name and address has been provided to the VA by the party seeking the information.

9. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, or persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputation of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems of programs (whether maintained by the Department or another agency or entity) that rely upon potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the provision of credit protection services or any risk analysis services when necessary to respond to, and if necessary, mitigate damages that might arise from a data breach involving data covered by this system of records.

10. VA may provide Department of Justice (DoJ) with information needed to represent the United States in litigation. VA may also disclose the information for this purpose in proceedings in which DoJ is not representing the Agency.

11. VA may disclose information to officials of the Merit Systems Protection Board or the Office of Special Counsel when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in Title 5, United States Code, Sections 1205 and 1206, or as may be authorized by law.

12. VA may disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or for other functions vested in the Commission as authorized by law or regulation.

13. VA may disclose to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in individual file folders organized by the OGC Professional Staff Group (PSG) handling the litigation.

RETRIEVABILITY:

The individual litigation folders are sorted by the OGC Professional Staff Group (PSG) handling the matter. Within each PSG section the records are maintained in alphabetical order by last name of an individual, business or organization involved in the litigation.

SAFEGUARDS:

Records are maintained in a manned room during working hours. During nonworking hours, the file area is locked, and the building is protected by the Federal Protective Service. Access to the records is only authorized to VA personnel on a ''need to know'' basis.

RETENTION AND DISPOSAL:

Upon completion of a case, except for precedent-setting cases (which are maintained permanently), records are treated as follows:

In Central Office, litigation files other than EEO records are maintained in the OGC Docket Room for two years, retired to the Washington National Federal Records Center for four years and then destroyed. EEO complainant records are maintained in the OGC Docket Room for four years, and then destroyed.

In Regional Counsel Offices, litigation files other than EEO records are maintained in the respective Regional Counsel Office for six years, and then destroyed. EEO complainant records are maintained in the Regional Counsel Office for four years, then destroyed. A Regional Counsel Office may choose to transfer records to the VA Records Center and Vault in Neosho, MO.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Assistant General Counsel, Professional Staff Group VI (026), Office of General Counsel, United States Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to the Assistant General Counsel, Professional Staff Group VI (026), Office of General Counsel, U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Such requests must contain a reasonable description of the records requested. All inquiries must reasonably identify the information involved and should include the individual's full name, return address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals, businesses or organizations seeking information regarding access to VA information maintained by the Office of General Counsel Central Office or Regional Counsel Offices may send a request by mail to the Assistant General Counsel, Professional Staff Group VI (026), Office of the General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

CONTESTING RECORD PROCEDURES:

Individuals, businesses or organizations seeking information regarding access to VA information maintained by the Office of General Counsel Central Office or Regional Counsel Offices may send a request by mail to the Assistant General Counsel, Professional Staff Group VI (026), Office of the General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

RECORDS SOURCE CATEGORIES:

Courts, Veterans, beneficiaries and dependents of Veterans, litigants and their attorneys, Federal and state agencies, insurance carriers, witnesses, or any other interested participants to the proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–5596 Filed 3–13–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Deletion of system of records.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) is deleting a system of records entitled, ''Physician, Dentist and Supervisory Nurse Professional Standards Board Action File-VA'' (29VA11), which is set forth in the **Federal Register** publication, ''Privacy Act Issuances, 1999 Compilation''. The records included a collection of personnel forms and correspondence pertaining to promotions, reassignments, transfers, proficiency ratings, physical examinations, etc., all of which are duplicated in the Professional Standards Board and Proficiency Rating Folder (101VA05). This system also contained board action folders for former employees who cannot be re-employed without approval of the Under Secretary for Health. As a result of a review of related systems of records maintained by the agency, it was determined there was no longer a need to maintain the records in 29VA11, since the records are maintained elsewhere.

DATES: Comments on the deletion of the system of records must be received no later than April 15, 2009. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the system will be deleted effective April 15, 2009, or 40 days after the notice was approved, whichever is latest. The ''Report of Intention to Publish a Deletion of a System of Records '' and advance copy of the notice has been been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (61 FR 6428), February 20, 1996.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulations Management (02Reg), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration Privacy Act Officer (193B3) , Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

Approved: February 23, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. E9–5597 Filed 3–13–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to systems of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending three existing systems of records 93VA131, ''Gulf War Registry-VA''; 105VA131, ''Agent Orange Registry-VA''; and 108VA11S, ''Spinal Cord Dysfunction Registry-VA'' to add a routine use relating to releasing information to agencies in the event of fraud or abuse; and add a routine use relating to disclosing information when there is a risk of embarrassment or harm to the reputations of the record subjects.

DATES: Comments on the amendment of this system of records must be received no later than April 15, 2009. If no public comment is received, the amended system will become effective April 15, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulation.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: VA provides health care services to many of America's Veterans through the Veterans Health Administration. During the course of providing health care, VHA collects medical and health information on Veterans. In order to protect Veteran's medical or health information VHA is adding two routine uses to three existing systems of records (93VA131, 105VA131, and 108VA11S).

Additional Routine Uses

The routine use added to 93VA131, 105VA131, and 108VA11S would permit VA to make disclosures to other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

The second routine use allows VA, on its own initiative, to disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or

remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

The Report of Intent to Amend a System on Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: February 24, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

Notice of Amendment of Systems of Records

1. In the system identified as 93VA131, ''Gulf War Registry-VA'', as set forth in the **Federal Register**, 69 FR 2962 and last amended on Jan. 21, 2004. Two new routine uses are added as follows:

93VA131

SYSTEM NAME:

Gulf War Registry-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

11. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

12. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

2. In the system identified as 105VA131, ''Agent Orange Registry-VA'', as set forth in the **Federal Register**, 68 FR 75025 and last amended on Dec. 29, 2003. Two new routine uses are added as follows:

105VA131

SYSTEM NAME:

Agent Orange Registry-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

10. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

11. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

3. In the system identified as 108VA11S, ''Spinal Cord Dysfunction-Registry (SCD–R)–VA'', as set forth in the **Federal Register** 69 FR 35139, and last amended on June 23, 2004. Two new routine uses are added as follows:

108VA11S

SYSTEM NAME:

Spinal Cord Dysfunction-Registry (SCD–R)–VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

12. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

13. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

[FR Doc. E9–5598 Filed 3–13–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of establishment of a new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled ''Executive Veterans Affairs Contact Management System (Exec VA)—VA'' (141VA005Q3).

DATES: Comments on this new system of records must be received no later than April 15, 2009. If no public comment is received, the new system will become effective April 15, 2009.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted through *www.Regulations.gov*; by mail or hand delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026; or e-mail to *VAregulations@va.gov*. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Director, Customer Relations & Executive Projects, Office of the Secretary, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 273–4830; fax 202 273–4877.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed System of Records

The Department of Veterans Affairs (VA) receives and responds to numerous inquiries concerning benefits administered by the Department and other matters regarding veterans. These inquiries are received from veterans, their representatives, individuals and entities doing business with VA via the telephone. This information is collected and put into a Web-based communications system known as Executive Veterans Affairs Contact Management System (Exec VA)—VA.

Information requested to process the inquiries may include the caller's (and veteran's, if applicable) name, address, phone number, claim number and Social Security number if provided by the caller. Callers are not required to provide personal or contact information; however, in some instances VA may need this information in order to respond to specific inquiries. The authority to maintain these records is title 38, United States Code, section 501.

Exec VA is accessed through a secured Intranet Web site located on the VA network. A username and password are required to log into the system. Once an authorized user has successfully logged into the system, information gleaned from the caller is entered into a form and assigned to pre-established groups, of VA employees, representing VA staff offices, and VA's three administrations: Veterans Health Administration (VHA); Veterans Benefits Administration (VBA); and National Cemetery Administration (NCA). The assigned person(s) receives an e-mail message notifying them of the inquiry being assigned to them. The Assignee then logs into the system and performs the required action, as dictated by the details of the issue, and closes the call.

The details of the call, including the caller's and veteran's personally identifiable information (PII), are kept in a database located in Austin, Texas. This collection of data is used to better serve our veterans by providing a searchable history of their claims, requests, issues and complaints.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following Routine Use disclosures of information maintained in the system:

1. VA may disclose information from the record of an individual to a congressional office in response to an inquiry made at the request of that individual. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. VA may disclose information to individuals, organizations, private or public agencies, or other entities whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the individual or entity with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary individual or entity to perform an activity that is necessary for the individual or entity with whom VA has a contract or agreement to provide the service to VA. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

3. VA may disclose information in this system to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation. VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

4. VA may disclose to the Federal Labor Relations Authority, including its General Counsel, information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised, in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

5. VA may disclose information in this system to officials of the Merit Systems Protection Board, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law. VA must be able to provide information to MSPB to comply with the statutory mandate under which it operates.

6. VA may disclose information identified in 5 U.S.C. 7114(b)(4) to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions. VA must be able to provide information to unions to assist them in advancing workers' interests with respect to wages, benefits, and working conditions. The routine use does not provide any greater access to Privacy Act protected information under section

7114(b) then the unions would have to the information if it was not protected by the Privacy Act. The routine use simply removes the Privacy Act as a bar to the disclosure of the information at the Agency's discretion.

7. VA may disclose information from this system of records to the National Archives and Records Administration in records management inspections conducted under title 44, U.S.C. NARA is responsible for archiving old records no longer actively used but which may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA in order to determine the proper disposition of such records.

8. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may only disclose the names and addresses of veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7).

9. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved and has an interest.

10. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosure that is required by the Memorandum from the Office of Management and Budget (M–07–16), dated May 22, 2007, of all systems of records of all federal agencies. Further, the disclosure allows VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724 and 5727.

11. VA may disclose information in this system of records to another Federal agency; either on VA's initiative or in response to a request from another Federal agency for the information after VA determines that such information is relevant to that Federal agency's mission. VA must be able to assist other Federal agencies in carrying out their operational missions and programs.

III. Compatibility of the Routine Uses

The Privacy Act permits disclosure of information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which the information is collected. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs; to provide a benefit to VA; or because disclosure is required by law.

The Report of Intent to Publish a New System of Records Notice and an advance copy of the system notice has been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act), as amended, and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: February 24, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

141VA005Q3

SYSTEM NAME:

Executive Veterans Affairs Contact Management System (Exec VA)—VA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The primary location of Exec VA application and database is at the Corporate Data Center Operations (CDCO), 1615 Woodward Street, Austin, Texas 78772. Some copies of electronic records and paper records may be available at various Department of Veterans Affairs (VA) offices where a matter has been referred for action. Additionally, copies of records in this system of records may be stored at various VA back up sites, including, Hines, Ill.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The category of the individuals covered by the Exec VA database encompasses veterans, their dependents, representatives, beneficiaries, and others contacting VA on veterans' issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are maintained in electronic and paper form depending on the nature of the materials received, background information compiled, and/or response sent. Each may include the names, Social Security numbers, mailing addresses, telephone numbers, and

other personal identifiers routinely required to identify a correspondent or subject. Other record items maintained may include personal facts about medical, financial, or memorial benefits related to the correspondent, veteran, dependent or beneficiary. Internal VA records may include (but are not limited to) VA administrative, financial and personnel information. Records may include scanned document, letter, e-mail, fax, Internet document, tracking sheet, note, and documentation of a telephone call and/or of a meeting with an individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3501, Note; Pub. L. 107–347, sec. 206(d); Note; 5 U.S.C. 301, and 553.

PURPOSE:

The Exec VA is a contact management system designed to track issues from veterans, others acting on their behalf, and others seeking information regarding veterans' issues. Initial contact may come from calls placed to a VA call center, telephone inquiries received at a VA office, or other medium including fax, e-mail, or information received at *http://www.va.gov*. The Exec VA system is designed to provide a one-stop repository for veterans' issues. Upon receipt of an inquiry, pertinent information is entered into Exec VA. The system provides access controls maintaining the integrity and confidentiality of the contact management system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PUROSES OF SUCH USES:

1. VA may disclose information from the record of an individual to a congressional office in response to an inquiry made at the request of that individual.

2. VA may disclose information to individuals, organizations, private or public agencies, or other entities whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the individual or entity with whom VA has an agreement or contract to perform the services of the contract or agreement.

3. VA may disclose information in this system to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation.

4. VA may disclose to the Federal Labor Relations Authority, including its General Counsel, information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised, in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

5. VA may disclose information in this system to officials of the Merit Systems Protection Board, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

6. VA may disclose information identified in 5 U.S.C. 7114(b)(4) to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

7. VA may disclose information from this system of records to the National Archives and Records Administration (NARA) in records management inspections conducted under title 44, U.S.C. NARA is responsible for archiving old records no longer actively used but which may be appropriate for preservation, and for the physical maintenance of the Federal government's records.

8. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

9. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

10. VA may disclose information in this system of records to another Federal agency; either on VA's initiative or in response to a request from another Federal agency for the information after VA determines that such information is relevant to that Federal agency's mission.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

The Exec VA database will not disclose information to any consumer reporting agency from this system of record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Exec VA data is regularly backed up and stored at the Corporate Data Center Operations (CDCO). A copy of the regular backups is securely transported and stored in a controlled storage facility at Hines, Illinois.

RETRIEVABILITY:

Records are retrieved by various data elements and key word searches, among which are by: Name, Number, Call#, Priority, Status, Subject, Address, Call Type, History, Claim#, SSN, Country, State, VISN, Phone, Date, time, group, and Call Range.

SAFEGUARDS:

The Exec VA is accessible by authorized VA personnel only with a user ID and a password that can be authenticated. Staff of the CDCO

performs backups for the Exec VA Application Server and the Oracle Database Server, respectively, according to the following schedule:

- Incremental data backups on a daily basis; and
- Full data backups on a weekly basis.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of, in accordance with records disposition authority, approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Customer Relations & Executive Projects, Office of the Secretary, 810 Vermont Ave., NW., Washington, DC 20420; (202) 273–4830.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this System of Records contains information, about them, should address written inquiries to the Office of Secretary (00), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Requests should contain the full name, address and telephone number of the individual making the inquiry.

RECORD ACCESS PROCEDURE:

Individuals seeking to access or contest the contents of records, about themselves, contained in this System of Records should address a written request, including full name, address and telephone number to the Office of Secretary (00), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420.

CONTESTING RECORD PROCEDURE:

(See Record Access Procedure above.)

RECORD SOURCE CATEGORIES:

Individuals who contact VA via the VA Web site at *http://www.va.gov* or by using a VA call center include veterans, veterans' family members and/or their representatives, government employees (Federal, State and local), realtors and home buyers, small business owners, vendors, funeral directors, clinicians, teachers, researchers, employees of veterans' service organizations, member of the public and all other individuals and representatives of organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemptions claimed for this system.

[FR Doc. E9–5599 Filed 3–13–09; 8:45 am]

BILLING CODE 8329–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of publication of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. Section 552a) requires that all agencies publish in the **Federal Register** a notice of the existence of and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system records entitled ''Inspector General Oversight Data Extracts—VA,'' (154VA53C).

DATES: Comments on this new system of records must be received not later than April 15, 2009. If no public comment is received, the amended system will become effective April 15, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Timothy J. McGrath, Attorney Advisor, Department of Veterans Affairs, Office of Inspector General (50C), 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 565–8667; or e-mail comments to *timothy.mcgrath@va.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed System of Records

The ''Inspector General Oversight Data Extracts—VA'' system of records is a collection of data, and extracts of data utilized by the Department of Veterans Affairs, Office of Inspector General (OIG) in performing its statutory mission under title 5 U.S.C. App. 3.

The OIG's mission is to detect and deter fraud, waste, abuse, and mismanagement of operations in the Department of Veterans Affairs. The OIG accomplishes that mission through various operational means including criminal investigations, audits, healthcare inspections, and other administrative reviews. OIG components may use various databases or extracts of those databases in furtherance of their investigation, project or review.

The database extracts are provided from master databases under the jurisdiction of the Department of Veterans Affairs, including, but not limited to, the Veterans Benefits Administration, Veterans Health Administration, and the National Cemetery Administration. Data extracts may also be from databases provided by the Department of Defense as well as other Federal and State agencies. When an OIG component begins an investigation, project, or review that requires the use or analysis of a particular database, the OIG Data Analysis Division (53CT) at the Consolidated Franchise Data Center in Austin, Texas will prepare an appropriate extract from a master database. To the fullest extent possible, the OIG component will use only the minimum amount of information required for the investigation, project or review. In appropriate cases, the Data Analysis Division will remove any personal identifying information before forwarding the data extract. This policy is designed as a security measure to control the type and amount of data being used and worked on.

These data extracts contain personal identifiers (*e.g.*, social security numbers and military service numbers, *etc.*), residential and professional contact data (*e.g.*, address and telephone numbers, *etc.*), population demographics (*e.g.*, gender and zip codes, *etc.*), military service-related data (*e.g.*, branch of service and service dates, *etc.*), financial-related data (*e.g.*, amount of historic benefit payments, *etc.*), claims processing codes and information (*e.g.*, disability compensation and pension award codes, *etc.*), and other VA and non-VA Federal information.

The information is retrievable by name, social security number, military service number, claim or file number, non-VA Federal benefit identifiers, and other personal identifiers. Consequently, a Privacy Act system of records must be established in order to protect this information.

II. Proposed Routine Use of Disclosures of Data in the System

VA is proposing to establish the following routine use disclosures of the information that will be maintained in the system.

1. Any records may be disclosed to appropriate agencies, entities, and persons under the following circumstances: When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigation or prosecuting such violation, or charged with enforcing or implementing the statute, regulation rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

3. Disclosure may be made to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

4. Any system records disclosure may be made to the National Archives and Records Administration in records management inspections under title 44, U.S.C.

5. VA may disclose information from this system to a Federal agency for the conduct of research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and OIG has determined prior to the disclosure that VA and OIG data handling requirements are satisfied.

6. Any system records may be disclosed to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

7. Any system records disclosure may be made to the Office of Management and Budget (OMB) in order for them to perform their statutory responsibilities for evaluating Federal programs.

8. VA OIG may disclose information in this system of records to the Department of Justice (DoJ), either on VA OIG's initiative or in response to DoJ's request for the information, after either VA OIG or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA OIG, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA OIG collected the records.

VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe* v. *DiGenova*, 779 F.2d 74, 78–84 (D.C. Cir. 1985) and *Doe* v. *Stephens*, 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

In determining whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update'', currently posted at *http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf*.

9. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, or will use the information to provide a benefit to VA, or disclosure is required by law.

The ''notice of intent to publish'' and an advance copy of the system notice have been sent to the appropriate Congressional committees and the OMB's Director as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB on December 12, 2000 (65 FR 77677).

Approved: February 24, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

154VA53C

SYSTEM NAME:

Inspector General Oversight Data Extracts—VA.

SYSTEM LOCATION:

The location for electronic records is in the Office of Inspector General, Information Technology and Data Analysis Division, (53CT), U.S. Department of Veterans Affairs, Consolidated Franchise Data Center, 1615 Woodward Street, Austin, TX 78772.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Service members and veterans who have applied for any type of benefits under title 38, U.S.C.
2. Veterans' spouse, surviving spouse, previous spouse, children, and parents who have applied for any type of benefit under title 38, U.S.C.
3. Beneficiaries of other Federal agencies or other governmental entities.
4. Individuals who have applied for any benefits under title 38, U.S.C., but who do not meet the requirements under Title 38 to receive such benefits.
5. VA employees, contractor employees, and volunteers.
6. Employees of VA affiliated hospitals and medical schools, researchers, and without compensation (WOC) employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system of records consist of data, and extracts of data, provided from master databases under the jurisdiction of the Department of Veterans Affairs, including but not limited to, the Veterans Benefits Administration, Veterans Health Administration, and the National Cemetery Administration. Data extracts may also be from databases provided by the Department of Defense, as well as other Federal and State agencies. The records may include personal identifiers (*e.g.*, social security numbers and military service numbers, etc.), residential and professional contact data (*e.g.*, address and telephone numbers etc.), population demographics (*e.g.*, gender and zip codes, etc.), military service-related data (*e.g.*, branch of service and service dates, etc.), financial-related data (*e.g.*, amount of historic benefit payments, etc.), claims processing codes and information (*e.g.*, disability compensation and pension award codes, etc.), and other VA and non-VA Federal information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C. App. 3.

PURPOSE(S):

The records in this system of records are used for qualitative, quantitative, and other analyses used to support OIG reviews, investigations, audits, and healthcare inspections. The Inspector General has a statutory mission of detecting and preventing fraud, waste, abuse, and mismanagement in the Department of Veterans Affairs programs and operations and does so through a number of means. The OIG intends that its operational elements will utilize the least amount of data necessary to support a particular project or review.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Note: To the extent that records contained in the system include individually-identifiable health information protected by 45 CFR parts 160 and 164 and 38 U.S.C. 7332, that information cannot be disclosed under any of the following routine uses unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. Any records may be disclosed to appropriate agencies, entities, and persons under the following circumstances: When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724.

2. VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

3. Disclosure may be made to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

4. Any system records disclosure may be made to the National Archives and Records Administration in records management inspections under title 44, U.S.C.

5. VA may disclose information from this system to a Federal agency to conduct research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and OIG has determined prior to the disclosure that VA and OIG data handling requirements are satisfied.

6. Any system records may be disclosed to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

7. Any system records disclosure may be made to the OMB in order for them to perform their statutory responsibilities for evaluating Federal programs.

8. VA OIG may disclose information in this system of records to the Department of Justice (DoJ), either on VA OIG's initiative or in response to DoJ's request for the information, after either VA OIG or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the

purpose for which VA OIG collected the records. VA OIG, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA OIG collected the records. In determining whether to disclose records under this routine use, VA OIG will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update'', currently posted at *http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf*.

9. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

The Department will not make disclosures from this system of records to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

OIG's records in this system of records are maintained in an electronic format on VA's segregated server housed at VA's Consolidated Franchise Data Center, 1615 Woodward Street, Austin, TX 78772. Access to that electronic data is handled through the OIG's Data Analysis Division (53CT). All imported and exported OIG data is handled and housed via the provisions of current VA and OIG data security policies, procedures, and directives.

RETRIEVABILITY:

OIG's records in this system of records may be retrieved by using an individual's name, social security number, military service number, VA claim or file number, non-VA Federal benefit identifiers, and other personal identifiers.

SAFEGUARDS:

Access to the server in the Consolidated Franchise Data Center in Austin, TX is limited by appropriate locking devices and restricted to authorized VA personnel. The Consolidated Franchise Data Center is a secure facility protected by a variety of physical and electronic safeguards.

The OIG will publish internal guidance and policy for its employees concerning requests for data extracts to support a project or review. A written request identifying and justifying the use of the data will be necessary. File extracts provided for specific official uses will be limited to contain only the information fields needed for the project or review. Further, only authorized individuals may have access to the data and only when needed to perform their official duties. Whenever possible, data used for analyses will have individual identifying characteristics removed or encrypted.

Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Health information files containing unique identifiers such as social security numbers are encrypted to NIST-verified FIPS 140–2 standard or higher for storage, transport, or transmission. All files stored or transmitted on laptops, workstations, data storage devices and media are encrypted. Files are kept encrypted at all times except when data is in immediate use, per specifications by the VA Office of Information Technology. NIST publications were consulted in development of security for this system of records.

Access to data storage areas is restricted to authorized VA and OIG employees, or contract staff who have been cleared to work by the VA Office of Security and Law Enforcement. File areas are locked after normal duty hours. VA facilities are protected from outside access by the Federal Protective Service and/or other security personnel.

In the event of a contract or special project, OIG may secure the services of contractors and/or subcontractors. In such cases, OIG will maximize the utilization of encrypted data, when possible. Contractors and their subcontractors are required to maintain the same level of security as VA and OIG staff for sensitive VA information that has been disclosed to them. Unless explicitly authorized in writing by the OIG, sensitive or protected data made available to the contractor and subcontractors shall not be divulged or made known in any manner to any person. All OIG employees and contractors are mandated to complete annual cyber security and privacy training.

RETENTION AND DISPOSAL:

In accordance with Title 36, CFR, Section 1234.34, Destruction of Electronic Records, ''electronic records may be destroyed only in accordance with a records disposition schedule approved by the Archivist of the United States, including General Records Schedules.'' The OIG's electronic files are destroyed or deleted when no longer needed for administrative, legal, audit, or other operational purposes in accordance with records disposition authority approved by the Archivist.

If the Archivist has not approved disposition authority for any records covered by the system notice, the System Manager will take immediate action to have the disposition of records in the system reviewed and paperwork initiated to obtain an approved records disposition authority in accordance with VA Handbook 6300.1, Records Management Procedures. The records may not be destroyed until VA obtains an approved records disposition authority. OIG will publish an amendment to this notice upon issuance of a NARA-approved disposition authority.

SYSTEM MANAGER(S) AND ADDRESS(ES):

OIG's system manager is the Director, Information Technology and Data Analysis Division, (53CT), Office of Inspector General, U.S. Department of Veterans Affairs, 1615 Woodward Street, Austin, TX 78772.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to the Director, Information Technology and Data Analysis Division, (53CT) Office of Inspector General, U.S. Department of Veterans Affairs, 1615 Woodward Street, Austin, TX 78772. Such requests must contain a reasonable description of the records requested. In addition, identification of the individual requesting the information will be required in the written request and will minimally consist of the requester's name, signature, social security number, address, telephone number, and return address.

RECORD ACCESS PROCEDURES:

(See Notification procedure above.)

CONTESTING RECORDS PROCEDURES:

(See Notification procedure above.)

RECORD SOURCE CATEGORIES:

This system of records information is obtained from VA's databases, the Department of Defense, Federal and State agencies, and other organizations whose data is necessary to accomplish the purpose for this system of records.

[FR Doc. E9–5603 Filed 3–13–09; 8:45 am]

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Federal Register

Monday,
March 16, 2009

Part II

Department of Homeland Security

Coast Guard

33 CFR Parts 1, 20, 70, et al.

46 CFR Parts 1, 4, 5, et al.

Consolidation of Merchant Mariner Qualification Credentials; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 1, 20, 70, 95, 101, 110, 141, 155, 156, 160, 162, 163, 164, and 165

46 CFR Parts 1, 4, 5, 10, 11, 12, 13, 14, 15, 16, 26, 28, 30, 31, 35, 42, 58, 61, 78, 97, 98, 105, 114, 115, 122, 125, 131, 151, 166, 169, 175, 176, 185, 196, 199, 401, and 402

[Docket No. USCG–2006–24371]

RIN 1625–AB02

Consolidation of Merchant Mariner Qualification Credentials

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard issues this final rule to consolidate the regulations covering issuance of merchant mariner qualification credentials, to reduce the burden on mariners by limiting the number of times they need to appear in person to provide fingerprints and proof of identity, and to address comments received from the public in response to the Supplemental Notice of Proposed Rulemaking, in some cases through revisions based on those comments. This final rule works in tandem with the joint final rule published by the Coast Guard and the Transportation Security Administration on January 25, 2007, entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License''.

DATES: This final rule is effective April 15, 2009. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of April 15, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2006–24371 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mayte Medina, Coast Guard, telephone 202–372–1406. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Acronyms

ADA Americans with Disabilities Act
ARPA Automatic Radar Plotting Aid
ATP Airline Transport Pilot
CFR Code of Federal Regulations
CBP Customs and Border Patrol
COR Certificate of Registry
EEOC Equal Employment Opportunity Commission
FAA Federal Aviation Administration
FR Final Rule
GMDSS Global Maritime Distress and Safety System
ILO International Labor Organization
IMO International Maritime Organization
MERPAC Merchant Marine Personnel Advisory Committee
MMC Merchant Mariner Credential
MMD Merchant Mariner Document
MODU Mobile Offshore Drilling Unit
NARA National Archives and Records Administration
NDR National Driver Register
NEPA National Environmental Policy Act
NMC National Maritime Center
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
NVIC Navigation and Inspection Circular
OCMI Officer in Charge, Marine Inspection
OICEW Officer in Charge of Engineering Watch
OICNW Officer in Charge of Navigational Watch
OMB Office of Management and Budget
OSV Offshore Supply Vessels
PVSA Passenger Vessel Safety Act of 1993
QMED Qualified Member of the Engine Department
REC Regional Examination Center
RFPNW Rating Forming Part of a Navigational Watch
SNPRM Supplemental Notice of Proposed Rulemaking
SOLAS Convention for the Safety of Life at Sea
SSN Social Security Number
STCW International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended.
TOAR Towing Officer's Assessment Record
TSA Transportation Security Administration
TWIC Transportation Worker Identification Credential
US United States
USC United States Code

II. Regulatory History

On May 22, 2006, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** titled ''Consolidation of Merchant Mariner Qualification Credentials'' (71 FR 29462). The NPRM included a 45-day comment period, and announced four public meetings that were held in Newark, NJ, Tampa, FL, St. Louis, MO, and Long Beach, CA. During the comment period for the NPRM, the Coast Guard received over 100 requests, both in writing and in person at the public meetings, for additional time to comment.

In response, on January 25, 2007, the Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) under the same title in the **Federal Register** (72 FR 3605) providing an additional three months for comments. The SNPRM included a discussion of all comments received in response to the NPRM. We received 19 letters commenting on the SNPRM. No public meeting was requested and none was held.

III. Background and Purpose

A complete discussion of the background and purpose for this rule can be found in the preamble to the NPRM, 71 FR 29463. Under the current

regulations being amended in this rule, the Coast Guard may issue up to four credentials to a mariner: A Merchant Mariner's Document (MMD), Merchant Mariner's License (License), Certificate of Registry (COR), and an International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Endorsement. Each credential serves a separate purpose, thus creating the possibility that a mariner might need all four.

The Maritime Transportation Security Act of 2002, 46 U.S.C. 70105, (MTSA) requires all merchant mariners credentialed under 46 U.S.C. part E to undergo a security threat assessment and obtain a transportation security card. This provision has been implemented by the Transportation Security Administration (TSA), which has begun implementing the Transportation Worker Identification Credential (TWIC) into the maritime sector, and the Coast Guard. All mariners are required, under Coast Guard regulations, to obtain a TWIC by April 15, 2009.[1] This means that, without a regulatory change, a mariner would need up to five credentials.

This rule will minimize these redundant credentialing requirements, and ease the burden on merchant mariners. The Coast Guard is streamlining its mariner regulations and consolidating the four separate credentialing documents into one Merchant Mariner Credential (MMC). In addition to reducing the number of credentials a mariner will need to hold, this rule also eliminates redundant burdens and government processes.

IV. Summary of Changes From SNPRM

Cite	Change	Reason
Throughout document	Changed the date by which a mariner must hold a TWIC from September 25, 2008 to April 15, 2009.	To reflect change in mariner compliance date published by DHS in a Final Rule on May 7, 2008 (73 FR 25562).
46 CFR 10.209, 10.211, 10.214, 10.221, 10.223, 10.225, 10.227, 10.229, 10.231, 10.235, 12.02–7.	Added language to reflect that applications for MMC's prior to April 15, 2009 will still need to be made in person at an REC to provide fingerprints and proof of identity, and that for these applications, the Coast Guard will still conduct security threat assessments. After April 15, 2009, TSA will collect the fingerprints and proof of identity and forward that information to the Coast Guard (National Maritime Center (NMC)).	To allow the Coast Guard to begin issuing the MMC prior to the date that mariners are required to hold a TWIC, and prior to the date when TSA will begin sharing applicant information with the Coast Guard.
33 CFR 164.13	Changed the term from properly, to appropriately	In response to comments.
46 CFR 10.107	Added language to the definition of safe and suitable person to refer the reader to 46 CFR 10.211 and 10.213; and added definitions for large passenger ship, non-resident alien and steward's department.	In response to comments and changes to regulations.
46 CFR 10.109	Added the first class pilot endorsement, and in (b) added subcategories of able seaman for consistency as well as clarity with the requirements in Parts 12 and 15.	In response to comments.
46 CFR 10.211	Added language to specifically state responses that applicants need only provide written disclosure of convictions not previously disclosed on an application.	In response to comments.
46 CFR 10.215 Table (a)	Revised the table to place the reg cites for the requirement.	In response to comments.
46 CFR 10.215(c)	Revised to allow the medical examiner, if qualified, to conduct the appropriate examinations.	In response to comments.
46 CFR 10.221(a)(2)	Added exception for large passenger vessel	In response to comments and Congress.
46 CFR 10.225	Removed the requirement that a mariner have proof of applying for a TWIC within the past 30 days.	In response to comments. Additionally, it provides more flexibility.
46 CFR 10.237	Added language to specify that the Coast Guard will provide the applicant the reason(s) for denial of an application directly to the applicant.	In response to comments.
46 CFR 11.304(h)(7)	Removed the requirement for gathering the TWIC information.	In response to comments and realization that we had sufficient information to determine the identity of the officer conducting the assessment.
46 CFR 11.518	Added the abbreviation for Qualified Member of the Engine Department (QMED).	In response to comments.
46 CFR 11.520	Replaced qualified member of the engine department with QMED.	In response to comments.
46 CFR 11.1005	Removed the date	In response to comments and date is no longer necessary.
46 CFR 12.02–11(d)	Revised to state that ratings endorsements will be issued if the holder or applicant is qualified for the endorsement.	In response to comments.
46 CFR 12.02–17	Revised section to remove reference to Officer in Charge Marine Inspection. In paragraph (g) revised section for clarity.	In response to comments and to provide clarity after the revisions.
46 CFR 12.05–3(c)	Revised paragraph to remove the date and to provide clarity that the endorsement for Rating Forming Part of a Navigational Watch (RFPNW) will be issued upon meeting the requirements of STCW.	In response to comments and to provide clarity.

[1] The first TWIC Final Rule, published on January 25, 2007, required all mariners to have a TWIC by September 25, 2008. See 72 FR 3492. On May 7, 2008, the Department of Homeland Security published a Final Rule delaying the date by which mariners must hold a TWIC until April 15, 2009. See 73 FR 25562.

Cite	Change	Reason
46 CFR 12.05–7	Removed the term Commanding Officer	In response to comments and for consistency with changes previously proposed.
46 CFR 12.10–1	Removed the term "United States collector or deputy collector of customs" and replaced it with the appropriate term with the DHS reorganization.	In response to comments and updating the regulations with current terminology.
46 CFR 12.10–3	Removed the term Commanding Officer	In response to comments and for consistency with changes previously proposed.
46 CFR 12.15–1	Removed the term "United States collector or deputy collector of customs" and replaced it with the appropriate term with the DHS reorganization.	In response to comments and updating the regulations with current terminology.
46 CFR 12.15–3(d)	Removed the February 1, 2002 date	In response to comments and because that date is no longer necessary.
46 CFR 12.15–7(c)	Revised the newly inserted word from engineer department to engine department.	Consistency with existing language and in response to comment.
46 CFR 12.40	Revised subpart for the requirements for non-resident aliens working on large passenger vessels.	In response to comments and new interim rule.
46 CFR 15.401	Spelled out the first use of TWIC	In response to comments.
46 CFR 15.530	Revised subpart for the requirements for non-resident aliens working on large passenger vessels.	In response to comments and new interim rule.
46 CFR 15.701	Removed the word Customs and replaced it with Customs and Border Protection.	In response to comments and updating the regulations with current terminology.
46 CFR 15.812(b)(1)	Clarified the requirement to state that it is either a first class pilot's license or an MMC with a first class pilot's endorsement.	In response to comments and for clarification.
46 CFR 15.815	Revised radar endorsement language to make it consistent with language proposed in the NPRM for radar endorsements.	Consistency with other ongoing rulemaking project that is specifically on that requirement.
46 CFR 15.915	Revised header from "Engineer Licenses" to "Engineer Officer Endorsements".	In response to comment and to make consistent with the remainder of the proposed rule.
46 CFR 42.05–70	Renumbered section to 42.05–27	In response to comment and because the definition was out of order.
46 CFR 78.65–1	Revised section to provide the option to post either license or merchant mariner credentials on a vessel.	In response to comment and to provide for the phase-in period when both documents will be in use.
46 CFR 97.53–1	Revised section to provide the option to post either license or merchant mariner credentials on a vessel.	In response to comment and to provide for the phase-in period when both documents will be in use.
46 CFR 401.210	Revised references to licensed service and added language to include the MMC requirement.	In response to comments and to correct oversights not addressed in the SNPRM.
46 CFR 402.220	Revised section to provide for mariners holding either a license or MMC.	In response to comments and to provide for the phase-in period when both documents will be in use.

V. Discussion of Comments and Changes

The following comments were submitted to the docket for the MMC SNPRM. All written comments received are available for inspection in the public docket for this rulemaking, where indicated under **ADDRESSES**.

A. Comments Regarding the TWIC Rulemaking

We continued to receive comments to the docket regarding the TWIC. This rulemaking is limited to the consolidation of merchant mariner credentials, including the requirement for a TWIC as required by 46 U.S.C. 70105; however, comments regarding the TWIC rulemaking are inappropriate for discussion in this rulemaking. They are not addressed in this FR; they were forwarded to the appropriate office either at the Coast Guard or at TSA for consideration, and included in the discussion of comments in the TWIC final rule, published on January 25, 2007 (72 FR 3492).

B. General

The Coast Guard received a number of positive comments on the SNPRM. We received one comment commending the Coast Guard on recognizing the need to move forward on concurrent processing of a TWIC and MMC. We received one comment supporting the removal of language in § 12.01–1 that stated that the MMD was owned by the Coast Guard. We received one comment expressing support for the revised requirements in § 15.815(d) and (e) requiring mariners to either carry their radar certificate with them or have a copy on file with their company. We received one comment that specifically stated that all the credentials should be combined as proposed in the SNPRM. We received four comments supporting the issuance of MMCs through the mail. We received one comment applauding the removal of withholding the reason for the denial of a credential. We received numerous comments agreeing with the need for proper identification and credentialing of mariners, in order to ensure safe vessel operation and national security. We received one comment commending the Coast Guard for allowing the mariner to take his/her oath before any person. We received one comment noting that the MMC represents an opportunity to make the mariner credentialing system more transparent, predictable and fair. We received one comment expressing appreciation of the Coast Guard's efforts to protect a mariner's privacy by removing the Social Security number on the form of payment.

We received one comment expressing concern that focusing the emphasis of the MMC on competency of the mariner would undermine the principle that the Coast Guard must be vigilant in its issuance of its credentials.

We disagree. While TSA is responsible for verifying identity and conducting security vetting for mariners, the Coast Guard will only issue credentials to those individuals who pass the security vetting and the safety and suitability check conducted by the Coast Guard. We will not ignore whether the individual is a security threat, though our focus will be

qualifying the mariner to be employed on vessels and ensuring the individual is not a threat to maritime safety.

We received one comment noting that the mariner would still be required to carry multiple credentials and documents and thus the synergetic effect of the Coast Guard's proposed consolidation of the mariner's credentials is somewhat diluted.

We agree. The Coast Guard recognizes that mariners will still be required to carry more than one credential; however, those issued by the Coast Guard will be reduced from as many as four to one.

We received one comment suggesting that this rulemaking should be used to remedy existing deficiencies in the licensing system.

We disagree. The purpose of this rulemaking is to streamline the existing merchant mariner credentialing process, to minimize redundant requirements, and simplify the credentialing program. While it is expected that this will remedy some of the existing deficiencies in the merchant mariner credentialing program, it is not the intent of this rulemaking. The Coast Guard has a number of initiatives in progress which are intended to improve the merchant mariner credentialing system, which include reorganization of the NMC and fully developing a quality standard system.

We received one comment asking the Coast Guard to address the deletions and additions of definitions, subsections, figures, and tables within the rulemaking.

In the NPRM, we provided a table showing where various subsections were moved between the various parts of Title 46 of the CFR (71 FR 29464–81). Additionally, when the definitions were consolidated we had no intention of removing definitions and have reviewed the list to ensure that all of the definitions within the subchapter have been retained, unless otherwise noted in this or previous regulatory documents. Within this preamble, we will discuss any changes from the SNPRM, which would not have been discussed in either the NPRM or the SNPRM.

We received one comment requesting that we readdress the comments they made to the NPRM.

The Coast Guard has determined that readdressing even some of the comments we received on the NPRM would be redundant, as those comments were already fully addressed in the ''Discussion of Comments and Changes'' section of the SNPRM (72 FR 3608). As such, we have not readdressed comments received on the NPRM; this discussion will only address those comments received on the SNPRM.

We received one comment stating that the creation of an entirely new form of a credential to replace the traditional license would create more problems than it might solve.

We disagree. While we recognize that the transition to this new credential will not be without challenges, we believe it will result in a better credential accepted by more mariners than the credentials currently in place.

One commenter recommended that the MMC proposal be withdrawn.

We do not agree with this comment and are proceeding with this final rule. Without this final rule, mariners would face duplicative appearance requirements when applying for their TWIC and their Coast Guard issued License, MMD, COR, or STCW Endorsement.

We received one comment expressing concern with this rulemaking because it comes at an especially active period in maritime regulation and it was recommended that we proceed with caution.

We recognize that the Coast Guard is involved in multiple regulatory projects at this time, and that several of them touch upon the same regulatory provisions being amended by this final rule. All persons involved in this project are sensitive to this fact, and have been diligent in ensuring that the same approach and language is used in all projects. As a result of this diligence, recent changes, published in an interim rule for vessel security officer training and certification (May 20, 2008; 73 FR 29060) and in final rules on training and service requirements for merchant marine officers (September 11, 2008; 73 FR 52789) and technical amendments for 46 CFR (September 29, 2008; 73 FR 56505), have been incorporated into this final rule.

One commenter expressed concern that the SNPRM implied the MMC is an identity document in addition to being a proficiency document. They felt adding the identity concept to the MMC would introduce confusion and recommended that the TWIC remain the proof of identification.

We disagree. There have been numerous comments recommending the MMC be International Labor Organization (ILO) 185 compliant. In order to meet those requests, the Coast Guard must make this credential, in part, an identification credential. Identification will not be the primary function of the MMC, as the TWIC will be used as the primary identification document aboard U.S. vessels and at U.S. facilities. The MMC may be used as an identity document in other places, as it will hold a digital photo of the mariner, which will be taken from the TWIC enrollment application during which time proof of identity is inspected.

We received one comment requesting the implementation of this rulemaking be delayed until there have been trials of the information sharing between the Coast Guard and TSA.

We agree, in part, with this comment. Before we fully implement this rulemaking we will be testing the transmission of information between the two agencies. If we are able to begin issuance of the MMC before the full implementation of TWIC, we may begin a partial implementation of those portions of the rule that do not require the information sharing.

We received one comment stating that the Coast Guard must educate other state and Federal agencies about the status of a merchant mariner credential, and the requirements to achieve them.

While not the purpose of this rulemaking, we agree we need to educate other agencies about the MMC. We will use all available channels to inform State and Federal agencies about the new credential.

We received one comment stating that the majority of licensed officers favor retaining the license as a separate document and as a certificate of qualifications at the licensed level.

We disagree. This statement is not represented by the comments received during this rulemaking.

We received one comment stating that the present documentation and licensing regulations should remain intact and should not be changed to a system of endorsements on a newly created MMC.

We disagree. Even before the MMC and TWIC rulemakings, the Coast Guard recognized the need to revise the current credentials, to make them less confusing. This need was further reinforced by comments received and responses made to Congress regarding the number of credentials being carried by mariners and the need to reduce that number.

We received one comment seeking clarification on a statement within the SNPRM preamble regarding delaying the final rule until ''next year'' to allow the Coast Guard to accept and apply additional public comments.

The intent of the statement within the SNPRM was to state that the Coast Guard was going to seek additional comments in conjunction with the rulemaking process. Because at that time mariners would not have been required to hold a TWIC until

September 25, 2008 (see TWIC final rule at 72 FR 3587–88), we recognized that there was ample time to allow for additional comment before needing to finalize this MMC rulemaking project. Providing a second round of comments has helped ensure that in consolidating the existing mariner credentialing regulations, we were not unintentionally changing any qualifications requirements.

We received one comment stating that not allowing mariners to serve prior to issuance of their MMC conflicted with the TWIC policy which allowed service for up to 30 days before they actually received their TWIC and that this Coast Guard policy would negate that advantage. We received two comments encouraging the Coast Guard to seek issuance of interim MMCs for mariners serving on passenger vessels that have been issued a TWIC, but are waiting on the processing of the MMC. We received one comment recommending issuance of interim credentials to persons who have had recent prior experience crewing on U.S.-flag vessels, or on other vessels that have evidence, issued by the Federal Maritime Commission, of compliance with sections 44102 and 44103 of Title 46 of the United States Code. In contrast, we received one comment stating that the issuance of interim credentials would be confusing and unnecessary, especially considering that we do not currently have interim credentials and everyone has managed to deal with it by planning ahead.

The Coast Guard has decided not to allow merchant mariners to serve prior to the issuance of their MMC. The U.S. Code provides that the Coast Guard may issue credentials to those applicants found qualified as to age, character, habits of life, experience, professional qualifications and physical fitness (46 U.S.C. 7101(c), 7306, and 7313). The law provides that the Coast Guard must ensure a mariner meets the aforementioned criteria before issuing a credential and the possession of such a credential is required to serve in a position on any vessel that requires a credential.

We received one comment that suggested the replacement of the phrase ''* * * a properly endorsed license * * *'' with ''* * * an appropriately endorsed license * * *'' in 33 CFR 164.13(b) and (c).

We concur with the suggestion and have made this change.

We received one comment seeking clarification regarding the listing of the Young Men's Christian Association (YMCA) but not the Young Women's Christian Association (YWCA) in 46 CFR 10.219(h)(2)(ii) and whether the failure to include that organization was intentional, and if so for further rationale for not including the organization.

The YWCA was intentionally excluded from the current published list in the regulations. The list has been in place and unchanged since the establishment of fee regulations in 1993, and it is not our intention with this rulemaking to add or remove organizations from the existing list. An organization seeking to be added to the list may follow the procedure, unchanged by this rulemaking, laid out in paragraph (h)(2)(i).

We received one comment recommending that 46 CFR 11.502(b) be revised to reflect three propulsion modes: motor, steam, and gas turbine.

We agree, in part. There are three propulsion modes that should be included in the regulations; however, this change is being considered in a separate, larger Coast Guard rulemaking, titled ''Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978'' (RIN: 1625–AA16).

We received one comment that recommended 46 CFR 11.1105 be the same as § 11.1005: ''To serve on a non-Ro-Ro passenger ship a person endorsed as master, mate, chief mate, engineer, or chief engineer shall meet the appropriate requirements of the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW) Regulation V/3 and of section A–V/E of the STCW Code.''

We disagree. It is not the purpose of this rule to revise the substantive qualifications requirements or even just the text of the requirements; this rule serves to reorganize the various parts, consolidate the various mariner credentials, and eliminate redundant appearance requirements in light of the new TWIC requirement. As noted in an earlier response, the Coast Guard has a number of ongoing regulatory projects that, if completed, would change portions of 46 CFR chapter I, subchapter B. Once these projects are completed, we will examine whether a complete revision of the regulations in subchapter B is warranted. The change suggested by the commenter could be incorporated into such a revision.

We received one comment recommending a revision to § 12.15–7(c) changing the phrase ''engineer department'' to ''engine department''.

We agree with this suggestion and have made this change.

We received one comment noting that we did not correct the heading for § 15.915. That omission was an oversight on the part of the Coast Guard; we have corrected that heading in this final rule to ''Engineer Officer Endorsements''.

One comment recommended §§ 78.65–1, 97.53–1, and 131.955 state that the page of the credential should show the information for officer credentials and include the license for the 5 year implementation period.

We agree, and have amended the sections to read ''All officers on a vessel must have their license or officer endorsements conspicuously displayed''.

We received one comment recommending that § 401.210(a)(1) be revised to allow for the transition period when mariners will still hold licenses.

We agree; this entire paragraph has been revised in this final rule, in order to allow the Coast Guard to start issuing MMCs even before mariners are required to obtain TWICs. These changes mean that, until April 15, 2009, mariners applying for their MMC will need to appear at an REC in person to provide proof of identity, citizenship, and their fingerprints. After April 15, 2009, the Coast Guard will be able to obtain that information from the record TSA created when the mariner enrolled for his/her TWIC and will not have to appear at an REC.

We received one comment recommending that § 402.220(a)(1), (a)(2), & (a)(3) should state license and MMC endorsement.

We agree that these terms would provide clarity, and have made the suggested changes.

We received one comment recommending that we model the mariner licensing system after the Federal Aviation Administration (FAA) processes, based upon the Airline Transport Pilot (ATP) license for the FAA coupled with type-rating for a specific aircraft.

We disagree. While this would ensure that each mariner is qualified for each specific vessel upon which he or she serves, it would make the regulations much more difficult and confusing. Additionally, vessels are not as uniform as aircraft in their design and operation, thus using the FAA model would not be appropriate.

One commenter suggested that STCW endorsements should be issued when a person meets STCW requirements for their position instead of in response to a request to go on an international voyage.

We concur; however, we do not issue STCW endorsements unless requested by mariner. Thus, when the STCW

endorsement is issued relies upon when the mariner makes his/her request.

We received one recommendation that the CFRs should be drafted to provide a list of requirements as has been done in some of the license checklists.

We disagree. While this idea appears on the surface to be a good solution, it would actually result in more difficulties over time. Checklists exist as aids that provide guidance on these regulations and are available for review at: *http://www.uscg.mil/stcw/index.htm*. Including such checklists in the regulations would mean they could only be revised through a regulatory change, requiring notice and comment under the Administrative Procedure Act. By providing the checklists as aids to understanding the regulations, we are able to quickly update and clarify them as requirements are revised or confusion is discovered.

We received one comment noting that the safekeeping of the MMC would be easier if it were a passport-sized document.

We agree and have started the process of transitioning to this style of document.

C. Appeals

We received one comment seeking clarification to the revised language in § 12.03–1(c)(2).

We have removed specific references to the Commanding Officer of the National Maritime Center throughout this rulemaking. In our view, this will have no effect on the processes currently in place. Coast Guard policy requires that Commanding Officers sign official correspondence or delegate it, as appropriate, within their command. We do not envision course application appeals being delegated below the Commanding Officer, except in his or her absence to an Acting Commanding Officer.

D. Application Process

We received one comment recommending the Coast Guard implement a Web-based application system and two comments recommending the Coast Guard allow electronic submission of applications.

We agree. As resources are available, the Coast Guard intends to develop systems through which a mariner may apply for an MMC using various Web-based applications.

We received one comment recommending that §§ 10.223(c)(2) and 10.227(d)(2) read "* * * have a valid TWIC or show proof of applying for a TWIC * * *".

We disagree. Mariners will not meet the TWIC requirement unless they actually hold the TWIC; completing the application process is not enough. Mariners need to plan to enroll with enough time to ensure their TWIC is available and able to be picked up prior to April 15, 2009 (the compliance date for the TWIC requirement for mariners). Therefore, this section only applies to those individuals who would already hold a valid TWIC and MMC.

We received one comment recommending the removal of the requirement of proof that a TWIC be obtained or applied for (within the past 30 days) in order to receive an original MMC from § 10.225(b)(2).

We agree that it would not be necessary to provide the 30-day limitation on the TWIC application for an original merchant mariner credential, and have made the suggested change.

One commenter expressed concern that the coordination of regulatory roles and administrative functions between two agencies within the same Department did not lead to development of one application and enrollment process, vetting of criminal or other records for safety, suitability, and terrorist security risks, determination of qualifications and issuance of a single combined Merchant Mariner Document (MMD)/TWIC.

We disagree. When the Coast Guard and TSA first began collaborating to issue regulations on TWIC, the issue of whether all credentials could be combined into a single MMC/TWIC was thoroughly explored. Unfortunately, this is not an option at this time. As the use of biometric and smart card technology becomes more wide-spread, this decision may be able to be revisited. However, at this time, it is simply not possible to combine the two credentials onto one card. We have, through this final rule, streamlined the application process for the MMC, to avoid duplicative appearance requirements and security vetting.

We received one comment recommending § 10.225(b)(5) be removed, since an applicant for an original MMC would not hold any of these credentials—cancelled or uncancelled.

We agree, and have made the suggested change.

We received one comment requesting that all mariners seeking renewals of towing vessel credentials be required to complete practical towing demonstrations, as well as for those mariners whose most recent credential has been suspended or revoked as stated in § 10.235(f).

We disagree. The towing vessel credential requirements were developed through a separate rulemaking, during which this requirement was presented to the public and they were provided an opportunity to comment on the requirement. To add this requirement to all other mariners would require notice and comment that is currently outside the scope of this rulemaking.

We received one comment recommending that § 10.237(a) clearly state that the written statement detailing the reason(s) for denial be provided to the applicant.

We agree. It is the intention of this rulemaking to clarify the MMC process and we will make the suggested change to provide additional clarity.

We received one comment questioning why we retained the Officer in Charge of Marine Inspection (OCMI) authority to make decisions about service and exam requirements in § 11.201.

This provision was retained because it provides the local Coast Guard official most familiar with the local area the ability to revise the requirements based upon that local knowledge.

We received one comment requesting that we reconsider allowing an expired passport as evidence of citizenship verification.

After reconsideration, we have decided to accept an expired passport, especially considering that the individual will undergo a thorough vetting for immigration status by the TSA during the security threat assessment, and a second vetting by the Coast Guard for suitability and safety qualifications.

We received one comment recommending the establishment of a process to identify delayed applications and require supervisory review, as well as a process to recoup lost salary.

We agree, in part. We have established a process within the quality standard system that will identify delayed applications and bring them to the attention of the leadership of the NMC. At present, there is no intention to develop a process to provide lost salary to applicants of a MMC.

E. Background Checks

We received one comment recommending the Coast Guard discontinue its duplicative background checks or the requirement to hold the TWIC, because it is unreasonable for both agencies to simultaneously examine a mariner's criminal background. We received three comments recommending that the TWIC and MMC data be incorporated into a single card. We received one comment

recommending that the MMD be retained in its present role and format, but with additional functionality that would allow it to serve, at the unlicensed level, as both a transportation security card and a certificate of qualifications.

We disagree. It is necessary for both the Coast Guard and TSA to review the criminal background, since both agencies are examining different issues to determine whether an individual should hold the credential issued by that agency. Also, it is not within the purview of the Coast Guard to change the requirement to hold the TWIC because that requirement is found in 46 U.S.C. 70105. The information in the applications for the MMD and TWIC are different with respect to the different focus of the two credentials. Additionally, to only make the MMD consistent for unlicensed personnel would create disconnect between the ratings and officers as well as those mariners serving on inland routes not required to have an MMD. This proposed scheme would create as many credentials as the current system, and frustrate the project's original purpose to consolidate credentials. However, this final rule does eliminate duplicative processes and requirements, such as the personal appearance and security background examinations requirements.

We received four comments recommending the Coast Guard limit criminal conviction disclosure to those not previously disclosed on an application for a Coast Guard credential. Similarly, we received one comment recommending that § 10.211 be revised to request full disclosure of criminal history only on the applicant's original application.

We agree and have made the suggested changes in this final rule.

We received one comment recommending that the self-disclosure of criminal history be eliminated from the application entirely.

We disagree. There should be some requirement for self-disclosure; however, we have agreed that the disclosure should only cover the period since the last application or any item not previously disclosed to the Coast Guard. This is a benefit for the mariner and provides the opportunity for supplemental information not otherwise available in the public record to be submitted to the Coast Guard for consideration during the evaluation period.

We received two comments stating that an unlimited review is counter to the Congressional intent regarding the National Driver Register (NDR).

We agree, and the statutory three year limit (found in 49 U.S.C. 30305) on such a review has been incorporated into this final rule (see § 10.213). This does not, however, limit the Coast Guard's ability to continue an unlimited review if the information obtained from the NDR is about a revocation or suspension still in effect on the date of the request.

F. Coast Guard Authority

We received two comments questioning whether the MMC with an officer endorsement will have the same significance as a license and whether the Coast Guard has authority to change the format of the license.

As noted in the SNPRM, the authority to revise the license is well within the broad authority provided to the Coast Guard under 46 U.S.C. Part E. Thus, the MMC with an officer endorsement will carry the same weight as a license.

G. Citizenship

We received one comment requesting clarification on § 10.231(d)(2) regarding the specific mention of naturalized citizens. This language was brought from the existing language in 46 CFR 10.207; it has not changed and carries the same meaning as it did prior to being moved by this final rule.

H. Consistency

We received one comment strongly recommending that the wording referencing mariner credential authority in parts covered by this regulation be changed by replacing the words ''not more than'' with the words ''less than''. This change was being sought to make the revisions more consistent with the provisions within STCW, as well as U.S. inspections language.

While we do not necessarily agree or disagree with the suggestion, this final rule is not the appropriate place to contemplate this change. The primary focus of this rulemaking is the development of a consolidated credential and a reorganization of subchapter B. This recommendation, however, is being contemplated for incorporation in a separate rulemaking, titled ''Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.''

We received one comment recommending the rules be consistent in the use of the term QMED for ''Qualified Member of the Engine Department.''

We agree. It is appropriate to establish an abbreviation in the text that can then be used in subsequent sections of the rules. We have revised § 11.518 to provide the abbreviation, and then used the term ''QMED'' for the remainder of that subpart.

We received one comment questioning the retention of the term Commanding Officer, National Maritime Center in §§ 12.05–7(b) and 12.10–3(a).

We have removed the term commanding officer from those sections.

We received two comments asking why the language referring to the United States collector or deputy collector of customs was left in the regulations in §§ 12.10–1 and 15.701(c), even though we removed the language referring to the shipping commissioner.

We removed the reference to the shipping commissioner because it was a function the Coast Guard previously performed, but no longer performs. The term United States Collector of Customs now falls under the responsibility of the Customs and Border Patrol (CBP) Port Director, and this change has been incorporated in this final rule.

We received one comment noting that we left out the shipping commissioner language in § 12.15–1. We have made this correction in this final rule.

We received one comment questioning why there was a difference in language between §§ 13.407 and 13.507, when it did not appear that there should be a difference in the language.

We agree with this comment, and have revised § 13.507 accordingly in this final rule.

We received one comment seeking clarification on § 401.210(a)(6), which allows a Great Lakes Pilot to have either an MMD or a TWIC.

This option was left in place because this final rule will go into effect before all mariners are required to hold a TWIC, therefore there will be a period where individuals might hold an MMD without a TWIC. We have revised the language to ensure that, on April 15, 2009, (the date when all mariners must hold a TWIC) only a TWIC will be acceptable.

I. Continuity Documents

We received one comment asking us to leave the decision whether to retain a continuity license and TWIC, or document of continuity without TWIC, to the license holder.

As an agency, we have decided not to continue to issue continuity licenses, but rather only documents of continuity. Should a mariner choose to obtain a TWIC, but seek to obtain an MMC for continuity purposes only, they will still receive a document of continuity. This decision is based on a desire to consolidate as many of our pre-existing credentials into the fewest number of mariner credentials as possible.

J. Definitions

We received two comments stating that the definition for ''day'' should not have been revised regarding 100-ton vessels and the service for Mobile Offshore Drilling Units (MODU) needed to be removed from the definition.

We disagree. The definition of ''day'' for vessels of 100 Gross Register Tons (GRT) or less was not significantly revised—we opted to use the more generic reference of Coast Guard rather than Officer in Charge, Marine Inspection. The definition of ''day'' for MODUs was already included in that definition in the pre-existing 46 CFR 10.103 under ''service as.'' We are including it in this definition in order to consolidate all definitions for ''day'' in one location.

We received two comments recommending that the definition for ''safe and suitable person'' should refer to 46 CFR 10.211.

While we do not believe it is necessary to make the connection between the definition and 46 CFR 10.211, we made the change to assist the mariner.

We received one comment stating the definition for ''senior company official'' needs clarification. This definition is consistent with the existing definition currently found in 46 CFR 10.103, therefore no change has been made.

We received one comment stating the Coast Guard should fully analyze the change of the application of the definition of ''operate, operating or operation'' to the entire Subchapter B.

We disagree. The definition is restricted to the manning requirements, and therefore analyzing its application throughout the entire subchapter would not be appropriate.

We received one comment recommending that a section be inserted at 46 CFR 12.01–6 to direct the reader to the definitions found in 46 CFR 10.107.

We disagree. This final rule is a consolidation of the pre-existing regulations, and as part of that consolidation, all definitions are found in the beginning of the subchapter. We believe that mariners and others who use these regulations will quickly adjust to looking in one spot (46 CFR 10.107) for definitions that apply throughout the subchapter.

We received one comment that stated that the definition for ''credential'' was out of order. We agree and have renumbered it at 46 CFR 42.05–27.

We received a comment stating that the definition for ''merchant mariner credential'' needs to be added to 46 CFR Parts 70, 91, 114, 125, 160, 169, 175, 188, and 199.

We disagree. The minimal addition of the phrase ''merchant mariner credential'' to those parts does not necessitate the addition of that definition. We note that those parts previously referenced either an MMD or a license (or both), with neither of those terms defined in those parts, without confusion.

We received one comment recommending the definition for ''conviction'' not refer to decisions made by a foreign country's court of record.

We disagree. This definition is consistent with the existing definition for ''conviction.'' This rulemaking is about the MMC, not changing the qualifications for licensing, and it is therefore beyond the scope of this rulemaking to address the meaning of the term ''conviction.

We received one recommendation that the definition for ''regional examination center'' should be revised to incorporate upcoming changes to the National Maritime Center and Regional Examination Center system.

While we agree that the change is necessary, it is beyond the scope of this rulemaking as the change needs to be made in more places in the CFR than just those being amended by this final rule. Some of these changes were recently made as part of a series of technical amendments to Title 46 of the CFR. 73 FR 56505.

K. Fees

We received one comment stating that while the MMC rule might reduce cost to the mariners, the entire TWIC/MMC rulemaking increases costs to the mariners.

While we recognize that the new TWIC requirement carries a new fee, the regulatory analysis for that project considered that new fee as a part of its cost and benefit analysis, thus it is inappropriate for that cost to be counted again in this final rule. The regulatory analysis for this rulemaking only considers the costs and benefits associated with the changes made by this final rule.

L. Format

We received one comment asking that the Coast Guard make a certificate suitable-for-framing with the officer information printed upon it, in addition to the final MMC.

We disagree. While this was also the recommendation from Merchant Marine Personnel Advisory Committee (MERPAC), the Coast Guard has decided not to produce such a document at this time since this rulemaking's purpose is to consolidate credentials.

We received one comment stating that MERPAC has gone on record opposing the MMC.

We disagree. We have reviewed the recommendations from MERPAC, and have found no facts which would support this statement.

We received one comment recommending the use of the term ''license endorsement'' rather than ''officer endorsement''.

We disagree. ''License'' merely signifies permission granted from a government. In our view, ''officer'' is more the appropriate term as it signifies an individual who is in a position of authority.

We received one comment recommending a new certificate of qualification be developed for ratings, and that the Coast Guard continue to issue two separate credentials.

We disagree. We are seeking to develop a consolidated credential where an individual could have all of their qualifications in a single location.

We received four comments recommending the MMC be designed to meet the requirements of ILO 185.

We agree. This was one of the items taken into account during the style selection process, as well as one of the reasons we could not combine the MMC with the TWIC. While the initial MMCs may not be ILO 185 compliant, as it will take some time to ensure the new credential meets all of the requirements, the Coast Guard is working diligently to bring the MMC into full ILO 185 compliance.

We received one comment recommending the expiration dates of the MMC and TWIC be aligned.

We disagree. This is not necessary and in some cases may not be in the best interests of those impacted by the regulations. We considered the costs associated with both documents, and believe that it may be economically advantageous to some mariners if the MMC and TWIC expiration dates do not align. However, those mariners wishing to bring these expiration dates into alignment may do so under this final rule.

M. Large Passenger Vessels

We received one comment stating that the Coast Guard needed to incorporate the Large Passenger Vessel Crew Requirements (RIN: 1625–AB16) that were published in the Interim Rule on April 24, 2007 (72 FR 20278). We received one comment recommending that 46 CFR 10.211(a)(2) be amended to include new subsection (d) for aliens in the steward's department on large passenger vessels. We received one comment recommending that we

incorporate the MMC language in 46 CFR Parts 12 and 15 relating to large passenger vessel crew requirements.

We agree with these suggestions and have incorporated the changes made by the interim rule into this final rule.

N. License Creep

We received four comments requesting the effective date of a mariner's renewed credential be the same as the expiration date (i.e. delayed issue of the credential).

We agree, in part. While the Coast Guard agrees with this comment, we are awaiting authority from Congress to make such a change. Currently, Congress requires that the Coast Guard issue credentials for five years. In order to take action on this comment, the Coast Guard requires statutory authority to issue a credential that is valid for a period beyond 5 years.

We received one comment stating that this rule does nothing to reduce license creep.

It is our hope that the streamlining features established by this rule will reduce license creep; additionally, the Coast Guard is moving forward with the reorganizations of the National Maritime Center and the Regional Examination Centers, both of which are more focused on improvement of processes.

O. Medical

We received one comment recommending that we require general medical exams for all mariners, including entry-level mariners.

We disagree. We do not have authority to require such exams.

We received two comments recommending Column 5 of table 46 CFR 10.215 be revised to read, ''may be required to demonstrate physical ability''.

We agree with the intent of this suggestion. However, we have opted to remove the ''x'' from the box and add, in its place, the appropriate paragraph which provides the specific requirement and applicability of the demonstration of physical ability. This should eliminate some confusion over who must ''demonstrate physical ability''.

We received one comment recommending revision to 46 CFR 10.215(c) to allow medical examiners to perform the audiometer/speech discrimination tests.

We agree and have made the suggested change. Medical examiners who are qualified to conduct the necessary hearing tests will be authorized to perform them.

We received one comment requesting an evaluation of 46 CFR 10.215(e) with regard to the Americans with Disabilities Act (ADA), and to either revise the paragraph or state that the ADA does not apply. The commenter seems to be concerned that medical examiners will require the demonstration of physical ability in more places than necessary to avoid potential lawsuits.

While we agree that this requirement is only mandatory for those mariners who are not undergoing a medical examination or those whom the medical examiner believes are physically unable to perform the duties of a merchant mariner, we do not believe it is appropriate to add the suggested language into the regulations.

We received one comment stating that the demonstration of physical ability: (1) Fails to provide sufficient information to ensure consistent test results, (2) will result in increased cost per examination, and (3) will increase the time needed to obtain medical results.

We disagree. The regulations provide general statements of what is required of the mariner, and additional information is available in Navigation and Inspection Circular (NVIC) 04–08, which was issued by the Coast Guard on September 18, 2008. (NVIC 04–08 replaced NVIC 02–98, incorporating developments and advancements in modern medical practices as well as improvements in the medical evaluation process.) We encourage the public to review the discussions of physical ability, examiner alternatives and current industry practice in the September 29, 2008 notice of availability for the NVIC. 73 FR 56600.

Additionally, this requirement is not going to apply to all mariners. It will only apply to those mariners whose physical ability might negatively impact maritime safety, as determined by their medical examiner during the course of normal physical examination. This demonstration will save the applicant an investment of time and money when an unknown medical or physical condition may prevent the issuance of the credential sought based on ability. It will also assist the Coast Guard in issuing a credential with certain limitations instead of denying the credential altogether or requiring additional tests. Both medical exams and demonstrations of physical ability are currently practiced and required under STCW Code. This rule clarifies the STCW requirement for physical ability; it does not alter it in any way. Based on consultation with medical practitioners, the National Maritime Center, and the Merchant Marine Personnel Advisory Committee (MERPAC), the determination of need for and demonstration of physical ability is part of common medical practice and will not result in a net change in baseline examination time and costs to industry.

We received one comment stating that the medical examiner is not the appropriate person to attest the mariner's ability to meet the demonstration of physical ability, since it is not a medical exam but a physical agility test.

We disagree. However, we note that it is not necessary for the actual medical examiner to conduct the demonstration of physical ability, only that he or she signs for (''attest to'') evaluations conducted by those within their medical practice.

We received one comment stating that the medical examiner should not be required to attest in writing to the applicant's ability to perform non-medical tasks, rather it should be provided by the actual person performing the evaluation.

We disagree. Medical examiners routinely sign-off for the tests/exams performed by persons within their practice. This evaluation should not be different.

We received one comment requesting that language be added requiring mariners to report changes in their medical condition.

The Coast Guard does not believe it is appropriate to add that requirement in this rule, as it was not contemplated or proposed in the SNPRM. In the future, the Coast Guard intends to develop regulations specifically on the medical requirements for merchant mariners. This ensures that an adequate review of the requirements can be made by those impacted by the regulations.

We received two comments recommending 46 CFR 10.215 (b) be revised to require the color vision test for original issue only.

The Coast Guard does not believe it is appropriate to make this revision in this final rule. We are limiting the changes made by this final rule to those medical issues that were proposed in the SNPRM, to consolidate the various credentials issued by the Coast Guard to mariners, and to reorganize the regulations governing the applications for, issuance of, and qualifications for those credentials. As previously mentioned, the Coast Guard intends to develop regulations specifically addressing medical requirements for mariners. We will keep this comment in mind for future reference, as we develop regulations specifically on the medical requirements for merchant mariners.

We received two comments recommending table 10.215(a) be

clarified so that hearing, vision, and physical demonstration only be required if the medical practitioner has concerns.

We agree, in part. The requirements regarding vision will be checked at each examination, which is a requirement consistent with the other modes of transportation. The hearing and demonstration of physical ability will only be required if the medical examiner has concerns regarding the applicant's medical condition as it relates to a possible negative impact on maritime safety.

We received two comments recommending that 46 CFR 10.227 be revised to allow proof of physical proficiency to be submitted on an alternative to the 719K.

We disagree. At this time, we do not have an alternative form approved for such use. Those revisions will have to be completed in a rulemaking process which provides the public with adequate opportunity to comment.

We received one comment recommending 46 CFR 10.215 be revised to ensure that the vision and hearing requirements match those on any proposed medical NVIC.

We agree. Any NVIC must be based upon the regulations which they clarify, and therefore cannot include reference to requirements outside of those found in the regulations.

We received one comment recommending 46 CFR 12.05–5 provide a reference to 46 CFR 10.215.

We agree that such a reference would be appropriate and have made the suggested change.

P. National Maritime Center

We received one comment recommending 46 CFR 10.217 be revised to provide the address to the new medical branch of the NMC.

We disagree. Merchant mariner applications will continue to be submitted to the servicing Regional Examination Centers listed in the regulations until such time as those requirements are revised through appropriate notice and comment.

We received one comment stating that 46 CFR 10.217 seems to contradict the new reorganization of the Mariner Licensing and Documentation (MLD) Program.

We recognize the inconsistency. The Coast Guard is still in the process of reorganizing the MLD program. Some of these changes were recently made in a series of technical amendments to Title 46 of the CFR. 73 FR 56505.

We received one comment stating that 46 CFR 10.02–17(f) and (g) appear to give the Officer in Charge of Marine Inspection (OCMI) the authority to refuse an examination.

This is true. Until the reorganization of the MLD program is complete, the OCMI will still retain that authority. However, in an effort to reduce confusion, and in preparation of the reorganization, we have revised ''OCMI'' to ''Coast Guard''.

Q. Oaths

We received one comment requesting that the oath not be required. At this time, the Coast Guard is not able to remove the oath requirement from the regulations, as it is also a statutory requirement (46 U.S.C. 7105).

R. Pilots

We received one comment stating that the MMC would result in lowering the standards for pilots.

We disagree. This final rule does not substantially change the requirements for pilots. The only changes made were based upon changes in terminology.

We received one comment stating that first class pilot endorsements were absent from the list of endorsements in 46 CFR 10.109.

We agree and have made the suggested change.

We received three comments stating that 46 CFR 15.812 is confusing, and possibly implies any officer can fulfill the requirements of a first class pilot.

We agree that portions of this section are confusing, and have revised it to ensure the language is consistent with the existing requirements and comprehensible.

S. Posting of Credential

We received one comment stating that 46 CFR 10.203(c) and (d) confuses the issue regarding the posting of the document.

We disagree. The posting of the credential is not inconsistent with this requirement, since the mariner is normally on the vessel with his or her credential. However, in order to clarify this, we have added a reference to the posting requirement in 10.203(c).

T. Social Security Numbers

We received one comment requesting that the Social Security Number (SSN) not be used for recordkeeping purposes as proposed in 46 CFR 10.207.

While we recognize the need to protect the SSN, it still remains the best method of correlating records on an individual. We will retain the SSN for internal recordkeeping purposes only.

U. International Convention on the Standards on Training, Certification, and Watchkeeping for Seafarers, 1978, as Amended (STCW)

We received one comment recommending 46 CFR 10.205(f) be deleted because it is unnecessarily confusing.

We disagree. This language is consistent with our existing requirements; changing it is outside the scope of this project. This change will be considered, in a separate rulemaking titled ''Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.''

We received one comment recommending that the date, January 31, 1997, referenced in 46 CFR 11.1005 be removed. We agree with this comment and have made the suggested change.

We received one comment expressing concern that 46 CFR 12.02–7 may be in error and that there may be additional vessels greater than 200 GRT/1000 Hp to which STCW applies.

We disagree. This language was carried over exactly from the existing requirements located at 46 CFR 12.02–7.

We received two comments seeking clarification for why the dates were left in 12.05–3(b) and 12.15–3, and not in 12.05–3(c) and 12.15–3(e).

These dates were retained because removing them would have amounted to a substantive change to the regulations, which is outside the scope of this rulemaking. This revision will be considered, in a separate rulemaking titled ''Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.''

V. Training

We received one comment stating there is an inconsistency in 46 CFR 11.304 between the requirements for Officer in Charge of Navigational Watch (OICNW) and Officer in Charge of Engineering Watch (OICEW) regarding onboard training.

While we agree there is an inconsistency, it is not accidental. These requirements are inconsistent because the requirements for OICNW and OICEW within the STCW are different.

W. Integration With TWIC

We received one comment asking why a TWIC was required in both 11.304(g) and (h).

While drafting the SNPRM, the TWIC requirement was added because it was

thought that an identity document would be necessary to determine the identity of each individual involved in the training process. However, upon reflection, there is no need to require the number of the TWIC be included for the identity of the individual, especially since not everyone involved in the training will hold a TWIC. We have, therefore, removed it from this final rule.

We received four comments expressing concern that the delay in the issuance of the TWIC could and should delay the issuance of the MMC.

We disagree. While there may be a delay in fully implementing all of the provisions within the MMC rule, such as the sharing of information between TSA and Coast Guard, once the credential is ready to be issued by the Coast Guard, it would be appropriate to move forward with the rule. As such, we have included language in this final rule that was not included in the SNPRM, that will allow the Coast Guard to issue MMCs, continue performing full background checks (for both safety and security), and require the appearance of the mariner in person for application of new and renewal MMCs, even before the regulatory requirement for mariners to obtain a TWIC is passed.

We received one comment stating that an automatic revocation of the MMC is inappropriate when the TWIC is invalidated and proposed a temporary suspension.

We agree. There will not be an automatic revocation of an MMC when the TWIC is denied or has been revoked. Any action against the MMC will be taken through the existing Suspensions and Revocations (S&R) procedure. However, because a mariner who lacks a valid TWIC will not be permitted unescorted access to secure areas, this will likely preclude performance of normal job functions on a vessel regulated by 33 CFR part 104.

We received one comment stating that the TWIC should not be a requirement for the issue or reissue of an MMC.

We disagree. Statute requires all mariners who are credentialed by the Coast Guard to hold a transportation security card (46 U.S.C. 70105). Further, the statute specifically includes all mariners engaged on towing vessels, which would include the unlicensed deckhands on inland towing vessels.

We received one comment requesting that we wait a full 5 years before suspending or revoking a mariner's credential for failing to hold a TWIC.

We disagree. The TWIC final rule requires a mariner holding a credential issued by the Coast Guard to apply for and activate a TWIC prior to April 15, 2009. After this date, a mariner failing to hold a TWIC would be in violation of this requirement, and the Coast Guard may begin suspension and revocation (S&R) proceedings.

We received one comment asking us to ensure that S&R proceedings against an MMC would not begin until the appeals regarding the TWIC have been exhausted.

We disagree. Under normal circumstances, S&R proceedings will not begin until all appeals regarding the TWIC have been completed. However, if the Coast Guard is provided with information considered sufficient to justify a temporary suspension of the MMC, then that action will be started immediately.

We received one comment asking if mariners will be able to serve during times of national need without a TWIC. At this time, 46 U.S.C. 70105 does not provide flexibility to allow a mariner to serve without a TWIC.

We received one comment stating that 10.235(h) contradicted the preamble language for appeals.

While we note that the language in the rule is not the same as the language in the preamble, the preamble also states that, if the situation warrants, we would pursue temporary suspension under 46 U.S.C. 7702, which also is not specifically detailed in the regulations. See discussion under ''4. Appeals'' at 72 FR 3609.

We received one comment recommending that § 15.401 be amended to include the abbreviation for TWIC following the phrase. We have made the suggested edit.

We received one comment recommending that language be added to § 15.720(a) clearly stating that foreign persons would be subject to the escorting requirements in the TWIC regulations.

While we agree that these foreign individuals are only allowed to be used in foreign waters when U.S. citizens are unavailable to fill those positions, we have not made the suggested change. The appropriate revision would be to add a requirement that the crew be replaced with U.S. citizens with the appropriate credentials before returning to a United States port. Such a change, however, would go beyond what was included in either the NPRM or the SNPRM. We will keep this suggestion in mind for future rulemaking projects in this area.

We received one comment stating opposition to TSA being involved in the credentialing of mariners; this opposition included their involvement in the background checks.

This comment is beyond the scope of this rulemaking, as the function to administer 46 U.S.C. 70105 (the TWIC requirement) was delegated to TSA, not the Coast Guard.

We received one comment expressing opposition to the Coast Guard in not reviewing TSA's decisions regarding the TWIC.

We disagree. It is not appropriate for the Coast Guard to review or duplicate TSA's performance in conducting the security vetting, as well as the possible appeals associated with any TWIC denial. TSA has provided opportunity in its regulations for independent review, by an Administrative Law Judge, of any adverse decisions in regard to the TWIC.

X. Questions Outside the Scope of This Rulemaking

We received a number of comments that the Coast Guard determined to be outside the scope of this rulemaking. These comments were forwarded to the appropriate organizations for consideration in future regulatory actions.

VI. Regulatory Evaluation

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analysis based on 13 of these statutes or executive orders.

A. Executive Order 12866

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. A final Regulatory Evaluation follows:

This rule makes substantive changes to the requirements in 46 CFR parts 10, 12, 13, 14, and 15 for the form on which the mariner's qualifications appear and the credential that will serve as the mariner's primary identification credential, and makes many non-substantive nomenclature changes throughout Titles 33 and 46 of the Code of Federal Regulations. Title 46 lays out the standards for merchant mariners, including eligibility and training requirements to obtain credentials needed to serve in one of the many roles in the merchant marine; wherever possible, this rulemaking will not change these qualification requirements. This rulemaking will combine the elements of the Merchant Mariner's License, Merchant Mariner's Document

(MMD), Standards of Training, Certification and Watchkeeping (STCW) Endorsement, and Certificate of Registry (COR) into one document, called the Merchant Mariner Credential (MMC). Although it technically serves as a certificate of identification, practically, the MMC would serve as the mariner's qualification document.

This rulemaking project was developed in conjunction with a joint rulemaking project, published by the Coast Guard and the Transportation Security Administration, titled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' (the ''TWIC rule''; RIN: 1652–AA41). The final rule for that joint project was published on January 25, 2007, in the same issue of the **Federal Register** as the SNPRM for this project.

The TWIC rule implemented the requirements of 46 U.S.C. 70105 and requires all merchant mariners holding an active License, MMD, COR, or STCW Endorsement to hold a TWIC. The TWIC is a biometric identification card, and will serve as the mariner's primary identity document while in U.S. waters. With this final rule, the MMD, License, COR, and STCW Endorsement will be consolidated into the MMC, which will serve as the mariner's qualification document, as well as an identity document (though the latter primarily when the mariner is serving outside of U.S. waters). All current qualification and suitability requirements associated with Licenses, MMDs, STCW Endorsements, and CORs remain the same, with only minor exceptions.

Prior to the effective date of this final rule, all four credentials (MMD, License, COR, and STCW Endorsement) were issued at one of 17 Coast Guard Regional Examination Centers (RECs). For first time applicants, the process of obtaining an MMD, License, COR, or STCW Endorsement required at least two visits to an REC. During the first visit, an applicant had to be fingerprinted by, and establish his or her identity and legal presence in the U.S. to, an REC employee.

After the successful completion of a safety and security review, verification of an applicant's identity, and verification that the applicant had satisfied all other requirements for the particular credential sought, an REC issued the credential to the applicant. For first time applicants, this required a return trip to the REC to retrieve their credential and take an oath to faithfully perform all duties required of them by law. Individuals renewing credentials did not need to restate the oath and could receive their renewed credentials by mail. However, all applicants, those seeking new credentials as well as those seeking to renew their credentials, had to travel to an REC once in the application process to be fingerprinted by, and show proof of identification to, an REC employee.

The requirements to receive a TWIC are similar to the requirements to receive an MMD, License, COR, or STCW Endorsement. In order for an applicant to receive a TWIC, the applicant is required to travel to a designated TWIC enrollment center to submit fingerprints, proof of identity, and legal presence in the U.S. A background check is conducted to determine that the applicant is not a security risk. Once an applicant has been approved, the applicant must return to the TWIC enrollment center to pick up the TWIC and prove their identity by a one-to-one match of the applicant's fingerprint against the electronic fingerprint template stored on the card.

Soon, TSA will submit to the Coast Guard the applicant's fingerprints, photograph, proof of citizenship, proof of legal presence in the U.S., and FBI number and any criminal record (if applicable) provided with the individual's TWIC application.

Since the applicant's fingerprints, photograph and proof of citizenship, and identity will have been verified by TSA and submitted to the Coast Guard, this final rule removes the requirement for a merchant mariner to travel to an REC to submit this information to an REC employee. In addition to allowing the merchant mariner to mail in their application, this rule will also allow new applicants to mail in their notarized oath, which would be a nominal cost to the applicant. This will remove the requirement for a second trip to the REC to pick up their card and take the oath. This rulemaking creates the possibility for a mariner to receive his or her MMC entirely through the mail.

Written examinations will still occur at RECs, and the RECs will remain accessible to mariners should they choose to seek their services in person.

This rulemaking will also remove the $45 issuance fee for continuity licenses and MMDs. These documents are issued to applicants for renewal of licenses and MMDs that are endorsed with qualified ratings who are unwilling or otherwise unable to meet all the requirements to serve and allows the mariner to renew the license or MMD with the following restrictive endorsement placed on the license: ''License renewed for continuity purposes only; service under the authority of this license is prohibited.'' Merchant mariner's documents are issued with the following restrictive endorsement: ''Continuity only; service under document prohibited.''

The following sections discuss the baseline population of applicants that will be affected by this rulemaking and provides an assessment of the impacts to merchant mariners by this rulemaking.

Baseline Population

The Coast Guard data for the number of affected merchant mariners came from the NMC, which provides credentialing, training, and certification services to all merchant mariners. There are approximately 205,000 credentialed merchant mariners. The NMC also estimates that the current population of mariners with a continuity document is approximately 4,500. In addition to the current population of merchant mariners, there are a number of new applicants every year.

Assessment

Under the current rule, applicants pay a $45 issuance fee for each credential that they apply for. Under this rulemaking the applicants will only apply for a single credential (the MMC) and as a result will only be required to pay one $45 issuance fee regardless of the number of endorsements that they carry. This change is not a reduction in any fee that a mariner must pay, but a reduction in the number of fees that the mariner must pay. Any mariner that would, under the current rules, solicit multiple mariner qualifying documents (such as both an MMD and a License), will benefit from this change in the fee structure.

If the merchant mariner has not synchronized the expiration dates of his or her current credentials, then they may currently be traveling to an REC multiple times within a five-year span. The issuance of the MMC will require mariners to track and update only one document and will potentially eliminate the need to travel to an REC entirely. This will provide greater flexibility to the mariner. Currently, approximately 13,843 mariners have more than one credential and have not aligned their expiration dates. These mariners will not only receive a benefit from reduced application fees, but also from fewer, if any, trips to a REC.

In order to reduce the burden of traveling and having to apply for a new MMC before the mariner's current MMD, License, COR, or STCW Endorsement expires, this rulemaking will allow mariners to apply for an

MMC at the time that their current credentials expire, which will essentially phase in the MMC over a five-year period. Since all currently issued credentials are valid for five-year periods, all mariners will have to renew their credentials by the close of the five-year grace period. When a mariner applies to renew his or her MMD, License, COR, or STCW Endorsement, they will instead be issued an MMC, which will reflect all of their qualifications in the form of endorsements on the MMC. This will allow mariners to apply over a longer period of time and will not create an additional burden by requiring mariners to make an extra trip to the RECs. Mariners whose credentials do not expire simultaneously may choose to wait to renew the credentials that have yet to expire, but if the applicant later chooses to renew that credential, the expiration date of the MMC on which the endorsement would be added will not change unless the mariner also renews all other endorsements on the MMC.

Currently, mariners may only renew their credentials within 12 months of their expiration date. This rulemaking will allow mariners to apply for renewal anytime before their current credentials expire and up to one year after the expiration date. As a result, this rulemaking will provide greater flexibility to mariners by allowing them to apply for an MMC at the time they choose.

In a separate Coast Guard rulemaking document, published on January 13, 2006 (71 FR 2154), it was estimated that approximately 60 percent of current mariners live within one-day roundtrip travel to an REC, 30 percent live within overnight roundtrip travel (one night and two days) to an REC, and 10 percent live at a distance greater than overnight roundtrip travel (greater than one night and two days) to an REC. This was derived from national percentages for all mariners who have addresses on file with the NMC. In the TWIC rule, TSA and the Coast Guard estimated that there would be many more TWIC enrollment centers than Coast Guard RECs (we now know that number will be 149 vice 17 RECs). By allowing mariners to visit TWIC enrollment centers instead of RECs, this rule will provide a potential benefit for many mariners by reducing the travel costs and time currently required to receive a credential.

In the separate rulemaking document (referenced above), the cost for mariners to travel to and from one of 17 RECs was estimated. The travel cost to mariners for a one-day roundtrip travel to and from an REC was given as $387. The estimated cost to mariners for overnight roundtrip travel was $911. Applicants who live distances greater than 200 miles and must travel for more than one night were determined to incur the maximum estimated cost of $1,185.

The TWIC has the effect of transferring the cost of travel from an REC to the cost of travel to a TWIC enrollment center, but that cost is associated with the TWIC rule, not with this rule. The overall cost for mariners associated with this rulemaking will decrease or remain the same and will serve to provide more flexibility to mariners. As there will be more TWIC enrollment centers than RECs, the distance required and the amount of time spent traveling will be reduced for most mariners. Based on the percentages above, 60 percent of the mariners that live within one-day roundtrip travel will potentially receive the economic benefits of having a TWIC enrollment center located closer to them than one of the current RECs. The remaining 30 percent of mariners that live within an overnight round-trip travel and the 10 percent of mariners that live a distance greater than an overnight roundtrip travel have an increased likelihood of having a TWIC enrollment center located closer to them than one of the current RECs and will potentially receive an even greater benefit in travel cost savings from this rule.

In addition to these benefits, the removal of the issuance fee for continuity documents will provide mariners who choose to apply for a continuity document a savings of $45.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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.

We do not expect this rule to have a significant impact on a large number of small entities. This rulemaking consolidates the number of credentials merchant mariners must carry and streamlines the application process in a way that would help prevent abuse, reduce cost, and assist the Coast Guard in its effort to help secure U.S. marine infrastructure, commercial activities, and the free flow of trade.

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 U.S. small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the individuals listed above in the section titled **FOR FURTHER INFORMATION CONTACT**.

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). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rulemaking will require the modification of one or more credentialing program collections of information currently approved by the Office of Management and Budget (OMB) under OMB Control Numbers 1625–0040, 1625–0012, 1625–0078, and 1625–0079. However, the changes from this rule which require modification of these collections of information will not go into effect until after April 15, 2009, when TSA begins sharing TWIC enrollment information with the Coast Guard. A number of policy decisions must be made before the changes to those collections can be finalized, such as how the information will be transferred from TSA to the Coast Guard, methods of submission for mariners, and the format of a new application form once Coast Guard is receiving information from TSA. Because these regulatory changes will not go into effect immediately, approval for revisions to these OMB Control Numbers will not be submitted to OMB

until these policy decisions have been made.

The changes made by this rule that go into effect in 30 days are burden neutral, and as such do not require immediate revision to the collections of information listed above.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. 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.

F. Unfunded Mandates Reform Act

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

G. 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.

H. 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.

I. 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 safety that may disproportionately affect children.

J. 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.

K. 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.

L. 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, the Coast Guard did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2 Figure 2–1, paragraph (34)(c) of the Instruction. This rule involves the training, qualifying, licensing, and disciplining of maritime personnel and involves matters of procedure only; it consolidates the credentials issued to merchant mariners and revises the application process for issuing those credentials. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

33 CFR Part 20

Administrative practice and procedure, Hazardous substances, Oil pollution, Penalties, Water pollution control.

33 CFR Part 70

Navigation (water) and Penalties.

33 CFR Part 95

Alcohol abuse, Drug abuse, Marine safety, and Penalties.

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 141

Citizenship and naturalization, Continental shelf, Employment, Reporting and recordkeeping requirements.

33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 162

Navigation (water) and Waterways.

33 CFR Part 163

Cargo vessels, Harbors, Navigation (water), Waterways.

33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 165

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

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 4

Administrative practice and procedure, Drug testing, Investigations, Marine safety, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 5

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

46 CFR Part 10

Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Seamen, Transportation Worker Identification Card.

46 CFR Part 11

Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 13

Cargo vessels, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 14

Oceanographic research vessels, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 28

Alaska, Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 42

Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 58

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 105

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum, Seamen.

46 CFR Part 114

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 115

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 122

Marine safety, Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 125

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Seamen.

46 CFR Part 131

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 166

Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 199

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 402

Great Lakes, Navigation (water), Seamen.

■ For the reasons listed in the preamble, the Coast Guard amends 33 CFR parts 1, 20, 70, 95, 101, 110, 141, 155, 156, 160, 162, 163, 164, and 165; 46 CFR parts 1, 4, 5, 10, 12, 13, 14, 15, 16, 26, 28, 30, 31, 35, 42, 58, 61, 78, 97, 98, 105, 114, 115, 122, 125, 131, 151, 166, 169, 175, 176, 185, 196, 199, 401 and 402; and in 46 CFR, add a new part 11 as follows:

33 CFR CHAPTER I

PART 1—GENERAL PROVISIONS

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

Authority: 14 U.S.C. 633; 33 U.S.C. 401, 491, 525, 1321, 2716, and 2716a; 42 U.S.C. 9615; 49 U.S.C. 322; 49 CFR 1.45(b), 1.46; section 1.01–70 also issued under the authority of E.O. 12580, 3 CFR, 1987 Comp., p. 193; and sections 1.01–80 and 1.01–85 also issued under the authority of E.O. 12777, 3 CFR, 1991 Comp., p. 351.

§ 1.08–5 [Amended]

■ 2. In § 1.08–5(b)(1), after the word ''licensed'', add the words ''or credentialed''.

§ 1.25–1 [Amended]

■ 3. In § 1.25–1(a), remove the words ''documents, certificates, or licenses'' and add, in their place, the words ''merchant mariner credentials, merchant mariner documents, licenses or certificates''.

PART 20—RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR FORMAL ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD

■ 4. The authority citation for part 20 continues to read as follows:

Authority: 33 U.S.C. 1321; 42 U.S.C. 9609; 46 U.S.C. 7701, 7702; 49 CFR 1.46.

■ 5. In § 20.102—
■ a. In the definition for ''Complaint'', after the word ''merchant'', add the words ''mariner credential,'';
■ b. In the definition for ''Suspension and revocation proceeding or S&R proceeding'', after the words ''merchant mariner's'', add the word ''credential,''; and
■ c. Add definitions for the terms ''credential'' and ''Merchant mariner credential or MMC'', in alphabetical order, to read as follows:

§ 20.102 Definitions.

* * * * *

Credential means any or all of the following:

(1) Merchant mariner's document.
(2) Merchant mariner's license.
(3) STCW endorsement.
(4) Certificate of registry.
(5) Merchant mariner credential.

* * * * *

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

* * * * *

§ 20.904 [Amended]

■ 6. In § 20.904—
■ a. In paragraph (e)(1) introductory text, after the words ''certificate of registry'' remove the word ''or''; and, after the word ''document'', add the words '', credential, or endorsement'';
■ b. In paragraph (e)(1)(i)(B), after the word ''certificate'' remove the word ''or''; and, after the word ''document'', add the words '', credential, or endorsement'';
■ c. In paragraph (f) introductory text, after the words ''revocation of a'', add the words ''credential, endorsement,''; and
■ d. In paragraph (f)(1), after the words ''issuance of a new'' remove the words ''license, certificate, or document'' and add, in their place, the words ''merchant mariner credential with appropriate endorsement''.

§ 20.1201 [Amended]

■ 7. In § 20.1201—
■ a. In paragraph (a), remove the words ''merchant mariner's license, certificate of registry, or document'' and add, in their place, the words ''mariner's credential'';
■ b. In paragraph (b) introductory text, before the words ''license, certificate, or document'', add the words ''merchant mariner credential,''; and
■ c. In paragraph (b)(2)(ii), after the words ''renewal of the'', add the words ''merchant mariner credential,''.

§ 20.1202 [Amended]

■ 8. In § 20.1202(a), before the words ''license, certificate of registry, or document'', add the word ''credential,''.

§ 20.1205 [Amended]

■ 9. In § 20.1205—
■ a. In the section heading, before the words ''license, certificate of registry, or document'', add the words ''merchant mariner credential,'';
■ b. In paragraph (a), after the words ''move that his or her'', add the words ''merchant mariner credential,''; and
■ c. In paragraph (b), after the words ''return of the suspended'', add the word ''credential,''.

§ 20.1307 [Amended]

■ 10. In § 20.1307 paragraph (c)(2), after words ''merchant mariner's license'', add the words '', merchant mariner credential,''.

PART 70—INTERFERENCE WITH OR DAMAGE TO AIDS TO NAVIGATION

■ 11. The authority citation for part 70 continues to read as follows:

Authority: Secs. 14, 16, 30 Stat. 1152, 1153; secs. 84, 86, 92, 633, 642, 63 Stat. 500, 501, 503, 545, 547 (33 U.S.C. 408, 411, 412; 14 U.S.C. 84, 86, 92, 633, 642).

§ 70.05–10 Revocation of merchant mariner credential officer endorsement or license.

■ 12. In § 70.05–10—
■ a. Revise the section heading as set forth above; and
■ b. In the text, after the words ''shall also have his'', add the words ''merchant mariner credential officer endorsement or''.

PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG

■ 13. Revise the authority citation for part 95 to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 2302; Department of Homeland Security Delegation No. 0170.1.

§ 95.015 [Amended]

■ 14. In § 95.015(b), remove the words ''a licensed individual'' and add, in their place, the words ''an officer''.

§ 95.045 [Amended]

■ 15. In § 95.045 introductory text, remove the words ''a licensed individual'' and add, in their place, the words ''an officer''.

PART 101—MARITIME SECURITY: GENERAL

■ 16. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 17. In § 101.105—
■ a. In the definitions for ''Master'' and ''Operator, Uninspected Towing Vessel'', before the word ''license'', wherever it appears, add the words ''merchant mariner credential or''; and
■ b. Add a definition for the term ''Merchant mariner credential or MMC'' to read as follows:

§ 101.105 Definitions.

* * * * *

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

* * * * *

PART 110—ANCHORAGE REGULATIONS

■ 18. Revise the authority citation for part 110 to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

§ 110.186 [Amended]

■ 19. In § 110.186(b)(3), after the word ''licensed'', add the words ''or credentialed''.

§ 110.188 [Amended]

■ 20. In § 110.188(b)(10), after the word ''licensed'', add the words ''or credentialed''.

§ 110.214 [Amended]

■ 21. In § 110.214(a)(3)(i), after the word ''licensed'' add the words ''or credentialed''.

PART 141—PERSONNEL

■ 22. Revise the authority citation for part 141 to read as follows:

Authority: 43 U.S.C. 1356; 46 U.S.C. 70105; 49 CFR 1.46(z).

§ 141.5 [Amended]

■ 23. In § 141.5(b)(1) remove the words ''licensed officers, and unlicensed crew'' and add, in their place, the words ''crew, and officers holding a valid license or MMC with officer endorsement''.

■ 24. In § 141.10, add a definition for the term ''Transportation Worker Identification Credential or TWIC'', in alphabetical order, to read as follows:

§ 141.10 Definitions.

* * * * *

Transportation Worker Identification Credential or TWIC means an identification credential issued by the Transportation Security Administration according to 49 CFR part 1572.

§ 141.25 [Amended]

■ 25. In § 141.25—

■ a. In paragraph (a) introductory text, remove the word ''The'' and add, in its place, the words ''For the purposes of this part, the''; and

■ b. In paragraph (a)(1), before the words ''merchant mariner's document'', add the word ''valid'', and remove the words ''under 46 CFR Part 12''.

■ 26. In § 141.30—

■ a. In the introductory text, remove the first appearance of the word ''The'' and add, in its place, the words ''For the purposes of this part, the'';

■ b. In paragraph (a), before the words ''merchant mariner's document'', add the word ''valid'', and remove the words ''under 46 CFR Part 12''; and

■ c. In paragraph (b), remove the words ''Immigration and Naturalization Service'' and add, in their place, the words ''Immigration and Customs Enforcement Agency''; and

■ d. Add a new paragraph (d) to read as follows:

§ 141.30 Evidence of status as a resident alien.

* * * * *

(d) A valid Transportation Worker Identification Credential.

§ 141.35 [Amended]

■ 27. In § 141.35(a)(1), after the words ''merchant mariner's document'', add the words '', Transportation Worker Identification Credential,''.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 28. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 also issued under section 4110(b) of Public Law 101–380.

■ 29. Revise § 155.110 to read as follows:

§ 155.110 Definitions.

Except as specifically stated in a section, the definitions in part 151 of this chapter, except for the word ''oil'', and in part 154 of this chapter, apply to this part. The following definition also applies to this part:

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

■ 30. In § 155.710—

■ a. In paragraph (a)(2), after the word ''license'', add the words ''or officer endorsement'';

■ b. Revise paragraph (e)(1) to read as set out below;

■ c. In paragraph (f), after the word ''MMD'', add the words '' or merchant mariner credential''; and after the words ''either a license'', add the words '', officer endorsement,''; and

■ d. In paragraph (g), after the words ''need not hold any of the'', add the words ''merchant mariner credentials,''.

§ 155.710 Qualifications of person in charge.

* * * * *

(e) * * *

(1) On each inspected vessel required by 46 CFR chapter I to have an officer aboard, holds a valid license or merchant mariner credential issued under 46 CFR chapter I, subchapter B, authorizing service as a master, mate, pilot, engineer, or operator aboard that vessel, or holds a valid merchant mariner's document or merchant Mariner credential endorsed as Tankerman-PIC;

* * * * *

§ 155.815 [Amended]

■ 31. In § 155.815(b), after the word ''licensed'' add the words ''or credentialed''.

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

■ 32. The authority citation for part 156 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703a, 3715; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793. Section 156.120(bb) and (ee) are also issued under 46 U.S.C. 3703.

§ 156.210 [Amended]

■ 33. In § 156.210(d), remove the words ''a licensed individual'' and add, in their place, the words ''an officer''.

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

■ 34. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

§ 160.113 [Amended]

■ 35. In § 160.113(b)(4), remove the word ''licensed''.

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

■ 36. Revise the authority citation for part 162 to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.1.

■ 37. Add a new § 162.5 to read as follows:

§ 162.5 Definitions.

The following definition applies to this part:

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

■ 38. In § 162.130(c), revise the definition for ''Master'' to read as follows;

§ 162.130 Connecting waters from Lake Huron to Lake Erie; general rules.

* * * * *

(c) * * *

Master means the master or operator, the person designated by the master or operator to navigate the vessel, or, on a vessel not requiring persons holding licenses or merchant mariner credential officer endorsements, the person in command of the vessel.

* * * * *

PART 163—TOWING OF BARGES

■ 39. The authority citation for part 163 continues to read as follows:

Authority: 33 U.S.C. 152, 2071; 49 CFR l.46(n).

§ 163.01 [Amended]

■ 40. In § 163.01(b), after the word ''license'', add the words ''or merchant mariner credential''.

■ 41. Add a new § 163.03 to read as follows:

§ 163.03 Definitions.

The following definition applies to this part:

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

PART 164—NAVIGATION SAFETY REGULATIONS

■ 42. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; Department of Homeland Security Delegation No. 0170.1 (75). Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

■ 43. In § 164.13—

■ a. In paragraph (b), remove the words ''a licensed engineer'' and add, in their place, the words ''an engineer with an appropriately endorsed license or merchant mariner credential''; and

■ b. Revise paragraph (c) to read as follows:

§ 164.13 Navigation underway: tankers.

* * * * *

(c) Each tanker must navigate with at least two deck officers with an appropriately endorsed license or merchant mariner credential on watch on the bridge, one of whom may be a pilot. In waters where a pilot is required, the second officer, must be an individual holding an appropriately endorsed license or merchant mariner credential and assigned to the vessel as master, mate, or officer in charge of a navigational watch, who is separate and distinct from the pilot.

* * * * *

■ 44. In § 164.70, add a new definition for the term ''Merchant mariner credential or MMC'', in alphabetical order, to read as follows:

§ 164.70 Definitions.

* * * * *

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 45. 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(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 46. Add a new § 165.3 to read as follows:

§ 165.3 Definitions.

The following definitions apply to this part:

Credential means any or all of the following:

(1) Merchant mariner's document.
(2) Merchant mariner's license.
(3) STCW endorsement.
(4) Certificate of registry.
(5) Merchant mariner credential.

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 165.120 [Amended]

■ 47. In § 165.120(b)(1), remove the words '' the Licensed Federal Pilot'' and add, in their place, the words ''an individual holding a valid merchant mariner's license or merchant mariner credential endorsed as pilot''.

§ 165.153 [Amended]

■ 48. In § 165.153(d)(6) and (d)(7), remove the word ''licensed'' wherever it appears.

§ 165.810 [Amended]

■ 49. In § 165.810(f)(1), remove the words ''licensed engineer'' and add, in their place, the words ''appropriately licensed or credentialed engineer officer''.

§ 165.1310 [Amended]

■ 50. In § 165.1310(f)(2), remove the word ''licensed'' and add, in its place, the words ''holding a license or merchant mariner credential issued''.

46 CFR CHAPTER I

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

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

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

■ 52. In § 1.01–05, add new paragraphs (d) and (e) to read as follows:

§ 1.01–05 Definitions.

* * * * *

(d) The term *Credential* means any or all of the following:

(1) Merchant mariner's document.
(2) Merchant mariner's license.
(3) STCW endorsement.
(4) Certificate of registry.
(5) Merchant mariner credential.

(e) The term *Merchant mariner credential or MMC* means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single

credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 1.01–10 [Amended]

■ 53. In § 1.01–10, in paragraph (b)(1)(ii)(C), remove the words ''licenses, documents or certificates'' and add, in their place, the word ''credentials.''

■ 54. In § 1.01–15—

■ a. In paragraph (a)(1), remove the words ''licenses, certificates, and documents'' and add, in their place, the word ''credentials'', and remove the words ''licensing, certificating'' and add, in their place, the word ''credentialing''; and

■ b. Revise paragraph (b) to read as follows:

§ 1.01–15 Organization; Districts; National Maritime Center.

* * * * *

(b) The Officers in Charge, Marine Inspection, in the Coast Guard districts, under the supervision of the District Commanders, and the Officer in Charge, Activities Europe, under the supervision of the Atlantic Area Commander are in charge of the marine inspection offices in the various ports and have command responsibilities with assigned marine safety zones for the performance of duties with respect to the inspection, enforcement and administration of navigation and vessel inspection laws, and rules and regulations governing marine safety. The Officer in Charge, Marine Inspection, has been designated and delegated to give immediate direction to Coast Guard activities relating to marine safety functions consisting of inspection of vessels in order to determine that they comply with the applicable laws, rules, and regulations relating to construction, equipment, manning and operation, and to be satisfied that such vessels are in seaworthy condition for the services in which such vessels are to be operated; shipyard inspections; factory inspections of materials and equipment for vessels; credentialing shipment and discharge of seaman; investigations of marine casualties and accidents; investigations of violations of law; negligence, misconduct, unskillfullness, incompetence or misbehavior of persons holding credentials issued by the Coast Guard; initiations of actions seeking suspension or revocation under 46 U.S.C. chapter 77 of credentials held by persons, and presentation of cases at hearings before Administrative Law Judges; and the enforcement of navigation, vessel inspection and seaman laws in general.

* * * * *

§ 1.01–25 [Amended]

■ 55. In § 1.01–25—

■ a. In paragraph (b)(1), remove the words ''licenses, certificates, or documents'' and add, in their place, the word ''credentials''; and

■ b. In paragraphs (c) introductory text and (c)(1) introductory text, remove the words ''license, certificate or document'' wherever they appear and add, in their place, the word ''credential''.

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

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

Authority: 33 U.S.C. 1231, 1321; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; Department of Homeland Security Delegation No. 170.1. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); Department of Homeland Security Delegation No. 0170.1.

■ 57. Add § 4.03–75 to read as follows:

§ 4.03–75 Merchant mariner credential and credential.

The following definitions apply to this part:

Credential means any or all of the following:

(1) Merchant mariner's document.
(2) Merchant mariner's license.
(3) STCW endorsement.
(4) Certificate of registry.
(5) Merchant mariner credential.

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 4.07–1 [Amended]

■ 58. In § 4.07–1(c)(3), remove the words ''any licensed or certificated person'' and add, in their place, the words ''any person holding a Coast Guard credential''; and remove the words ''license or certificate'' and add, in their place, the word ''credential''.

§ 4.07–10 [Amended]

■ 59. In § 4.07–10(a)(3), remove the words ''licenses or certificates'' and add, in their place, the word ''credentials''.

PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

■ 60. The authority citation for part 5 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7301, 7701; Department of Homeland Security Delegation No. 0170.1.

§ 5.3 [Amended]

■ 61. In § 5.3, remove the words ''licenses, certificates or documents'' and add, in their place, the words ''credentials or endorsements''.

§ 5.5 [Amended]

■ 62. In § 5.5, remove the word ''certification'' and add, in its place, the words ''certificate, merchant mariner credential, endorsement,''.

§ 5.19 [Amended]

■ 63. In § 5.19(b), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

■ 64. Add a new § 5.40 to read as follows:

§ 5.40 Credential and merchant mariner credential.

Credential means any or all of the following:

(1) Merchant mariner's document.
(2) Merchant mariner's license.
(3) STCW endorsement.
(4) Certificate of registry.
(5) Merchant mariner credential.

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 5.55 [Amended]

■ 65. In § 5.55(a) introductory text, remove the words ''license, certificate or document'' and add, in their place, the word ''credential''.

■ 66. In § 5.57—

■ a. Revise the section heading and paragraph (b) to read as set out below;

■ b. In paragraph (a) introductory text, remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''; and

■ c. In paragraph (c), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

§ 5.57 Acting under authority of Coast Guard credential or endorsement.

* * * * *

(b) A person is considered to be acting under the authority of the credential or

endorsement while engaged in official matters regarding the credential or endorsement. This includes, but is not limited to, such acts as applying for renewal, taking examinations for raises of grade, requesting duplicate or replacement credentials, or when appearing at a hearing under this part.

* * * * *

§ 5.59 [Amended]

■ 67. In § 5.59—

■ a. In the section heading, remove the words ''licenses, certificates or documents'' and add, in their place, the words ''credentials or endorsements''; and

■ b. In the introductory text, remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

§ 5.61 [Amended]

■ 68. In § 5.61—

■ a. In the section heading, remove the words ''licenses, certificates or documents'' and add, in their place, the word ''credentials''; and

■ b. In paragraphs (a) introductory text and (b), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsements''.

§ 5.101 [Amended]

■ 69. In § 5.101(a) introductory text, (a)(1), and (a)(2), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.105 [Amended]

■ 70. In § 5.105(b), (c), and (e), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

Subpart E—[Amended]

■ 71. In the heading to subpart E, remove the words ''License, Certificate or Document'' and add, in their place, the words ''Coast Guard Credential or Endorsement''.

§ 5.201 [Amended]

■ 72. In § 5.201(a), (b) introductory text, (b)(4), (c) introductory text, and (d), remove the words ''license, certificate, or document'' and add, in their place, the words ''credential or endorsement''.

§ 5.203 [Amended]

■ 73. In § 5.203(a), (b) introductory text, (b)(2), and (c), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

§ 5.205 [Amended]

■ 74. In § 5.205—

■ a. In the section heading, remove the words ''license, certificate of registry, or merchant mariners document'' and add, in their place, the words ''credential or endorsement''; and

■ b. In paragraphs (a), (b) introductory text, (c) introductory text, and (d), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.501 [Amended]

■ 75. In § 5.501, remove the words ''license, certificate of registry, or document'' and add, in their place, the words ''credential or endorsement''.

§ 5.521 Verification of credential or endorsement.

■ 76. In § 5.521—

■ a. Revise the section heading as set forth above;

■ b. In paragraph (a), after the words ''all valid'', remove the words ''licenses, certificates, and/or documents'' and add, in their place, the word ''credentials''; and, after the words ''alleges that'', remove the words ''such license, certificate or document'' and add, in their place, the word ''credential''; and

■ c. In paragraph (b), remove the words ''license, certificate, or document'' and add, in their place, the word ''credential''.

§ 5.567 [Amended]

■ 77. In paragraphs (b), (c) introductory text, (d), and (e), remove the words ''licenses, certificates or documents'' wherever they appear and add, in their place, the word ''credentials or endorsements''; and remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.707 [Amended]

■ 78. In § 5.707—

■ a. In the section heading, remove the words ''license, certificate, or document'' and add, in their place, the words ''credential or endorsement''; ■ b. In paragraph (a), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''; ■ c. In paragraph (c), remove the words ''document or license'' and add, in their place, the words ''credential or endorsement''; ■ d. In paragraph (d), after the words ''All temporary'', remove the word ''documents'' and add, in its place, the words ''credentials or endorsements''; and, after the words ''If a temporary'', remove the word ''document'' and add, in its place, the words ''credential or endorsement''; ■ e. In paragraph (e), remove the word ''document'' and add, in its place, the words ''credential or endorsement''; and ■ f. In paragraph (f), remove the word ''documents'' and add, in its place, the word ''credential''.

§ 5.713 [Amended]

■ 79. In § 5.713(a), remove the words ''licenses, certificates, or documents'' and add, in their place, the words ''credentials or endorsements''.

§ 5.715 [Amended]

■ 80. In § 5.715—

■ a. In the section heading, remove the words ''document and/or license'' and add, in their place, the words ''credential and/or endorsement''; ■ b. In paragraph (a), remove the words ''document or license'' and add, in their place, the words ''credential and/or endorsement''; and

■ c. In paragraph (c), remove the words ''document and/or license'' and add, in their place, the words ''credential and/or endorsement'', and after the words ''order. This'', remove the word ''document'' and add, in its place, the words ''credential and/or endorsement''.

Subpart L—[Amended]

■ 81. In the heading to subpart L, remove the words ''Licenses, Certificates or Documents'' and add, in their place, the words ''Credential or Endorsement''.

§ 5.901 [Amended]

■ 82. In § 5.901(a), (c), and (e), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''; and in paragraph (d) introductory text, remove the words ''license, certificate, or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.903 [Amended]

■ 83. In § 5.903(a), (c) introductory text, and (c)(2), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.905 [Amended]

■ 84. In § 5.905(b), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

PART 10—MERCHANT MARINER OFFICERS AND SEAMEN

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

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906, and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

PART 10—[REDESIGNATED AS PART 11]

■ 86. Redesignate part 10, consisting of §§ 10.101 through 10.1105, as part 11, §§ 11.101 through 11.1105.

■ 87. Add a new part 10 to subchapter B to read as follows:

PART 10—MERCHANT MARINER CREDENTIAL

Subpart A—General

Sec.

10.101 Purpose of rules in this part.
10.103 Incorporation by reference.
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Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. chapter 71; 46 U.S.C. chapter 72; 46 U.S.C. chapter 75; 46 U.S.C. 7701, 8906 and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1.

Subpart A—General

§ 10.101 Purpose of rules in this part.

The regulations in this part provide:

(a) A means of determining and verifying the qualifications an applicant must possess to be eligible for certification to serve on merchant vessels;

(b) A means of determining that an applicant is competent to serve under the authority of their merchant mariner credential (MMC);

(c) A means of confirming that an applicant does not pose a threat to national security through the requirement to hold a Transportation Worker Identification Credential (TWIC); and

(d) A means of determining whether the holder of an MMC is a safe and suitable person.

§ 10.103 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental Standards (CG–5221), 2100 Second Street SW., Washington, DC 20593–0001, 202–372–1405 and is available from the sources indicated in this section.

(b) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, England, telephone: + 44 (0)20 7735 7611, *http://www.imo.org:*

(1) The STCW—International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended 1995 (the STCW Convention or the STCW), incorporation by reference approved for §§ 10.107, 10.109, and 10.231.

(2) The Seafarers' Training, Certification and Watchkeeping Code, as amended 1995 (the STCW Code), incorporation by reference approved for §§ 10.107, 10.109, 10.227, and 10.231.

§ 10.105 Paperwork approval. [Reserved]

§ 10.107 Definitions in subchapter B.

(a) With respect to part 16 and § 15.1101 of this title only, if the definitions in paragraph (b) of this section differ from those set forth in either § 16.105 or § 15.1101, the definition set forth in either § 16.105 or § 15.1101, as appropriate, applies.

(b) As used in this subchapter, the following terms apply only to merchant marine personnel credentialing and the manning of vessels subject to the manning provisions in the navigation and shipping laws of the United States:

Apprentice mate (steersman) of towing vessels means a mariner qualified to perform watchkeeping on the bridge, while in training onboard a towing vessel under the direct supervision and in the presence of a master or mate (pilot) of towing vessels.

Approved means approved by the Coast Guard according to § 11.302 of this chapter.

Approved training means training that is approved by the Coast Guard or meets the requirements of § 11.309 of this chapter.

Assistance towing means towing a disabled vessel for consideration.

Assistant engineer means a qualified officer in the engine department.

Authorized official includes, but is not limited to, a Federal, State or local law enforcement officer.

Ballast control operator or BCO means an officer restricted to service on mobile offshore drilling units (MODUs) whose duties involve the operation of the complex ballast system found on many MODUs. When assigned to a MODU, a ballast control operator is equivalent to a mate on a conventional vessel.

Barge supervisor or BS means an officer restricted to service on MODUs whose duties involve support to the offshore installation manager (OIM) in marine-related matters including, but not limited to, maintaining watertight integrity, inspecting and maintaining mooring and towing components, and maintaining emergency and other marine-related equipment. A barge supervisor, when assigned to a MODU, is equivalent to a mate on a conventional vessel.

Boatswain means the leading seaman and immediate supervisor of deck crew who supervises the maintenance of deck gear.

Cargo engineer means a person holding an officer endorsement on a dangerous-liquid tankship or a liquefied-gas tankship whose primary responsibility is maintaining the cargo system and cargo-handling equipment.

Chief engineer means any person responsible for the mechanical

propulsion of a vessel and who is the holder of a valid officer endorsement as chief engineer.

Chief mate means the deck officer next in seniority to the master and upon whom the command of the vessel will fall in the event of incapacity of the master.

Coast Guard-accepted means that the Coast Guard has officially acknowledged in writing that the material or process at issue meets the applicable requirements; that the Coast Guard has issued an official policy statement listing or describing the material or process as meeting the applicable requirements; or that an entity acting on behalf of the Coast Guard under a Memorandum of Agreement has determined that the material or process meets the applicable requirements.

Coastwise seagoing vessel means a vessel that is authorized by its Certificate of Inspection to proceed beyond the Boundary Line established in part 7 of this chapter.

Competent person as used in part 13 only, means a person designated as such under 29 CFR 1915.7.

Conviction means that the applicant for a merchant mariner credential has been found guilty, by judgment or plea by a court of record of the United States, the District of Columbia, any State, territory, or possession of the United States, a foreign country, or any military court, of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304). If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court's conviction, then the Coast Guard will consider the applicant to have received a conviction. A later expungement of the conviction will not negate a conviction unless the Coast Guard is satisfied that the expungement is based upon a showing that the court's earlier conviction was in error.

Credential means any or all of the following:

(1) Merchant mariner's document.
(2) Merchant mariner's license.
(3) STCW endorsement.
(4) Certificate of registry.
(5) Merchant mariner credential.

Criminal record review means the process or action taken by the Coast Guard to determine whether an applicant for, or holder of, a credential is a safe and suitable person to be issued such a credential or to be employed on a vessel under the authority of such a credential.

Dangerous drug means a narcotic drug, a controlled substance, or a controlled-substance analogue (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)).

Dangerous liquid or DL means a liquid listed in 46 CFR 153.40 of this chapter that is not a liquefied gas as defined in this part. Liquid cargoes in bulk listed in 46 CFR part 153, table 2, of this chapter are not dangerous-liquid cargoes when carried by non-oceangoing barges.

Day means, for the purpose of complying with the service requirements of this subchapter, eight hours of watchstanding or day-working not to include overtime. On vessels where a 12-hour working day is authorized and practiced, each work day may be creditable as one and one-half days of service. On vessels of less than 100 gross register tons, a day is considered as eight hours unless the Coast Guard determines that the vessel's operating schedule makes this criteria inappropriate, in no case will this period be less than four hours. When computing service required for MODU endorsements, a day is a minimum of four hours, and no additional credit is received for periods served over eight hours.

Deck crew (excluding individuals serving under their officer endorsement) means, as used in 46 U.S.C. 8702, only the following members of the deck department: able seamen, boatswains, and ordinary seamen.

Designated areas means those areas within pilotage waters for which first class pilot's endorsements are issued under part 11, subpart G, of this chapter, by the Officer in Charge, Marine Inspection (OCMI). The areas for which first class pilot's endorsements are issued within a particular Marine Inspection Zone and the specific requirements to obtain them may be obtained from the OCMI concerned.

Designated duty engineer or DDE means a qualified engineer, who may be the sole engineer on vessels with a periodically unattended engine room.

Designated examiner means a person who has been trained or instructed in techniques of training or assessment and is otherwise qualified to evaluate whether an applicant has achieved the level of competence required to hold a merchant mariner credential (MMC) endorsement. This person may be designated by the Coast Guard or by a Coast Guard-approved or accepted program of training or assessment. A faculty member employed or instructing in a navigation or engineering course at the U.S. Merchant Marine Academy or at a State maritime academy operated under 46 CFR part 310 is qualified to serve as a designated examiner in his or her area(s) of specialization without individual evaluation by the Coast Guard.

Directly supervised, only when referring to issues related to tankermen, means being in the direct line of sight of the person-in-charge or maintaining direct, two-way communications by a convenient, reliable means, such as a predetermined working frequency over a handheld radio.

Disabled vessel means a vessel that needs assistance, whether docked, moored, anchored, aground, adrift, or underway, but does not mean a barge or any other vessel not regularly operated under its own power.

Drug test means a chemical test of an individual's urine for evidence of dangerous drug use.

Employment assigned to is the total period a person is assigned to work on MODUs, including time spent ashore as part of normal crew rotation.

Endorsement is a statement of a mariner's qualifications, which may include the categories of officer, staff officer, ratings, and/or STCW appearing on a merchant mariner credential.

Entry-level mariner means those mariners holding no rating other than ordinary seaman, wiper, or steward's department (F.H.)

Evaluation means processing an application, from the point of receipt to approval or rejection of the application, including review of all documents and records submitted with an application as well as those obtained from public records and databases.

Fails a chemical test for dangerous drugs means that the result of a chemical test conducted under 49 CFR part 40 was reported as ''positive'' by a Medical Review Officer because the chemical test indicated the presence of a dangerous drug at a level equal to or exceeding the levels established in 49 CFR part 40.

First assistant engineer means the engineer officer next in seniority to the chief engineer and upon whom the responsibility for the mechanical propulsion of the vessel will fall in the event of the incapacity of the chief engineer.

Great Lakes for the purpose of calculating service requirements for an officer endorsement, means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between mile 326 and 327), the Chicago River as far as the

east side of the Ashland Avenue Bridge (between mile 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock. For purposes of requiring merchant mariner credentials with rating endorsements, the connecting and tributary waters are not part of the Great Lakes.

Harbor assist means the use of a towing vessel during maneuvers to dock, undock, moor, or unmoor a vessel, or to escort a vessel with limited maneuverability.

Horsepower means, for the purpose of this subchapter, the total maximum continuous shaft horsepower of all the vessel's main propulsion machinery.

IMO means the International Maritime Organization.

Inland waters means the navigable waters of the United States shoreward of the Boundary Lines as described in part 7 of this chapter, excluding the Great Lakes, and, for towing vessels, excluding the Western Rivers. For establishing credit for sea service, the waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska, are inland waters.

Invalid credential means a merchant mariner credential, merchant mariner's document, merchant mariner's license, STCW endorsement, or certificate of registry that has been suspended or revoked, or has expired.

Large passenger vessel means a vessel of more than 70,000 gross tons, as measured under 46 U.S.C. 14302 and documented under the laws of the United States, with capacity for at least 2,000 passengers and a coastwise endorsement under 46 U.S.C. chapter 121.

Liquefied gas or LG means a cargo that has a vapor pressure of 172 kPa (25 psia) or more at 37.8 °C (100 °F).

Liquid cargo in bulk means a liquid or liquefied gas listed in § 153.40 of this chapter and carried as a liquid cargo or liquid-cargo residue in integral, fixed, or portable tanks, except a liquid cargo carried in a portable tank actually loaded and discharged from a vessel with the contents intact.

Lower level is used as a category of deck and engineer officer endorsements established for assessment of fees. Lower-level officer endorsements are other than those defined as upper level, for which the requirements are listed in subparts D, E, and G of part 11.

Marine chemist means a person certificated by the National Fire Protection Association.

Master means the officer having command of a vessel.

Mate means a qualified officer in the deck department other than the master.

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

MMC application means the application for the MMC, as well as the application for any endorsement on an MMC.

Mobile offshore drilling unit or MODU means a vessel capable of engaging in drilling operations for the exploration for or exploitation of subsea resources. MODU designs include the following:

(1) Bottom bearing units, which include:

(i) Self-elevating (or jack-up) units with moveable, bottom bearing legs capable of raising the hull above the surface of the sea; and

(ii) Submersible units of ship-shape, barge-type, or novel hull design, other than a self-elevating unit, intended for operating while bottom bearing.

(2) Surface units with a ship-shape or barge-type displacement hull of single or multiple hull construction intended for operating in a floating condition, including semi-submersibles and drill ships.

Month means 30 days, for the purpose of complying with the service requirements of this subchapter.

National Driver Register or NDR means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration under 49 U.S.C. chapter 303.

NDR-listed convictions means a conviction of any of the following motor vehicle-related offenses or comparable offenses:

(1) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

(2) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

Near coastal means ocean waters not more than 200 miles offshore.

Non-resident alien means an alien, as defined under Section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (the Act), who is not lawfully admitted for permanent residence, as defined by Section 101(a)(20) of the Act, but who is employable in the United States under the Act and its implementing regulations, including an alien crewman described in section 101(a)(15)(D)(i) of the Act who meets the requirements of 46 U.S.C. 8103(k)(3)(A).

Oceans means the waters seaward of the Boundary Lines as described in 46 CFR part 7. For the purposes of establishing sea service credit, the waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska, are not considered oceans.

Officer endorsement means an annotation on a merchant mariner credential that allows a mariner to serve in the capacities in § 10.109(a). The officer endorsement serves as the license and/or certificate of registry pursuant to 46 U.S.C. subtitle II part E.

Officer in Charge, Marine Inspection or OCMI means, for the purposes of this subchapter, the individual so designated at one of the Regional Examination Centers, or any person designated as such by the Commandant.

Offshore installation manager or OIM means an officer restricted to service on MODUs. An assigned offshore installation manager is equivalent to a master on a conventional vessel and is the person designated by the owner or operator to be in complete and ultimate command of the unit.

On location means that a mobile offshore drilling unit is bottom bearing or moored with anchors placed in the drilling configuration.

Operate, operating, or operation, as applied to the manning requirements of vessels carrying passengers, refers to a vessel any time passengers are embarked whether the vessel is underway, at anchor, made fast to shore, or aground.

Operator means an individual qualified to operate certain uninspected vessels.

Orally assisted examination means an examination as described in part 11, subpart I of this chapter verbally administered and documented by an examiner.

Participation, when used with regard to the service on transfers required for tankerman by §§ 13.120, 13.203, or 13.303 of this chapter, means either actual participation in the transfers or close observation of how the transfers are conducted and supervised.

Passes a chemical test for dangerous drugs means that the result of a chemical test conducted according to 49 CFR part 40 is reported as ''negative'' by a Medical Review Officer according to that part.

PIC means a person in charge.

Pilot of towing vessels means a qualified officer of a towing vessel operated only on inland routes.

Pilotage waters means the navigable waters of the United States, including all inland waters and offshore waters to

a distance of three nautical miles from the baseline from which the Territorial Sea is measured.

Practical demonstration means the performance of an activity under the direct observation of a designated examiner for the purpose of establishing that the performer is sufficiently proficient in a practical skill to meet a specified standard of competence or other objective criterion.

Qualified instructor means a person who has been trained or instructed in instructional techniques and is otherwise qualified to provide required training to candidates for a merchant mariner credential endorsement. A faculty member employed at a State maritime academy or the U.S. Merchant Marine Academy operated under 46 CFR part 310 and instructing in a navigation or engineering course is qualified to serve as a qualified instructor in his or her area of specialization without individual evaluation by the Coast Guard.

Qualified rating means various categories of able seaman, qualified member of the engine department, lifeboatman, or tankerman endorsements formerly issued on merchant mariner's documents.

Raise of grade means an increase in the level of authority and responsibility associated with an officer or rating endorsement.

Rating endorsement is an annotation on a merchant mariner credential that allows a mariner to serve in those capacities set out in § 10.109(b) and (c). The rating endorsement serves as the merchant mariner's document pursuant to 46 U.S.C. subtitle II part E.

Regional examination center or REC means a Coast Guard office that issues merchant mariners' credentials and endorsements.

Restricted tankerman endorsement means a valid tankerman endorsement on a merchant mariner credential restricting its holder as the Coast Guard deems appropriate. For instance, the endorsement may restrict the holder to one or a combination of the following: A specific cargo or cargoes; a specific vessel or vessels; a specific facility or facilities; a specific employer or employers; a specific activity or activities (such as loading or unloading in a cargo transfer); or a particular area of water.

Rivers means a river, canal, or other similar body of water designated as such by the Coast Guard.

Safe and suitable person means a person whose prior record, including but not limited to criminal record and/or NDR record, provides no information indicating that his or her character and habits of life would support the belief that permitting such a person to serve under the MMC and/or endorsement sought would clearly be a threat to the safety of life or property, detrimental to good discipline, or adverse to the interests of the United States. See 46 CFR 10.211 and 10.213 for the regulations associated with this definition.

Self propelled has the same meaning as the terms ''propelled by machinery'' and ''mechanically propelled.'' This term includes vessels fitted with both sails and mechanical propulsion.

Self-propelled tank vessel means a self-propelled tank vessel, other than a tankship.

Senior company official means the president, vice president, vice president for personnel, personnel director, or similarly titled or responsible individual, or a lower-level employee designated in writing by one of these individuals for the purpose of certifying employment and whose signature is on file at the REC at which application is made.

Service as, used when computing the required service for MODU endorsements, means the time period, in days, a person is assigned to work on MODUs, excluding time spent ashore as part of crew rotation. A day is a minimum of four hours, and no additional credit is received for periods served over eight hours.

Simulated transfer means a transfer practiced in a course meeting the requirements of § 13.121 of this chapter that uses simulation supplying part of the service on transfers required for tankerman by § 13.203 or 13.303 of this chapter.

Staff officer means a person who holds an MMC with an officer endorsement listed in § 10.109(a)(31).

Standard of competence means the level of proficiency to be achieved for the proper performance of duties onboard vessels according to national and international criteria.

Steward's department means the department that includes entertainment personnel and all service personnel, including wait staff, housekeeping staff, and galley workers, as defined in the vessel security plan approved by the Secretary under 46 U.S.C. 70103(c). These personnel may also be referred to as members of the hotel department on a large passenger vessel.

STCW means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended 1995 (incorporated by reference in § 10.103).

STCW Code means the Seafarer's Training, Certification and Watchkeeping Code, as amended 1995 (incorporated by reference in § 10.103).

STCW endorsement means an annotation on a merchant mariner credential that allows a mariner to serve in those capacities under § 10.109(d). The STCW endorsement serves as evidence that a mariner has met the requirements of STCW.

Tank barge means a non-self-propelled tank vessel.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that:

(1) Is a vessel of the United States;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

Tankerman assistant means a person holding a valid ''Tankerman-Assistant'' endorsement to his or her merchant mariner credential.

Tankerman engineer means a person holding a valid ''Tankerman-Engineer'' endorsement to his or her merchant mariner credential.

Tankerman PIC means a person holding a valid ''Tankerman-PIC'' endorsement on his or her merchant mariner credential.

Tankerman PIC (Barge) means a person holding a valid ''Tankerman-PIC (Barge)'' endorsement to his or her merchant mariner credential.

Tankship means any tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or as cargo residue and propelled by power or sail.

Transfer means any movement of dangerous liquid or liquefied gas as cargo in bulk or as cargo residue to, from, or within a vessel by means of pumping, gravitation, or displacement. Section 13.127 of this chapter describes what qualifies as participation in a creditable transfer.

Transportation Worker Identification Credential or TWIC means an identification credential issued by the Transportation Security Administration under 49 CFR part 1572.

Underway means that a vessel is not at anchor, made fast to the shore, or aground. When referring to a mobile offshore drilling unit (MODU), underway means that the MODU is not in an on-location or laid-up status and includes that period of time when the MODU is deploying or recovering its mooring system.

Undocumented vessel means a vessel not required to have a certificate of documentation issued under the laws of the United States.

Upper level is used as a category of deck and engineer officer endorsements

established for assessment of fees. Upper-level endorsements are those for which the requirements are listed in §§ 11.404 to 11.407 of this subchapter and §§ 11.510, 11.512, 11.514, and 11.516 of this subchapter.

Vessel Security Officer (VSO) means a person onboard the vessel accountable to the Master, designated by the Company as responsible for security of the vessel, including implementation and maintenance of the Vessels Security Plan, and for liaison with the Facility Security Officer and the vessel's Company Security Officer.

Western rivers means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen-Morgan City Alternate Route, and that part of the Atchafalaya River above its junction with the Port Allen-Morgan City Alternate Route including the Old River and the Red River, and those waters specified in 33 CFR 89.25.

Year means 360 days for the purpose of complying with the service requirements of this subchapter.

§ 10.109 Classification of endorsements.

(a) The following officer endorsements are established in part 11 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in part 11 of this subchapter:

(1) Master;
(2) Chief mate;
(3) Second mate;
(4) Third mate;
(5) Mate;
(6) Master of towing vessel;
(7) Mate (pilot) of towing vessel;
(8) Apprentice mate (Steersman);
(9) Offshore installation manager (OIM);
(10) Barge supervisor (BS);
(11) Ballast control operator (BCO);
(12) Operator of uninspected passenger vessels (OUPV);
(13) Master of uninspected fishing industry vessels;
(14) Mate of uninspected fishing industry vessels;
(15) Master of offshore supply vessels;
(16) Chief mate of offshore supply vessels;
(17) Mate of offshore supply vessels;
(18) Chief engineer;
(19) Chief engineer (limited);
(20) Chief engineer (limited-ocean);
(21) Chief engineer (limited-near-coastal);
(22) First assistant engineer;
(23) Second assistant engineer;
(24) Third assistant engineer;
(25) Assistant engineer (limited);
(26) Designated duty engineer (DDE);
(27) Chief engineer offshore supply vessel;
(28) Engineer offshore supply vessel;
(29) Chief engineer MODU;
(30) Assistant engineer MODU;
(31) Chief engineer uninspected fishing industry vessels;
(32) Assistant engineer uninspected fishing industry vessels;
(33) Radio officer;
(34) First class pilot
(35) Chief purser;
(36) Purser;
(37) Senior assistant purser;
(38) Junior assistant purser;
(39) Medical doctor;
(40) Professional nurse;
(41) Marine physician assistant;
(42) Hospital corpsman; and
(43) Radar observer.

(b) The following rating endorsements are established in part 12 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in part 12 of this subchapter:

(1) Able seaman:
(i) Any waters, unlimited;
(ii) Limited;
(iii) Special; and
(iv) Special (OSV).
(2) Ordinary seaman.
(3) Qualified member of the engine department (QMED):
(i) Refrigerating engineer;
(ii) Oiler;
(iii) Deck engineer;
(iv) Fireman/Watertender;
(v) Junior engineer;
(vi) Electrician;
(vii) Machinist;
(viii) Pumpman;
(ix) Deck engine mechanic; and
(x) Engineman.
(4) Lifeboatman.
(5) Wiper.
(6) Steward's department
(7) Steward's department (F.H.).
(8) Cadet.
(9) Student observer.
(10) Apprentice engineer.
(11) Apprentice mate.

(c) The following ratings are established in part 13 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in part 13 of this subchapter:

(1) Tankerman PIC.
(2) Tankerman PIC (Barge).
(3) Restricted tankerman PIC.
(4) Restricted tankerman PIC (Barge).
(5) Tankerman assistant.
(6) Tankerman engineer.

(d) The following STCW endorsements are established by STCW and issued according to the STCW Code, STCW Convention and parts 11 and 12 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in parts 11 or 12 of this subchapter as well as the STCW Code and STCW Convention (incorporated by reference see § 10.103):

(1) Master.
(2) Chief mate.
(3) Officer in charge of a navigational watch (OICNW).
(4) Chief engineer.
(5) Second engineer officer.
(6) Officer in charge of an engineering watch in a manned engineroom or designated duty engineer in a periodically unmanned engineroom (OICEW).
(7) Rating forming part of a navigational watch (RFPNW).
(8) Rating forming part of a watch in a manned engineroom or designated to perform duties in a periodically unmanned engineroom (RFPEW).
(9) Proficiency in survival craft and rescue boats other than fast rescue boats (PSC).
(10) Proficiency in fast rescue boats.
(11) Person in charge of medical care.
(12) Medical first aid provider.
(13) GMDSS at-sea maintainer.
(14) GMDSS operator.

Subpart B—General Requirements for All Merchant Mariner Credentials

§ 10.201 General characteristics of the merchant mariner credential.

(a) A merchant mariner credential (MMC) (Coast Guard Form CG–4610), is a credential combining the elements of the merchant mariner's document (MMD), merchant mariner's license (license), and certificate of registry (COR) enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement issued pursuant to the STCW Convention and STCW Code incorporated by reference in § 10.103. MMDs, licenses, STCW endorsements and CORs are no longer issued as separate documents and all qualifications formerly entered on those separate documents appear in the form of an endorsement(s) on an MMC.

(b) An MMC authorizes the holder to serve in any capacity endorsed thereon, or in any lower capacity in the same

department, or in any capacity covered by a general endorsement.

(c) An MMC may be issued to qualified applicants by the National Maritime Center or at any Regional Examination Center during usual business hours, or through the mail.

§ 10.203 Requirement to hold a TWIC and a merchant mariner credential.

(a) Any mariner required to hold a license, MMD, COR, and/or an STCW endorsement by a regulation in 33 CFR chapter I or 46 CFR chapter I must hold an MMC. A mariner may continue to serve under the authority of and within any restriction on their license, MMD, COR, and/or STCW endorsement until the first renewal or upgrade of that credential, but not later than April 15, 2014.

(b) Failure to obtain or hold a valid TWIC serves as a basis for the denial of an application for an original, renewal, new endorsement, duplicate, or raise of grade of a mariner's credential and may serve as a basis for suspension and revocation under 46 U.S.C. 7702 and 7703.

(c) An MMC, license, MMD, COR, or STCW endorsement must be retained by the mariner to whom it was issued and, while valid, must be produced to verify qualifications when requested by an authorized official as identified in 33 CFR 101.515(d). Posting of the officer endorsement may be necessary as required in 46 U.S.C. 7110.

(d) Although an MMD and an MMC serve as certificates of identification, a TWIC must be retained by the mariner to whom it was issued and, while valid, serves as the mariner's primary identification document. The TWIC must be produced to verify identity when required by an authorized official as identified in 33 CFR 101.515(d).

§ 10.205 Validity of a merchant mariner credential.

(a) An MMC is valid for a term of five years from the date of issuance.

(b) All endorsements are valid until the expiration date of the MMC on which they appear.

(c) A mariner may not serve under the authority of an MMC past its expiration date. An expired MMC may be renewed during an administrative grace period of up to one year beyond its expiration date as per § 10.227(f) of this part.

(d) When an MMC is renewed or re-issued before its expiration date in accordance with § 10.227, the MMC that has been replaced becomes invalid.

(e) An MMC is not valid until signed by the applicant and a duly authorized Coast Guard official.

(f) A mariner's STCW endorsement is valid only when the related officer or rating endorsement is valid.

(g) A mariner's endorsements authorize the holder to serve in any capacity endorsed on the MMC, or in any lower capacity in the same department, or in any capacity covered by a general endorsement thereon.

(h) If a mariner chooses to renew his or her license, MMD, COR, or STCW endorsement and receive their first MMC, the Coast Guard may also renew all other credentials for which the mariner is qualified.

§ 10.207 Identification number.

For recordkeeping purposes only, a mariner's official MMC identification number is the individual's social security number. However, a unique serial number, and not the social security number, will appear on the credential.

§ 10.209 General application procedures.

(a) The applicant for an MMC, whether original, renewal, duplicate, raise of grade, or a new endorsement on a previously issued MMC, must establish to the Coast Guard that he or she satisfies all the requirements for the MMC and endorsement(s) sought before the Coast Guard will issue the MMC. This section contains the general requirements for all applicants. Additional requirements for duplicates, renewals, new endorsements, and raises of grade appear later in this part.

(b) The Coast Guard may refuse to process an incomplete MMC application. The requirements for a complete application for an original MMC are contained in § 10.225, the requirements for a renewal MMC application are in § 10.227, the requirements for a duplicate MMC application are contained in § 10.229, and the requirements for an application for a new endorsement or raise of grade are contained in § 10.231.

(c) Applications are valid for 12 months from the date that the Coast Guard approves the application.

(d) The portions of the application that may be submitted by mail, fax, or other electronic means may include:

(1) The application, consent for NDR check, and notarized oath on Coast Guard-furnished forms, and the evaluation fee required by § 10.219 of this part;

(2) The applicant's continuous discharge book, certificate of identification, MMD, MMC, license, STCW endorsement, COR, or, if it has not expired, a photocopy of the credential, including the back and all attachments;

(3) Proof, documented on a form provided by the Coast Guard, that the applicant passed the applicable vision, hearing, medical or physical exam as required by § 10.215 of this part;

(4) If the applicant desires a credential with a radar-observer endorsement in accordance with § 11.480 of this chapter, either the radar-observer certificate or a certified copy;

(5) Evidence of, or acceptable substitute for, sea service, if required;

(6) For an endorsement as a medical doctor or professional nurse as required in § 11.807, evidence that the applicant holds a currently valid, appropriate license as physician, surgeon, or registered nurse, issued under the authority of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. Any MMC issued will retain any limitation associated with the medical license;

(7) Any certificates or other supplementary materials required to show that the mariner meets the mandatory requirements for the specific endorsement sought, as established in parts 11, 12 or 13 of this chapter; and

(8) An open-book exercise, in accordance with § 10.227(d)(8)(i) of this part.

(e) The following requirements must be satisfied before an original or renewal MMC, or new endorsement or a raise of grade added to a previously issued MMC, will be issued. These materials will be added to the individual's record by the Coast Guard:

(1) *Determination of safety and suitability.* No MMC will be issued as an original or reissued with a new expiration date, and no new officer endorsement will be issued if the applicant fails the criminal record review as set forth in § 10.211 of this part;

(2) *NDR review.* No MMC will be issued as an original or reissued with a new expiration date, and no new officer endorsement will be issued until the applicant has passed an NDR review as set forth in § 10.213 of this part; and

(3) *Information supplied by the Transportation Security Administration (TSA).* (i) Beginning on April 15, 2009, no MMC or endorsement will be issued until the Coast Guard receives the following information from the applicant's TWIC application: the applicant's fingerprints, FBI number and criminal record (if applicable), photograph, proof of United States citizenship, or Nationality with proof of legal resident status (if applicable). If the information is not available from TSA, the mariner may be required to

visit a Regional Exam Center to provide this information.

(ii) Until April 15, 2009, no application for an MMC or endorsement will be considered complete until the applicant appears at a Regional Exam Center to provide the following information: the applicant's fingerprints, photograph, proof of United States citizenship, or Nationality with proof of legal resident status (if applicable).

(f) Upon determining that the applicant satisfactorily meets all requirements for an MMC or an endorsement thereon, the Coast Guard will issue the properly endorsed MMC to the applicant. Beginning April 15, 2009, the Coast Guard will not issue an MMC until it has received proof that the mariner holds a valid TWIC.

(g) When a new MMC is issued, the mariner must return the previously issued MMC, license, MMD, COR, or STCW endorsement to the Coast Guard, unless the new MMC is being issued to replace a lost or stolen credential. Upon written request at the time of application, the cancelled, previously issued credential(s) will be returned to the applicant.

(h) Unless otherwise stated in this Part, an applicant who fails a chemical test for dangerous drugs will not be issued an MMC.

§ 10.211 Criminal record review.

(a) The Coast Guard may conduct a criminal record review to determine the safety and suitability of an applicant for an MMC and any endorsements. An applicant conducting simultaneous MMC transactions will undergo a single criminal record review. At the time of application, each applicant must provide written disclosure of all convictions not previously disclosed to the Coast Guard on an application.

(b) A criminal record review is not required for applicants seeking a duplicate MMC under § 10.229.

(c) *Fingerprints.* Beginning September 25, 208, the Transportation Security Administration (TSA) will provide to the Coast Guard the applicant's fingerprints submitted by the applicant with his or her TWIC application and, if applicable, the applicant's FBI number and criminal record generated in the TWIC review process. This information, or the fingerprints taken by the Coast Guard at an REC, will be used by the Coast Guard to determine whether the applicant has a record of any criminal convictions.

(d) When a criminal record review leads the Coast Guard to determine that an applicant is not a safe and suitable person or cannot be entrusted with the duties and responsibilities of the MMC or endorsement applied for, the application may be disapproved.

(e) If an application is disapproved, the applicant will be notified in writing of that fact, the reason or reasons for disapproval, and advised that the appeal procedures in subpart 1.03 of part 1 of this chapter apply. No examination will be given pending decision on appeal.

(f) No person who has been convicted of a violation of the dangerous drug laws of the United States, the District of Columbia, any State, territory, or possession of the United States, or a foreign country, by any military or civilian court, is eligible for an MMC, except as provided elsewhere in this section. No person who has ever been the user of, or addicted to the use of a dangerous drug, or has ever been convicted of an offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304) because of addiction to or abuse of alcohol is eligible for an MMC, unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (l) of this section. A conviction for a drug offense more than 10 years before the date of application will not alone be grounds for denial.

(g) The Coast Guard will use table 10.211(g) to evaluate applicants who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the Coast Guard will establish an appropriate assessment period using the list as a guide. The assessment period commences when an applicant is no longer incarcerated. The applicant must establish proof of the time incarcerated and periods of probation and parole to the satisfaction of the Coast Guard. The assessment period may include supervised or unsupervised probation or parole.

TABLE 10.211(G)—GUIDELINES FOR EVALUATING APPLICANTS FOR MMCS WHO HAVE CRIMINAL CONVICTIONS

Crime [1]	Assessment periods	
	Minimum	Maximum
Assessment Periods for Officer and Rating Endorsements		
Crimes Against Persons:		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Robbery	5 years	10 years.
Other crimes against persons [2]		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highways	1 year	2 years.
Other vehicular crimes [2]		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety [2]		

TABLE 10.211(G)—GUIDELINES FOR EVALUATING APPLICANTS FOR MMCS WHO HAVE CRIMINAL CONVICTIONS—Continued

Crime [1]	Assessment periods	
	Minimum	Maximum
Dangerous Drug Offenses [3 4 5]		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions [6]		
Assessment Periods for Officer Endorsements Only		
Criminal Violations of Environmental Laws		
Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials.	1 year	10 years.
Crimes Against Property		
Burglary	3 years	10 years.
Larceny (embezzlement)	3 years	5 years.
Other crimes against property [2]		

[1] Conviction of attempts, solicitations, aiding and abetting, accessory after the fact, and conspiracies to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[2] Other crimes will be reviewed by the Coast Guard to determine the minimum and maximum assessment periods depending on the nature of the crime.

[3] Applicable to original applications only. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (f) of this section. Note: Applicants for reissue of an MMC with a new expiration date including a renewal or additional endorsement(s), who have been convicted of a dangerous drug offense while holding a license, MMC, MMD, STCW endorsement or COR, may have their application withheld until appropriate action has been completed by the Coast Guard under the regulations which appear in 46 CFR part 5 governing the administrative actions against merchant mariner credentials.

[4] The Coast Guard may consider dangerous drug convictions more than 10 years old only if there has been another dangerous drug conviction within the past 10 years.

[5] Applicants must demonstrate rehabilitation under paragraph (l) of this section, including applicants with dangerous drug use convictions more than 10 years old.

[6] Other dangerous drug convictions will be reviewed by the Coast Guard on a case by case basis to determine the appropriate assessment period depending on the nature of the offense.

(h) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in table 10.211(g) and table 10.213(c) in § 10.213 based upon the applicant's convictions; the maximum assessment period will be the longest shown in table 10.211(g) and table 10.213(c) of § 10.213 based upon the applicant's convictions.

(i) If a person with a criminal conviction applies before the minimum assessment period shown in table 10.211(g) or established by the Coast Guard under paragraph (g) of this section has elapsed, then the applicant must provide, as part of the application package, evidence of suitability for service in the merchant marine. Factors that are evidence of suitability for service in the merchant marine are listed in paragraph (l) of this section. The Coast Guard will consider the applicant's evidence submitted with the application and may issue the MMC and/or endorsement in less than the listed minimum assessment period if the Coast Guard is satisfied that the applicant is suitable to hold the MMC and/or endorsement for which he or she has applied. If an application filed before the minimum assessment period has elapsed does not include evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the Coast Guard.

(j) If a person with a criminal conviction submits their MMC application during the time between the minimum and maximum assessment periods shown in table 10.211(g) or established by the Coast Guard under paragraph (g) of this section, then the Coast Guard will consider the conviction and, unless there are offsetting factors, will grant the applicant the MMC and/or endorsement for which he or she has applied. Offsetting factors include such factors as multiple convictions, failure to comply with court orders (e.g., child support orders), previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the Coast Guard considers the applicant unsuitable for service in the merchant marine at the time of application, the Coast Guard may disapprove the application.

(k) If a person with a criminal conviction submits their MMC application after the maximum assessment period shown in table 10.211(g) or established by the Coast Guard under paragraph (g) of this section has elapsed, then the Coast Guard will grant the applicant the MMC or endorsement for which he or she has applied unless the Coast Guard considers the applicant still unsuitable for service in the merchant marine. If the Coast Guard disapproves an applicant with a conviction older than the maximum assessment period listed in table 10.211(g), the Coast Guard will notify the applicant in writing of the reason(s) for the disapproval. The Coast Guard will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in subpart 1.03 of this chapter apply.

(l) If an applicant has one or more alcohol or dangerous drug related criminal or NDR-listed convictions, if the applicant has ever been the user of, or addicted to the use of, a dangerous drug, or if the applicant applies before the minimum assessment period has elapsed for his or her conviction, the Coast Guard may consider the following

factors, as applicable, in assessing the applicant's suitability to hold an MMC. This list is intended as a guide for the Coast Guard. The Coast Guard may consider other factors appropriate to a particular applicant, such as:

(1) Proof of completion of an accredited alcohol or drug abuse rehabilitation program;

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous;

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers;

(4) Steady employment; and

(5) Successful completion of all conditions of parole or probation.

§ 10.213 National Driver Register.

(a) No MMC will be issued as an original or reissued with a new expiration date, and no new officer endorsement will be issued, unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways).

(b) The Coast Guard will not consider NDR-listed civil convictions that are more than three years old from the date of request unless that information relates to a current suspension or revocation of the applicant's license to operate a motor vehicle. The Coast Guard may determine minimum and maximum assessment periods for NDR-listed criminal convictions using table 10.213(c). An applicant conducting simultaneous MMC transactions is subject to only one NDR check.

(c) The guidelines in table 10.213(c) will be used by the Coast Guard in evaluating applicants who have drug or alcohol related NDR-listed convictions. Non-drug or alcohol related NDR-listed convictions will be evaluated by the Coast Guard under table 10.211(g) of § 10.211 as applicable. The Coast Guard will consider non-drug or alcohol related NDR-listed convictions that are more than three years old from the date of the request when the information relates to a current suspension or revocation of the applicant's license to operate a motor vehicle.

TABLE 10.213(C)—GUIDELINES FOR EVALUATING APPLICANTS FOR MMCS WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL [1]

Number of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years	Application will be processed, unless suspension, or revocation [2] is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than 3 years old	Not necessary unless suspension or revocation is still in effect.
2 or more	Any less than 3 years old	1 year since last conviction and at least 3 years from 2nd most recent conviction, unless suspension or revocation is still in effect.
2 or more	All more than 3 years old	Application will be processed unless suspension or revocation is still in effect.

[1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section.

[2] Suspension or revocation, when referred to in table 10.213, means a State suspension or revocation of a motor vehicle operator's license.

(d) Any application may be disapproved if information from the NDR check leads the Coast Guard to determine that the applicant cannot be entrusted with the duties and responsibilities of the MMC or endorsement for which the application is made. If an application is disapproved, the Coast Guard will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in subpart 1.03 of part 1 of this chapter apply. No examination will be given pending decision on appeal.

(e) Before disapproving an application because of information received from the NDR, the Coast Guard will make the information available to the applicant for review and written comment. The applicant may submit records from the applicable State concerning driving record and convictions to the Coast Guard REC processing the application. The REC will hold an application with NDR-listed convictions pending the completion of the evaluation and delivery by the individual of the underlying State records.

(f) If an applicant has one or more alcohol or dangerous drug related criminal or NDR-listed convictions, if the applicant has ever been the user of, or addicted to the use of, a dangerous drug, or if the applicant applies before the minimum assessment period for his or her conviction has elapsed, the Coast Guard may consider the following factors, as applicable, in assessing the applicant's suitability to hold an MMC. This list is intended as a guide for the Coast Guard. The Coast Guard may consider other factors, which it judges appropriate to a particular applicant, such as:

(1) Proof of completion of an accredited alcohol or drug abuse rehabilitation program;

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous;

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers;

(4) Steady employment; and

(5) Successful completion of all conditions of parole or probation.

§ 10.214 Security Check.

Until April 15, 2009, the Coast Guard may conduct a security check on an applicant for an MMC, utilizing the criminal record review discussed in § 10.211 of this part.

§ 10.215 Medical and physical requirements.

(a) *Medical and Physical Exams.* To qualify for an MMC an applicant must meet the medical and physical standards in this section. Columns 2 through 5 of table 10.215(a) provide the specific exam, test, or demonstrations required to obtain the corresponding credential listed in column 1. Further clarifications of the requirements contained in the table are found throughout this section. Any required test, exam, or demonstration must have been performed, witnessed, or reviewed

by a licensed medical doctor, licensed physician assistant, or licensed nurse practitioner.

(1) First-class pilots, and those serving as pilots under § 15.812 of this part, on vessels and tank barges of 1,600 GRT or more must satisfactorily complete annual medical exams and, unless exempt per 46 CFR 16.220, pass annual chemical tests for dangerous drugs and submit the results to the Coast Guard.

(2) Medical exams for Great Lakes Pilots must be conducted by a licensed medical doctor in accordance with the physical exam requirements in 46 CFR 402.210.

TABLE 10.215(A)—MEDICAL AND PHYSICAL REQUIREMENTS FOR MARINER ENDORSEMENTS [1]

Credential	Vision test	Hearing test	General medical exam	Demonstration of physical ability
(i) Deck officer, including pilot	§ 10.215(b)(1)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(ii) Engineering officer	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(iv) Radio officer	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(v) Offshore installation manager, barge supervisor, or ballast control operator.	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(vi) Able seaman	§ 10.215(b)(1)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(vii) QMED	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(viii) RFPNW	§ 10.215(b)(1)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(ix) RFPEW	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(x) Tankerman	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(xi) Food handler serving on vessels to which STCW does not apply.			§ 10.215(d)(2)	
(xii) Food handler serving on vessels to which STCW applies.			§ 10.215(d)(2)	§ 10.215(e)(1)
(xiii) Ratings, including entry level, serving on vessels to which STCW applies, other than those listed above.				§ 10.215(e)(2)

(b) *Vision Test*—(1) *Deck Standard.* An applicant must have correctable vision to at least 20/40 in one eye and uncorrected vision of at least 20/200 in the same eye. An applicant having lost vision in one eye must wait six months before application and provide a statement of demonstrated ability on his or her medical examination. The color sense must be determined to be satisfactory when tested by any of the following methods or an alternative test approved by the Coast Guard, without the use of color-sensing lenses:

(i) Pseudoisochromatic Plates (Dvorine, 2nd Edition; AOC; revised edition or AOC–HRR; Ishihara 14-, 24-, or 38-plate editions).

(ii) Eldridge-Green Color Perception Lantern.

(iii) Farnsworth Lantern.

(iv) Keystone Orthoscope.

(v) Keystone Telebinocular.

(vi) SAMCTT (School of Aviation Medicine Color Threshold Tester).

(vii) Titmus Optical Vision Tester.

(viii) Williams Lantern.

(2) Engineering, radio operator, tankerman, and MODU standard. An applicant must have correctable vision of at least 20/50 in one eye and uncorrected vision of at least 20/200 in the same eye and need only have the ability to distinguish the colors red, green, blue and yellow.

(3) Any applicant whose uncorrected vision does not meet the standards listed above, and is granted a waiver in accordance with paragraph (g) of this section, may not serve under the authority of the endorsement unless corrective lenses are worn and spare lenses are carried onboard a vessel.

(c) *Hearing test.* If the medical practitioner conducting the general medical exam has concerns that an applicant's ability to hear may impact maritime safety, the examining medical practitioner, if not qualified to conduct the appropriate examinations, must refer the applicant to an audiologist or other hearing specialist to conduct an audiometer test and/or a speech discrimination test, as appropriate.

(1) The audiometer test should include testing at the following thresholds: 500 Hz; 1,000 Hz; 2,000 Hz; and 3,000 Hz. The frequency responses for each ear should be averaged to determine the measure of an applicant's hearing ability. Applicants must demonstrate an unaided threshold of 20 decibels or less in each ear.

(2) The functional speech discrimination test should be carried out at a level of 55 decibels. For issuance of an original MMC or endorsement the applicant must demonstrate functional speech discrimination of at least 90%. For renewal or raise of grade, the applicant must demonstrate functional speech discrimination of at least 80%. An applicant who is unable to meet the standards of the audiometer test, but who can pass the functional speech discrimination test, may be eligible for a medical waiver in accordance with paragraph (g) of this section.

(d) *General medical exam.* (1) This exam must be documented and of such scope to ensure that there are no conditions that pose an inordinate risk of sudden incapacitation or debilitating complication. This exam must also document any condition requiring medication that impairs judgment or reaction time. Examples of physical impairment or medical conditions that could lead to disqualification include, but are not limited to, poorly controlled diabetes, myocardial infarctions, psychiatric disorders, and convulsive disorders.

(2) Food handlers are not required to submit to a general medical exam, but must obtain a statement from a licensed physician, physician assistant, or nurse practitioner attesting that they are free of communicable diseases.

(e) *Demonstration of physical ability.* (1) A demonstration of physical ability is required only if the medical practitioner conducting the general medical exam is concerned that an applicant's physical ability may impact maritime safety or if table 10.215(a) shows that the mariner must pass a demonstration of physical ability, but he or she is not required to pass a general medical exam.

(2) For an applicant to satisfactorily pass a demonstration of physical ability, the examiner must be satisfied that the applicant:

(i) Has no disturbance in the sense of balance;

(ii) Is able, without assistance, to climb up and down vertical ladders and inclined stairs;

(iii) Would be able, without assistance, to step over a door sill or coaming;

(iv) Would be able to grasp, lift, and manipulate various common shipboard tools; move hands and arms to open and close valve wheels in vertical and horizontal directions, and rotate wrists to turn handles;

(v) Does not have any impairment or disease that could prevent normal movement and physical activities;

(vi) Is able to stand and walk for extended periods;

(vii) Does not have any impairment or disease that could prevent response to a visual or audible alarm; and

(viii) Is capable of normal conversation.

(f) *Reports of medical and physical exams, demonstrations, and tests.* These reports must be submitted within 12 months from the date signed by the licensed medical professional. When submitted with a complete application package these reports remain valid for 12 months from the date of the application approval.

(g) *Medical waivers.* Where an applicant does not possess the vision, hearing, or general physical condition necessary, the Coast Guard, after consultation with the examining licensed physician, licensed physician assistant, or licensed nurse practitioner may grant a waiver if extenuating circumstances warrant special consideration. An applicant may submit to the Coast Guard additional correspondence, records, and reports in support of a waiver. In this regard, recommendations from agencies of the Federal Government operating government vessels, as well as owners and operators of private vessels, made on behalf of their employees, will be given full consideration. Waivers are not normally granted to an applicant whose corrected vision in the better eye is not at least 20/40 for deck officers or 20/50 for engineer officers.

(h) Individuals holding only a staff officer endorsement need not meet the medical and physical requirements of this section.

§ 10.217 Merchant mariner credential application and examination locations.

(a) Applicants may apply to any of the Regional Examination Centers. Applicants may contact the National Maritime Center at 100 Forbes Drive, Martinsburg, WV 25404, or by telephone 1–888–427–5662 or 304–433–3400. A list of Regional Examination Center locations is available through the Coast Guard Web site at *http://www.uscg.mil/stcw.*

(b) *Coast Guard-designated facilities.* The Coast Guard may designate additional locations to provide services to applicants for MMCs.

(c) *Exam Locations Abroad.* (1) Coast Guard Merchant Marine Details abroad may conduct exams for ratings at locations other than the RECs, but are not prepared to conduct the physical examination where required. Merchant Marine Details may not issue regular rating endorsements, but temporary permits in lieu thereof. Merchant Marine Details will instruct the recipient of each temporary permit to present it to the OCMI, upon arrival in the first port in the United States in order to exchange it for a permanent credential.

(2) The temporary permit must be accepted by the OCMI as proof that the bearer has complied with the rules and regulations governing the issuance of credentials, except as noted in the body of the temporary permit. The requirements noted in the exceptions will be complied with as in the case of other applicants.

(3) The written examinations are forwarded to the National Maritime Center by Merchant Marine Details. When an applicant with a temporary permit appears before an OCMI, that OCMI may request and obtain the examination from the National Maritime Center. Any OCMI who doubts the propriety of issuing a permanent credential instead of a temporary permit which has been issued by an overseas Merchant Marine Detail must inform the National Maritime Center fully as to the circumstances.

§ 10.219 Fees.

(a) Use table 10.219(a) of this section to calculate the mandatory fees for MMCs and associated endorsements.

TABLE 10.219(A) FEES

If you apply for	And you need . . .		
	Evaluation then the fee is . . .	Examination then the fee is . . .	Issuance then the fee is . . .
MMC with officer endorsement:			
Original:.			
Upper level	$100	$110	$45
Lower level	100	95	45
Renewal	50	45	45
Raise of grade	100	45	45
Modification or removal of limitation or scope	50	45	45
Radio officer endorsement:			
Original	50	45	45
Renewal	50	n/a	45
Staff officer endorsements:			
Original	90	n/a	45
Renewal	50	n/a	45
MMC with rating endorsement:			
Original endorsement for ratings other than qualified ratings	95	n/a	45
Original endorsement for qualified rating	95	140	45
Upgrade or Raise of Grade	95	140	45
Renewal endorsement for ratings other than qualified ratings	50	n/a	45
Renewal endorsement for qualified rating	50	45	45
STCW certification:			
Original	No fee	No fee	No fee
Renewal	No fee	No fee	No fee

TABLE 10.219(A) FEES—Continued

If you apply for	And you need . . .		
	Evaluation then the fee is . . .	Examination then the fee is . . .	Issuance then the fee is . . .
Reissue, replacement, and duplicate	n/a	n/a	[1] $45

[1] Duplicate for MMC lost as result of marine casualty—No Fee.

(b) *Fee payment procedures.* Applicants may pay:

(1) All fees required by this section at the time the application is submitted; or

(2) A fee for each phase at the following times:

(i) An evaluation fee when the application is submitted.

(ii) An examination fee before the first examination section is taken.

(iii) An issuance fee before receipt of the MMC.

(c) If the examination is administered at a place other than an REC, the examination fee must be paid to the REC at least one week before the scheduled examination date.

(d) Unless the REC provides additional payment options, fees must be paid as follows:

(1) Fee payment(s) must be for the exact amount.

(2) Payments may be made by cash, check, money order, or credit card.

(3) Payments submitted by mail may not be made in cash. Mailed payments should specify the type of credential sought and the type of fee (e.g., evaluation, examination, issuance) being paid. The address for sending payment by mail can be found at *http://www.uscg.mil/stcw/ldcr-userfees.htm.*

(4) Checks or money orders are to be made payable to the U.S. Coast Guard, and the full legal name and last four digits of applicant's security number must appear on the front of each check or money order.

(5) Fee payment may be made by electronic payment in a manner specified by the Coast Guard. For information regarding current forms of electronic payment, go to *http://www.uscg.mil/stcw/ldcr-userfees.htm.*

(e) Unless otherwise specified in this part, when two or more endorsements are processed on the same application:

(1) *Evaluation fees.* If an applicant simultaneously applies for a rating endorsement and a deck or engineer officer's endorsement, only the evaluation fee for the officer's endorsement will be charged. If an applicant simultaneously applies for a staff officer or radio officer endorsement along with the deck or engineer officer's endorsement, only the evaluation fee for the deck or engineer officer's endorsement will be charged. No evaluation fee is charged for an STCW endorsement.

(2) *Examination fees.* One examination fee will be charged for each exam or series of exams for an original, raise of grade, or renewal of an endorsement on an MMC taken within one year from the date of the application approval. An examination fee will also be charged to process an open-book exercise used to renew an MMC. If an officer endorsement examination under part 11 of this chapter also fulfills the examination requirements in part 12 of this chapter for rating endorsements, only the fee for the officer endorsement examination is charged.

(3) *Issuance fees.* Only one issuance fee will be charged for each MMC issued, regardless of the number of endorsements placed on the credential. There is no fee for a Document of Continuity.

(f) The Coast Guard may assess additional charges to anyone to recover collection and enforcement costs associated with delinquent payments, failure to pay a fee, or returned checks. The Coast Guard will not provide credentialing services to a mariner who owes money for credentialing services previously provided.

(g) Anyone who fails to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of not more than $6,500 for each violation.

(h) *No-fee MMC for certain applicants.* (1) For the purpose of this section, a no-fee MMC applicant is a person who is a volunteer, or a part-time or full-time employee of an organization that is:

(i) Charitable in nature;

(ii) Not for profit; and

(iii) Youth oriented.

(2) *Determination of eligibility.* (i) An organization may submit a written request to U.S. Coast Guard National Maritime Center, 100 Forbes Drive, Martinsburg, WV 25404, in order to be considered an eligible organization under the criteria set forth in paragraph (h)(1) of this section. With the written request, the organization must provide evidence of its status as a youth-oriented, not-for-profit, charitable organization.

(ii) The following organizations are accepted by the Coast Guard as meeting the requirements of paragraph (h)(1) of this section and need not submit evidence of their status: Boy Scouts of America, Sea Explorer Association, Girl Scouts of the United States of America, and Young Men's Christian Association of the United States of America.

(3) A letter from an organization determined eligible under paragraph (h)(2) of this section must also accompany the person's MMC application to the Coast Guard. The letter must state that the purpose of the person's application is solely to further the conduct of the organization's maritime activities. The applicant then is eligible under this section to obtain a no-fee MMC if other requirements for the MMC are met.

(4) An MMC issued to a person under this section is endorsed restricting its use to vessels owned or operated by the sponsoring organization.

(5) The holder of a no-fee MMC issued under this section may have the restriction removed by paying the appropriate evaluation, examination, and issuance fees that would have otherwise applied.

§ 10.221 Citizenship.

(a)(1) *MMCs with officer Endorsements.* Only individuals with valid U.S. citizenship may apply for officer endorsements, except individuals applying for endorsements as operators of uninspected passenger vessels authorizing service on undocumented vessels in accordance with § 11.201(d) of this part.

(2) *All other MMCs.* All other applicants, except as noted in § 12.40–11 of this subchapter, must be either:

(i) A citizen of the United States;

(ii) An alien, as defined under Section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (the Act), who is lawfully admitted to the United States for permanent residence, as defined by Section 101(a)(20) of the Act.; or

(iii) A foreign national who is enrolled in the United States Merchant Marine Academy (USMMA).

(b) Beginning April 15, 2009, proof of citizenship or alien status must be submitted to the Transportation Security Administration (TSA) with the applicant's TWIC application in accordance with 49 CFR 1572.17(a)(11). Until April 15, 2009, proof of citizenship or alien status must be submitted by appearing at a Regional Exam Center.

(c) TSA and the Coast Guard may reject any evidence of citizenship that is not believed to be authentic. Acceptable evidence of citizenship may be an original or a copy certified as true by the agency responsible for issuing the document of the following:

(1) If the individual is applying for an officer endorsement (with the exception of those applying for an MMC endorsed only as Operator of an Uninspected Passenger Vehicle (OUPV) of an undocumented vessel), the individual must provide an original of any one of the following documents:

(i) Certified copy of a birth certificate, issued by a State, county, municipality or outlying possession of the U.S. bearing an official seal;

(ii) U.S. passport (expired or unexpired);

(iii) Certificate of Citizenship issued by U.S. Citizenship and Immigration Services or the Immigration and Naturalization Service;

(iv) Certificate of Naturalization issued by U.S. Citizenship and Immigration Services or the Immigration and Naturalization Service; or

(v) Merchant mariner's document issued by the Coast Guard after February 3, 2003, that shows that the holder is a citizen of the United States.

(2) If the individual is applying for a rating endorsement and they hold one of the documents listed in paragraph (c)(1)(i) through (v) of this section, these documents are also acceptable as evidence of citizenship. If the individual does not hold any one of those documents listed in paragraph (c)(1)(i) through (v), the individual must provide an original unexpired foreign passport and an original of any one of the following documents:

(i) Permanent resident card (form I–551) issued by U.S. Citizenship and Immigration Services bearing the certification that the alien was admitted to the United States as an immigrant,

(ii) A declaration of intention to become a citizen of the United States issued by a naturalization court; or

(iii) A certificate issued by the consular representative of the country of which the alien is a citizen or subject.

(3) If the individual is the holder of or applying for a rating endorsement and the individual does not hold any of the documents listed in paragraphs (c)(1) or (2) of this section, proof of enrollment in the United States Merchant Marine Academy (USMMA) in the form of an original letter from the USMMA, signed by the Superintendent attesting to the individual's enrollment along with an unexpired foreign passport issued by the government of the country in which the alien is a citizen or subject, with a valid U.S. visa affixed to the passport, will be acceptable evidence of lawful status in the United States.

(4) If the individual is applying for an MMC endorsed only as OUPV of an undocumented vessel, the individual must provide an original of any one of the documents enumerated in paragraphs (c)(1)(i) through (v) or (c)(2)(i) or (ii) of this section, or proof of acceptable alien status as provided in 49 CFR 1572.105.

§ 10.223 Modification or removal of limitations or scope.

(a) If the Coast Guard is satisfied by the documentary evidence submitted that an applicant is entitled by experience, training, and knowledge to an endorsement or increase in the scope of any MMC held, any limitations that were previously placed upon the MMC by the Coast Guard may be changed or removed. Such an increase in scope may include a change in horsepower or tonnage limitations, or geographic route restrictions.

(b) Modifications or removal of limitations or scope to MMC endorsement(s) under this section will not change the expiration date of the mariner's MMC unless the applicant renews all endorsements that would appear on the MMC under § 10.227 of this part.

(c) A complete application for modification or removal of limitation of scope must contain the following:

(1) A completed signed application;

(2) Beginning April 15, 2009, proof that the mariner holds a valid TWIC;

(3) All supplementary materials required to show that the mariner meets the mandatory requirements for the transaction sought:

(i) The mandatory requirements for officer endorsements are contained in part 11 of this chapter.

(ii) The mandatory requirements for rating endorsements are contained in part 12 of this chapter.

(iii) The mandatory requirements for tankerman rating endorsements are contained in part 13 of this chapter.

(iv) The mandatory requirements for STCW endorsements are contained in parts 11 and 12 of this chapter and in the STCW Convention and Code (incorporated by reference, see § 10.103).

(4) The appropriate fee as set forth in § 10.219 of this part; and

(5) Any uncanceled MMD, MMC, license, STCW endorsement, or COR held by the applicant. If one or more of these credentials are still valid at the time of application, a photocopy, front and back of all pages, and all attachments, will satisfy this requirement. If the applicant submits a photocopy, upon the issuance of the new MMC, the applicant must surrender the old, original credential to the Coast Guard. If requested in writing at the time of submission, the old MMD, MMC, license, COR, or STCW endorsement may be returned to the applicant after cancellation.

(d) No limitation on any endorsement may be changed before the applicant has made up any deficiency in the experience prescribed for the endorsement or endorsement desired and passed any necessary examination.

§ 10.225 Requirements for original merchant mariner credentials.

(a) An applicant must apply as an original if the MMC sought is:

(1) The first credential issued to the applicant;

(2) The first credential issued to an applicant after their previous credential has expired and they do not hold a document of continuity under § 10.227(e) of this part or an equivalent unexpired continuity endorsement on their license or MMD; or

(3) The first credential issued to an applicant after their previous credential was revoked pursuant to § 10.235 of this part.

(b) A complete application for an original MMC must contain the following:

(1) A completed, signed application;

(2) Beginning April 15, 2009, proof that the mariner either holds a valid TWIC or has applied for a TWIC;

(3) All supplementary materials required to show that the mariner meets the mandatory requirements for all endorsements sought;

(i) The mandatory requirements for officer endorsements are contained in part 11 of this chapter.

(ii) The mandatory requirements for rating endorsements are contained in part 12 of this chapter.

(iii) For a tankerman rating endorsement, the applicant must also provide those documents or proofs required in part 13 of this chapter.

(iv) The mandatory requirements for STCW Endorsements are contained in parts 11 and 12 of this chapter and in the STCW Convention and Code

(incorporated by reference, see § 10.103).

(4) The appropriate fee as set forth in § 10.219 of this part;

(5) Evidence of having passed a chemical test for dangerous drugs or of qualifying for an exemption from testing in § 16.220 of this subchapter;

(6) Discharges or other documentary evidence of service indicating the name, tonnage, and propulsion power of the vessels, dates of service, capacity in which the applicant served, and on what waters, where sea service is required;

(7) Proof, documented on a form provided by the Coast Guard, that the applicant passed all applicable vision, hearing, medical, and/or physical exams as required by § 10.215 of this part.

(8) Consent to a Coast Guard check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982, as amended; and

(9) The oath as required in paragraph (c) of this section.

(c) *Oath.* Every person who receives an original MMC must first take an oath, before an official authorized to give such an oath, that he or she will faithfully and honestly, according to his or her best skill and judgment, without concealment or reservation, perform all the duties required by law and obey all lawful orders of superior officers. An oath may be administered by any Coast Guard-designated individual or any person legally permitted to administer oaths in the jurisdiction where the person taking the oath resides. An oath administered at a location other than those listed in § 10.217 must be verified in writing by the administering official and submitted to the same REC where the applicant applied for his or her MMC. This oath remains binding for any subsequently issued MMC and endorsements added to the MMC, unless specifically renounced in writing.

§ 10.227 Requirements for renewal.

(a) Except as provided in paragraph (e) of this section, an applicant for renewal of a credential must establish possession of all of the necessary qualifications before the renewal MMC will be issued.

(b) A credential may be renewed at any time during its validity and for one year after expiration.

(c) No credential will be renewed if it has been suspended without probation or revoked as a result of action under part 5 of this chapter or if facts that would render a renewal improper have come to the attention of the Coast Guard.

(d) Except as provided in paragraph (e) of this section, a complete application for renewal must contain the following:

(1) A completed, signed application;

(2) Beginning April 15, 2009, proof that the mariner holds a valid TWIC;

(3) The appropriate fee as set forth in § 10.219 of this part;

(4) Any uncanceled MMD, MMC, license, STCW endorsement, or COR held by the applicant. If one or more of these credentials are still valid at the time of application, a photocopy—front, back, and all attachments—will satisfy this requirement. If the applicant submits a photocopy, upon the issuance of the new MMC, the applicant must surrender the old original credential to the Coast Guard. If requested in writing at the time of submission, the old MMD, MMC, license, COR, or STCW endorsement may be returned to the applicant after cancellation;

(5) Evidence of having passed a chemical test for dangerous drugs or of qualifying for an exemption from testing in § 16.220 of this subchapter;

(6) Proof, documented on a form provided by the Coast Guard, that the applicant passed all applicable vision, hearing, medical, and/or physical exams as required by § 10.215 of this part;

(7) Consent to a Coast Guard check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982, as amended;

(8) Except as provided in paragraph (d)(8)(viii) of this section, the applicant must meet the following professional requirements for renewal:

(i) The applicant must either—

(A) Present evidence of at least one year of sea service during the past five years;

(B) Pass a comprehensive, open-book exercise covering the general subject matter contained in appropriate sections of subpart (I) of this part;

(C) Complete an approved refresher training course; or

(D) Present evidence of employment in a position closely related to the operation, construction, or repair of vessels (either deck or engineer as appropriate) for at least three years during the past five years. An applicant for a deck license or officer endorsement with this type of employment must also demonstrate knowledge on an applicable Rules of the Road open-book exercise.

(ii) The qualification requirements for renewal of radar observer endorsement are in § 11.480 of this chapter.

(iii) Additional qualification requirements for renewal of an officer endorsement as first-class pilot are contained in § 11.713 of this chapter.

(iv) An applicant for renewal of a radio officer's endorsement must, in addition to meeting the requirements of this section, present evidence of a currently valid license as first or second-class radiotelegraph operator issued by the Federal Communications Commission. If submitted, the original license will be returned to the applicant.

(v) An applicant for renewal of an endorsement as medical doctor or professional nurse must, in addition to meeting the requirements of this section, present evidence that he or she holds a currently valid, appropriate license as physician, surgeon, or registered nurse issued under the authority of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. Any such renewal will retain the limitations placed upon the medical license by the issuing body. There are no professional requirements for renewal of an endorsement as marine physician assistant or hospital corpsman.

(vi) An applicant for renewal of an endorsement as master or mate (pilot) of towing vessels must submit satisfactory evidence of:

(A) Having completed a practical demonstration of maneuvering and handling a towing vessel to the satisfaction of a designated examiner; or

(B) Ongoing participation in training and drills during the validity of the license or MMC being renewed.

(vii) An applicant seeking to renew a tankerman endorsement must meet the additional requirements listed in § 13.120 of this chapter.

(viii) There are no professional requirements for renewal for the following endorsements:

(A) Radio officer;

(B) Staff officers (all types);

(C) Ordinary seaman;

(D) Wiper;

(E) Steward's department (F.H.);

(F) Cadet;

(G) Student observer;

(H) Apprentice engineer;

(I) Apprentice mate (issued under part 12 of this subchapter);

(J) Person in charge of medical care;

(K) Medical first-aid provider;

(L) GMDSS at-sea maintainer; and

(M) GMDSS operator.

(9) Except as otherwise provided, each candidate for a renewal of an STCW endorsement must meet the applicable requirements of § 11.202 of this chapter and must meet the requirements of section A–VI/2, paragraphs 1 to 4 of the STCW Code (incorporated by reference in § 10.103).

(e) *Document of continuity.* (1) Applicants for renewal who are unwilling or otherwise unable to meet the requirements of paragraph (d) of this section, including but not limited to the medical and physical standards of § 10.215, drug tests, and TWIC, may apply for a document of continuity issued by the Coast Guard. Documents of continuity do not expire and are issued solely to maintain an individual's eligibility for renewal. A document of continuity does not entitle an individual to serve as a merchant mariner. A holder of a document of continuity may obtain a properly endorsed, valid MMC at any time by satisfying the requirements for renewal as provided in paragraph (d).

(2) Applications for a document of continuity must include:

(i) The credential to be renewed. Upon written request, the Coast Guard will return the credential to the applicant after it has been cancelled; and

(ii) An application including a signed statement from the applicant attesting to an awareness of the limited purpose of the Document of Continuity, their inability to serve, and the requirements to obtain an MMC.

(f) *Administrative grace period.* Except as provided herein, a credential may not be renewed more than 12 months after it has expired. To obtain a re-issuance of the credential, an applicant must comply with the requirements of paragraph (g) of this section. When an applicant's credential expires during a time of service with the Armed Forces and there is no reasonable opportunity for renewal, including by mail, this period may be extended. The period of military service following the date of expiration which precluded renewal may be added to the 12-month grace period. The 12-month grace period and any extensions do not affect the expiration date of the credential. A license, MMD, COR, STCW endorsement, MMC, and any endorsements thereon, are not valid for use after the expiration date.

(g) *Re-issuance of expired credentials.* (1) Whenever an applicant applies for re-issuance of an endorsement as deck officer, engineer officer, or qualified rating more than 12 months after expiration, instead of the requirements of paragraph (g) of this section, the applicant must demonstrate continued professional knowledge by completing a course approved for this purpose, or by passing the complete examination. The examination may be oral-assisted if the expired credential was awarded on an oral exam. The fees set forth in § 10.219 apply to these examinations. In the case of an expired radio officer's endorsement, the endorsement may be issued upon presentation of a valid first or second-class radiotelegraph operator license issued by the Federal Communications Commission.

(2) An endorsement for chief purser, purser, senior assistant purser, junior assistant purser, hospital corpsman, marine physician assistant, medical doctor, or professional nurse that has been expired for more than 12 months shall be renewed in the same way as a current endorsement of that type. There are no additional requirements for re-issuing endorsements for chief purser, purser, senior assistant purser, junior assistant purser, hospital corpsman, marine physician assistant, medical doctor, or professional nurse that have been expired for more than 12 months.

§ 10.229 Issuance of duplicate merchant mariner credentials.

(a) Upon request and without examination, a mariner may be issued a duplicate credential after submitting an application with an affidavit describing the circumstances of the loss. The Coast Guard will only issue the duplicate credential after confirming the validity of the mariner's credential and, beginning April 15, 2009, the validity of the mariner's TWIC.

(b) The duplicate will have the same authority, wording, and expiration date as the lost credential. A duplicate credential will reference the serial number, type, place of issue, and date of issue of the replaced credential(s). The duplicate issued will be in the form of an MMC. Until April 15, 2014, if a mariner seeks a duplicate of more than one credential, the MMC issued will reflect endorsements for all credentials lost, and the expiration date will match the earliest expiration date of the credentials lost.

(c) If a person loses a credential by shipwreck or other casualty, a duplicate will be issued free of charge. The term ''other casualty'' includes any damage to a ship caused by collision, explosion, tornado, wreck, flooding, beaching, grounding, or fire; or personal loss associated with a federally declared natural disaster.

(d) If a person loses a credential by means other than those noted in paragraph (c) of this section and applies for a duplicate, the appropriate fee set out in § 10.219 must be paid.

(e) No application from an alien for a duplicate credential will be accepted unless the alien complies with the requirements of § 10.221 of this part.

(f) Applications for duplicate credentials will not be subject to a criminal record review.

§ 10.231 Requirements for raises of grade or new endorsements.

(a) This section applies to applicants who already hold a valid credential and want to make the following transaction(s):

(1) Add a new endorsement; or

(2) Raise of grade of an existing endorsement.

(b) New endorsements or raises of grade of existing endorsements on an MMC under this section will not change the expiration date of the MMC unless the applicant renews all endorsements that appear on the MMC under § 10.227 of this part.

(c) A complete application for a new endorsement or raise of grade must contain the following:

(1) A completed, signed application;

(2) Beginning April 15, 2009, proof that the mariner holds a valid TWIC;

(3) All supplementary materials required to show that the mariner meets the mandatory requirements for the new endorsement(s) sought;

(i) The mandatory requirements for officer endorsements are contained in part 11 of this chapter and paragraph (d) of this section.

(ii) The mandatory requirements for rating endorsements are contained in part 12 of this chapter.

(iii) The mandatory requirements for tankerman rating endorsements are contained in part 13 of this chapter.

(iv) The mandatory requirements for STCW endorsements are contained in parts 11 and 12 of this chapter and in the STCW Convention and Code (incorporated by reference, see § 10.103).

(4) The appropriate fee as set forth in § 10.219 of this part;

(5) Any uncanceled MMD, MMC, license, STCW endorsement, or COR held by the applicant. If one or more of these credentials are still valid at the time of application, a photocopy—front, back, and all attachments—will satisfy this requirement. If the applicant submits a photocopy, upon the issuance of the new MMC, the applicant must surrender the old original credential to the Coast Guard. If requested in writing at the time of submission, the old MMD, MMC, license, COR, or STCW endorsement may be returned to the applicant after cancellation;

(6) Applicants for the following endorsements must produce evidence of having passed a chemical test for dangerous drugs or of qualifying for an exemption from testing in § 16.220 of this subchapter:

(i) Any officer endorsement; and

(ii) The first endorsement as able seaman, lifeboatman, qualified member of the engine department, or tankerman.

(7) An applicant for an endorsement where sea service is required must produce discharges or other documentary evidence of service, indicating the name, tonnage, and horsepower of the vessels, dates of service, capacity in which the applicant served, and on what waters;

(8) Applicants who have not submitted evidence within the past three years that they have passed all applicable vision, hearing, medical, and/or physical exams required in § 10.215 for the particular endorsement sought must submit proof, on a Coast Guard-approved form, that the applicant has passed those medical/physical tests and exams; and

(9) Consent to a Coast Guard check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982, as amended.

(d) Additional requirements for an applicant seeking a raise of grade of an officer endorsement:

(1) Sea service acquired before the issuance of an officer endorsement is generally not accepted as any part of the service required for a raise of grade of that endorsement. However, service acquired before issuance of an officer endorsement will be accepted for certain crossovers, endorsements, or increases in scope of an MMC, as appropriate. In the limited tonnage categories for deck officers, total accumulated service is a necessary criterion for most raises of grade; service acquired before the issuance of such officer endorsements will, therefore, be accepted.

(2) No raise of grade may be issued to any naturalized citizen on less experience in any grade than would have been required of a citizen of the United States by birth.

(3) Experience and service acquired on foreign vessels while holding a valid U.S. officer endorsement is creditable for establishing eligibility for a raise of grade, subject to evaluation by the Coast Guard to determine that it is a fair and reasonable equivalent to service acquired on merchant vessels of the United States, with respect to grade, tonnage, horsepower, waters, and operating conditions. An applicant who has obtained the qualifying experience on foreign vessels shall submit satisfactory documentary evidence of such service (including any necessary translations into English) in the forms prescribed by paragraph (c)(7) of this section.

(4) An applicant remains eligible for a raise of grade while on probation as a result of action under part 5 of this chapter. A raise of grade issued to a person on probation will be subject to the same probationary conditions imposed against the applicant's other credentials. The offense for which he or she was placed on probation will be considered on the merits of the case in determining fitness to hold the endorsement applied for. No applicant will be examined for a raise of grade during any period when a suspension without probation or a revocation imposed under part 5 of this chapter is effective against the applicant's credential or while an appeal from these actions is pending.

(5) *Professional examination.* (i) When the Coast Guard finds an applicant's experience and training for raise of grade to be satisfactory, and the applicant is eligible in all other respects, the Coast Guard will authorize a professional examination.

(ii) Oral-assisted examinations may be administered in accordance with § 11.205(f) of this chapter. The Coast Guard will place in the applicant's file a record indicating the subjects covered.

(iii) The general instructions for administration of examinations and the lists of subjects for all officer endorsements appear in part 11, subpart I of this chapter.

§ 10.233 Obligations of the holder of a merchant mariner credential.

(a) The holder of a credential may not voluntarily part with it or place it beyond his or her personal control by pledging or depositing it with any other person, except as required by regulation or as necessary to safeguard the credential. If the holder violates this section, the Coast Guard may pursue suspension or revocation of the license, MMD, COR, or MMC under the provisions of part 5 of this chapter.

(b) Whenever a mariner loses a credential, he or she must immediately report the loss to the Coast Guard. The report must be made in writing, giving the facts incident to its loss.

(c) Invalid credentials must be returned to the Coast Guard. Upon written request, the Coast Guard will return the cancelled credential to the mariner.

§ 10.235 Suspension or revocation of merchant mariner credentials.

(a) Any MMC or endorsement is subject to suspension or revocation on the same grounds, in the same manner, and with like procedure as provided in 46 U.S.C. chapter 77.

(b) When any individual's credential is revoked, it is no longer valid for any purpose, and any MMC subsequently requested must be applied for as an original. When an endorsement on an individual's MMC is revoked, it is no longer valid, and any endorsement of the same type subsequently requested must be applied for as an original. When an officer's endorsement is revoked, the Coast Guard will issue an MMC containing any rating endorsement for which the holder is qualified.

(c) An applicant who has had a TWIC, credential, or endorsement revoked, and who is applying for a subsequent MMC or endorsement, must state in his or her application the date of revocation, the serial number of the document revoked, and the type of document or endorsement revoked.

(d) A person whose credential or endorsement has been revoked or suspended without probation may not be issued a replacement credential or endorsement without approval of the Commandant. If a mariner has multiple endorsements and one or more, but not all, of those endorsements are suspended or revoked, the mariner may apply for a replacement MMC reflecting those endorsements for which the mariner remains qualified.

(e) When a credential or endorsement that is about to expire has been suspended, the renewal of the credential or endorsement will be withheld until expiration of the suspension period.

(f) An applicant for renewal or return of a credential with endorsement as master or mate (pilot) of towing vessels whose most recent credential has been suspended or revoked by an administrative law judge for incompetence must complete the practical demonstration required under § 10.227(d)(8)(vi)(A).

(g) Beginning April 15, 2009, if the Coast Guard is advised by the Transportation Security Administration (TSA) that a mariner has either been denied a TWIC or their TWIC has been revoked, the Coast Guard may initiate suspension and revocation action against the mariner's MMC, license, MMD, and COR under 46 U.S.C. 7702 and 7703. During the subsequent suspension and revocation proceeding, the TSA decision to deny issuance of, or to revoke, a mariner's TWIC will not be subject to review, and the mariner's failure to hold a TWIC will be treated by the Coast Guard as proof that the mariner is not eligible for an MMC, license, MMD or COR.

(h) Beginning April 15, 2009, a mariner that has either been denied issuance of a TWIC or whose TWIC has been revoked for non-administrative reasons (e.g., being lost or stolen, not functioning, or having a misspelling) will be deemed ineligible for an MMC, license, MMD or COR.

§ 10.237 Right of appeal.

(a) If the Coast Guard refuses to grant an applicant an MMC or endorsement, a written statement listing the reason(s) for denial will be provided to the applicant.

(b) Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal under the provisions of subpart 1.03 of part 1 of this chapter.

(c) The Coast Guard will not review decisions made by the Transportation Security Administration to suspend, revoke, or deny a mariner's TWIC.

§ 10.239 Quick reference table for MMC requirements.

Table 10.239 provides a guide to the requirements for officer endorsements. Provisions in the reference section are controlling.

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Addendum A: Oversized Tables

Table 10.239.

Endorsement category	Minimum age	Citizenship	Medical and physical exam	Experience	Recommendations and character check	Firefighting	Professional exam	Demonstration of professional ability	Recency of service	First aid and CPR
Master, mates and operators of uninspected passenger vessels (original)	21, 11.201(e) Note: exceptions	U.S., 11.201(d) Note: exception for OUPV	Yes, 10.215 Note: exceptions	Yes, 11.205 (b); subpart D	11.205(c)	11.205(d) Note: exceptions	Yes, 11.205 (f); 11.903; 11.910 Note: 11.903(b)	Yes, 11.205(g); 11.901(c); 11.903(c)	Yes, 3 months in past 3 years, 11.201 (c)	11.205(e) Note: exceptions
Engineers (original)	21, 11.201(e) Note: exceptions	U.S., 11.201(d) no exceptions	Yes, 10.215 Note: exceptions	Yes, 11.205 (b) ; subpart E	11.205(c)	11.205(d)	11.205(f); 11.903; 11.950	Yes, 11.205(g); 11.901(c); 11.903(c)	Yes, 3 months in past 3 years, 11.201 (c)	11.205(e) Note: exceptions
Officer raises of grade	21, 11.201(e) Note: exceptions	U.S., 11.201(d) no exceptions	Yes, 10.215 Note: exceptions	Yes, 10.231 (c) ; subpart D and E	N/A	Yes; 10.231 (e)	Yes, 10.231(d); 11.903; 11.910; 11.920; 11.950	Yes, 11.205(g); 11.901(c); 11.903(c)	Yes, 3 months in past 3 years, 11.201 (c)	N/A
Officer renewals	N/A	U.S., 11.201(d) no exceptions	Yes, 10.215 Note: exceptions	Yes, 10.227 (g) Note: exceptions	N/A	N/A	10.227(g)	Towing officers, 10.227(i)	Yes, 1 year in past 5, 10.227(g) Note: alternative	N/A
Pilot	21, 46 USC 7101	U.S., 11.201(d) no exceptions	Yes, 10.215 Note: exceptions	Yes, 11.703	11.205(c)	N/A	11.707; 11.903; 11.910	N/A	Yes, 11.703, 11.75(e), 11.713	11.205(e) Note: exceptions
Towing vessels	21, Master 19, Mate 18, App. Mate 11.201(e)	U.S., 11.201(d) no exceptions	Yes, 10.215 Note: exceptions	Yes, 10.464; 10.465; 10.466	11.205(c)	Yes, 11.205(d) oceans	Yes, 11.205 (f); 11.903; 11.910 Note: 11.903(b)	Yes, 11.464; 11.465; 11.205(g); 11.901(c)	Yes, 3 months in past 3 years, 11.201 (c)	11.205(e) Note: exceptions
Uninspected fishing industry vessels	21, 11.201(e) Note: exceptions	U.S., 11.201(d) no exceptions	Yes, 10.215 Note: exceptions	Deck: 11.462; Eng: 11..530	11.205(c)	11.205(d) Note: exceptions	Yes, 11.205 (f); 11.903; 11.910 Note: 11.903(b)	N/A	Yes, 3 months in past 3 years, 11.201 (c)	11.205(e) Note: exceptions
Radio officer	19, 11.201(e)(1)	U.S., 11.201(d) no exceptions	Yes, 10.215 Note: exceptions	11.603	11.205(c)	N/A	N/A	N/A	N/A	11.205(e) Note: exceptions
Staff	N/A	U.S.,	Yes, 10.215	11.807	11.205(c)	N/A	N/A	N/A	N/A	N/A

officer		11.201(d) no exceptions	Note: exceptions							
Staff officer renewals	N/A	U.S., 11.201(d) no exceptions	Yes, 10.215 Note: exceptions	10.227 (g) (5)	N/A	N/A	N/A	N/A	N/A	N/A
Offshore installation manager, barge supervisor, ballast control operator	21, 11.201(e) Note: exceptions	U.S., 11.201(d) no exceptions	Yes, 10.215 Note: exceptions	OIM: 11.470 B.S.: 11.472 BCO: 11.474 Eng: 11.540	11.205(c)	11.205(d)	Yes, 11.205 (f); 11.903; 11.920	N/A	Yes, 3 months in past 3 years, 11.201 (c)	11.205(e) Note: exceptions
Able seamen	18, 12.05-3 (a)(1)	U.S. or alien admitted for permanent residence, 10.221	Yes, 10.215 Note: exceptions	12.05-7	N/A	N/A	Yes, 12.05-3 (a); 12.05-9	Yes, 12.05-3 (c); 12.05-9	Renewal only, 1 year in past 5, 10.227(g) Note: alternative	12.05-3(b)
Qualified members of engine department	N/A	U.S. or alien admitted for permanent residence, 10.221	Yes, 10.215 Note: exceptions	12.15-7	N/A	N/A	Yes, 12.15-9	Yes, 12.15-3(d)	Renewal only, 1 year in past 5, 10.227(g) Note: alternative	12.15-3(d)
Entry level ratings	N/A	U.S. or alien admitted for permanent residence, 10.221	Yes, 10.215 Note: exceptions	N/A	N/A	N/A	N/A	N/A	N/A	N/A

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■ 88. Revise the heading to newly redesignated part 11 to read as follows:

PART 11—REQUIREMENTS FOR OFFICER ENDORSEMENTS

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

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

■ 90. In newly redesignated § 11.101—

■ a. Revise paragraphs (a) and (a)(1) to read as set out below;

■ b. In paragraph (a)(2), in the last sentence, remove the words ''in 1995'' and ''certificate or'';

■ c. In paragraph (b), remove the word ''licenses'' and add, in its place, the words ''officer endorsements''; remove the words ''all licensed personnel shall'' and add, in their place, the words ''each officer credentialed under this part must''; and, after the words ''characteristics of'', remove the word ''each'' and add, in its place, the word ''a''; and

■ d. In paragraph (c)(1), remove the words ''license or license endorsement'' and add, in their place, the words ''officer endorsement'':

§ 11.101 Purpose of regulations.

(a) These regulations provide—

(1) A means of determining the qualifications an applicant must possess to be eligible for an officer endorsement as a staff officer, deck officer, engineer, pilot, or radio officer on merchant vessels, or for an endorsement to operate uninspected passenger vessels; and

* * * * *

■ 91. Revise newly redesignated § 11.102 to read as follows:

§ 11.102 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental Standards (CG–5221), 2100 Second Street, SW., Washington, DC 20593–0001, 202–372–1405 and is available from the sources indicated in this section.

(b) *International Maritime Organization (IMO),* 4 Albert Embankment, London SE1 7SR, England, telephone: + 44 (0)20 7735 7611, *http://www.imo.org:*

(1) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended 1995 (the STCW Convention or the STCW), approved for incorporation by reference in §§ 11.202, 11.304, 11.603; 11.901, 11.903, 11.1005, and 11.1105.

(2) The Seafarers' Training, Certification and Watchkeeping Code, as amended 1995 (the STCW Code), approved for incorporation by reference in §§ 11.202, 11.304, 11.901, 11.903, 11.1005, and 11.1105.

§ 11.103 [Removed and Reserved]

■ 92. Remove and reserve newly redesignated § 11.103.

§ 11.105 [Removed and Reserved]

■ 93. Remove and reserve newly redesignated § 11.105.

■ 94. In newly redesignated § 11.107, revise paragraphs (b)(1), (b)(2), and (b)(3) to read as follows:

§ 11.107 Paperwork approval.

* * * * *

(b) * * *

(1) OMB 1625–0040–46 CFR 11.201, 11.202, 11.205, 11.470, 11.472, 11.474, 11.542, and 11.544.

(2) OMB 1625–028–46 CFR 11.302, 11.303, 11.304, 11.480.

(3) OMB 1625–0079–46 CFR 11.304 and 11.309.

§ 11.109 [Removed and Reserved]

■ 95. Remove and reserve newly redesignated § 11.109.

§ 11.110 [Removed and Reserved]

■ 96. Remove and reserve newly redesignated § 11.110.

§ 11.111 [Removed and Reserved]

■ 97. Remove and reserve newly redesignated § 11.111.

§ 11.112 [Removed and Reserved]

■ 98. Remove and reserve newly redesignated § 11.112.

§ 11.113 [Removed and Reserved]

■ 99. Remove and reserve newly redesignated § 11.113.

Subpart B—General Requirements for Officer Endorsements

■ 100. Revise the heading to subpart B as set forth above.

■ 101. Revise newly redesignated § 11.201 to read as follows:

§ 11.201 Eligibility for officer endorsements and STCW endorsements, general.

(a) In addition to the requirements of part 10 of this chapter, the applicant for an officer endorsement, whether original, renewal, duplicate, or raise of grade, must establish to the satisfaction of the Coast Guard that he or she possesses all the qualifications necessary (including but not limited to age, experience, character references and recommendations, physical health, citizenship, approved training, passage of a professional examination, a test for dangerous drugs, and when required by this part, a practical demonstration of skills) before the Coast Guard will issue a merchant mariner credential (MMC).

(b) Except as provided in § 11.467(h) of this part, an applicant for an officer endorsement must demonstrate an ability to speak and understand English as found in the navigation rules, aids to navigation publications, emergency equipment instructions, machinery instructions, and radiotelephone communications instructions.

(c) An applicant for an officer endorsement must have at least three months of qualifying service on vessels of appropriate tonnage or horsepower within the three years immediately preceding the date of application.

(d) No officer endorsement may be issued to any person who is not a citizen of the United States with the exception of operators of uninspected passenger vessels that are not documented under the laws of the United States.

(e) Except as specified in this paragraph, no officer endorsement may be issued to a person who has not attained the age of 21 years. The required evidence of age may be established using any of the items submitted to establish citizenship set out in 49 CFR 1572.17 of this chapter:

(1) An endorsement may be granted to an applicant who has reached the age of 19 years as:

(i) Master of near coastal, Great Lakes and inland, inland, or river vessels of 25–200 GRT;

(ii) Third mate;

(iii) Third assistant engineer;

(iv) Mate of vessels of 200–1,600 GRT;

(v) Ballast control operator (BCO);

(vi) Assistant engineer (MODU);

(vii) Assistant engineer of fishing industry vessels;

(viii) Mate (pilot) of towing vessels;

(ix) Radio officer;

(x) Assistant engineer (limited oceans); or

(xi) Designated duty engineer of vessels of not more than 4,000 horsepower.

(2) An endorsement may be granted to an applicant who has reached the age of 18 years as:

(i) Limited master of near-coastal vessels of not more than 100 GRT;

(ii) Limited master of Great Lakes and inland vessels of not more than 100 GRT;

(iii) Mate of Great Lakes and inland vessels of 25–200 GRT;

(iv) Mate of near coastal vessels of 25–200 GRT;

(v) Operator of uninspected passenger vessels (OUPV);

(vi) Designated duty engineer of vessels of not more than 1,000 horsepower; or

(vii) Apprentice mate (steersman) of towing vessels.

(f) Persons serving or intending to serve in the merchant marine service are encouraged to take the earliest opportunity to ascertain, through examination, whether their visual acuity, color vision, hearing, and general physical condition where required, are such as to qualify them for service in that profession. Any physical impairment or medical condition which would render an applicant incompetent to perform the ordinary duties required of an officer at sea is cause for denial of an officer endorsement.

(g) Applications for an original officer's endorsement, raises of grade, extensions of route, or STCW endorsements must be current and up to date with respect to service and the physical examination, as appropriate. Physical examinations and applications are valid for 12 months from the date the application is approved.

(h) Applicants for an endorsement as OUPV must meet the requirements for an officer endorsement.

(i) The Officer in Charge, Marine Inspection (OCMI), may modify the service and examination requirements in this part to satisfy the unique qualification requirements of an applicant. The OCMI may also lower the age requirement for OUPV applicants. The authority granted by an officer endorsement will be restricted to reflect any modifications made under the authority of this paragraph. These restrictions may not be removed without the approval of the OCMI issuing the license or officer endorsement.

■ 102. Revise newly redesignated § 11.202 to read as follows:

§ 11.202 STCW endorsements.

(a) *General.* When an original MMC is issued, renewed, upgraded, or otherwise modified, the OCMI will determine whether the applicant needs to have an STCW endorsement for service on a seagoing vessel and then, if the applicant is qualified, will issue the appropriate endorsement. The OCMI will also issue an STCW endorsement at other times, if circumstances so require and if the applicant is qualified to hold the endorsement.

(b) *Basic safety training or instruction.* Except as provided in paragraph (f) of this section, an STCW endorsement will be issued only when the candidate provides evidence of having achieved or, if training has been completed, having maintained the minimum standards of competence for the following four areas of basic safety within the previous five years upon assessment of a practical demonstration of skills and abilities:

(1) Personal survival techniques as set out in table A–VI/1–1 of the STCW Code (incorporated by reference, see § 11.102).

(2) Fire prevention and firefighting as set out in table A–VI/1–2 of the STCW Code (incorporated by reference, see § 11.102).

(3) Elementary first aid as set out in table A–VI/1–3 of the STCW Code (incorporated by reference, see § 11.102).

(4) Personal safety and social responsibilities as set out in table A–VI/1–4 of the STCW Code (incorporated by reference, see § 11.102).

(c) *Competence in the use of Automatic Radar-Plotting Aids (ARPA).* (1) Subject to paragraphs (c)(2) and (f) of this section, each candidate for an STCW endorsement as master or mate for service on vessels in ocean or near-coastal service must present a certificate of completion from an approved course or from accepted training on an ARPA simulator. The course or training must be sufficient to establish that the applicant is competent to maintain safe navigation through the proper use of ARPA by correctly interpreting and analyzing the information obtained from that device and taking into account both the limitations of the equipment and the prevailing circumstances and conditions. The simulator used in the course or training must meet or exceed the performance standards established under STCW Regulation I/12 (incorporated by reference, see § 11.102).

(2) Training and assessment in the use of ARPA are not required for mariners serving exclusively on vessels not fitted with ARPA. However, when any mariner so serving has not completed it, his or her STCW endorsement will indicate this limitation.

(d) *Endorsement for operator of radio in the Global Maritime Distress and Safety System (GMDSS).* (1) Subject to paragraphs (d)(2) and (f) of this section, each candidate for an STCW endorsement as master or mate for service on vessels in ocean or near-coastal service shall present:

(i) A certificate for operator of radio in the GMDSS issued by the Federal Communications Commission (FCC); and

(ii) A certificate of completion from a Coast Guard-approved or accepted course for operator of radio in the GMDSS or from another approved or accepted program of training and assessment covering the same areas of competence. The course or program must be sufficient to establish that the applicant is competent to perform radio duties on a vessel participating in the GMDSS and meets the standard of competence under STCW Regulation IV/2 (incorporated by reference, see § 11.102).

(2) Paragraph (d)(1) of this section does not apply to a candidate intending to serve only as a pilot or intending to serve only on vessels not required to comply with the provisions of the GMDSS in Chapter IV of the Convention for the Safety of Life at Sea, 1974, as amended (SOLAS). SOLAS is available from the *International Maritime Organization (IMO),* 4 Albert Embankment, London SE1 7SR, England, telephone: + 44 (0)20 7735 7611, *http://www.imo.org.*

(3) Each candidate presenting a certificate described in paragraph (d)(1) of this section may receive a GMDSS endorsement.

(e) *Procedures for bridge team work.* Except as otherwise provided in paragraph (f) of this section, each candidate for an STCW endorsement as master or mate for service on vessels in ocean or near-coastal service must present sufficient documentary proof that he or she understands, and can effectively apply procedures for, bridge team work as an essential aspect of maintaining a safe navigational watch, taking into account the principles of bridge-resource management enumerated in Section B–VIII/2 of the STCW Code.

(f) Notwithstanding paragraph (b) through (e) of this section, § 11.304, and § 11.901, each mariner found qualified to hold any of the following officer

endorsements will also be entitled to hold an STCW endorsement corresponding to the service or other limitations on the MMC, because the vessels concerned are not subject to further obligation under STCW because of their special operating conditions as small vessels engaged in domestic voyages:

(1) Masters, mates, or engineers endorsed for service on small passenger vessels that are subject to subchapter T or K of this chapter and that operate beyond the boundary line.

(2) Masters, mates, or engineers endorsed for service on seagoing vessels of less than 200 gross register tons (GRT), other than passenger vessels subject to subchapter H of this chapter.

(g) No mariner serving on, and no owner or operator of any of the following vessels, need hold an STCW endorsement, because they are exempt from application of STCW:

(1) Uninspected passenger vessels as defined in 46 U.S.C. 2101(42).

(2) Fishing vessels as defined in 46 U.S.C. 2101(11)(a).

(3) Fishing vessels used as fish-tender vessels as defined in 46 U.S.C. 2101(11)(c).

(4) Barges as defined in 46 U.S.C. 2101(2), including non-self-propelled mobile offshore drilling units.

(5) Vessels operating exclusively on the Great Lakes or on the inland waters of the U.S. in the Straits of Juan de Fuca inside passage.

§ 11.203 [Removed and Reserved]

■ 103. Remove and reserve newly redesignated § 11.203.

§ 11.204 [Removed and Reserved]

■ 104. Remove and reserve newly redesignated § 11.204.

■ 105. Revise newly redesignated § 11.205 to read as follows:

§ 11.205 Requirements for original officer endorsements and STCW endorsements.

(a) *General.* In addition to the requirements in part 10 of this chapter and §§ 11.201 through 11.203 of this part, the applicant for an original officer endorsement must also satisfy the requirements of this section.

(b) *Experience or training.* (1) All applicants for original officer or STCW endorsements shall present to the OCMI letters, discharges, or other documents certifying the amount and character of their experience and the names, tonnage, and horsepower of the vessels on which acquired. The OCMI must be satisfied as to the authenticity and acceptability of all evidence of experience or training presented. Certificates of discharge are returned to the applicant. The OCMI shall note on the application that service represented by these documents has been verified. All other documentary evidence of service, or authentic copies thereof, is filed with the application. An MMC is not considered as satisfactory evidence of any qualifying experience.

(2) No original officer or STCW endorsement may be issued to any naturalized citizen based on less experience in any grade or capacity than would have been required of a citizen of the United States by birth.

(3) Experience and service acquired on foreign vessels is creditable for establishing eligibility for an original officer or STCW endorsement, subject to evaluation by the OCMI to determine that it is a fair and reasonable equivalent to service acquired on merchant vessels of the United States, with respect to grade, tonnage, horsepower, waters, and operating conditions. An applicant who has obtained qualifying experience on foreign vessels shall submit satisfactory documentary evidence of such service (including any necessary translation into English) in the forms prescribed by paragraph (b)(1) of this section.

(4) No applicant for an original officer or STCW endorsement who is a naturalized citizen, and who has obtained experience on foreign vessels, will be given an original officer endorsement in a grade higher than that upon which he or she has actually served while acting under the authority of a foreign credential.

(c) *Character check and references.* (1) Each applicant for an original officer or STCW endorsement must submit written recommendations concerning the applicant's suitability for duty from a master and two other individuals holding officer endorsements or licenses on vessels on which the applicant has served.

(i) For an officer endorsement as engineer or as pilot, at least one of the recommendations must be from the chief engineer or pilot, respectively, of a vessel on which the applicant has served.

(ii) For an officer endorsement as engineer where service was obtained on vessels not carrying a credentialed engineer and for an officer endorsement as master or mate (pilot) of towing vessels, the recommendations may be by recent marine employers with at least one recommendation from a master, operator, or person in charge of a vessel upon which the applicant has served.

(iii) For an officer endorsement as offshore installation manager, barge supervisor, or ballast control operator, at least one recommendation must be from an offshore installation manager of a unit on which the applicant has served.

(iv) Where an applicant qualifies for an endorsement through an approved training school or program, one of the character references must be an official of that school or program.

(v) For an endorsement for which no commercial experience may be required, such as master or mate 25–200 gross tons, OUPV, radio officer, or certificate of registry, the applicant may have the written recommendations of three persons who have knowledge of the applicant's suitability for duty.

(vi) A person may apply for an original officer or STCW endorsement, or officer or STCW endorsement of a different type, while on probation as a result of administrative action under part 5 of this chapter. The offense for which the applicant was placed on probation will be considered in determining his or her fitness to hold the endorsement applied for. An officer or STCW endorsement issued to an applicant on probation will be subject to the same probationary conditions as were imposed against the applicant's other credential. An applicant may not take an examination for an officer or STCW endorsement during any period when a suspension without probation or a revocation is effective against the applicant's currently held license, merchant mariner's document, or MMC, or while an appeal from these actions is pending.

(vii) If an original license, certificate of registry, or officer endorsement has been issued when information about the applicant's habits of life and character is brought to the attention of the OCMI, if such information warrants the belief that the applicant cannot be entrusted with the duties and responsibilities of the license, certificate of registry, or endorsement issued, or if such information indicates that the application for the license, certificate of registry, or endorsement was false or incomplete, the OCMI may notify the holder in writing that the license, certificate of registry, or endorsement is considered null and void, direct the holder to return the credential to the OCMI, and advise the holder that, upon return of the credential, the appeal procedures of § 10.237 of this chapter apply.

(d) *Firefighting certificate.* Applicants for officer endorsements in the following categories must present a certificate of completion from a firefighting course of instruction which has been approved by the Commandant. The course must meet both the basic and advanced sections of the International Maritime Organization's

(IMO) Resolution A.437 (XI) *Training of Crews in Firefighting.* (Available from the *International Maritime Organization (IMO),* 4 Albert Embankment, London SE1 7SR, England, telephone: + 44 (0)20 7735 7611, *http://www.imo.org*). The course must have been completed within five years before the date of application for the officer endorsement requested.

(1) Officer endorsement as master on vessels of 200 GRT or less in ocean service.

(2) Officer endorsements as master or mate on vessels of more than 200 GRT.

(3) All officer endorsements for master or mate (pilot) of towing vessels, except apprentice mate (steersman) of the vessels, on oceans.

(4) All officer endorsements for MODUs.

(5) All officer endorsements for engineers.

(e) *First aid and cardiopulmonary resuscitation (CPR) course certificates.* All applicants for an original officer endorsement, except as provided in §§ 11.429, 11.456, and 11.467 of this part, must present to the OCMI:

(1) A certificate indicating completion of a first aid course not more than one year from the date of application from:

(i) The American National Red Cross *Standard First Aid and Emergency Care* or *Multi-media Standard First Aid course;*

(ii) A Coast Guard-approved first aid training course; or

(iii) A course the OCMI determines meets or exceeds the standards of the American Red Cross courses; and

(2) A currently valid certificate of completion of a CPR course from either:

(i) The American National Red Cross;

(ii) The American Heart Association;

(iii) A Coast Guard-approved CPR training course; or

(iv) A course the OCMI determines meets or exceeds the standards of the American Red Cross or American Heart Association courses.

(f) *Professional Examination.* (1) When the OCMI finds the applicant's experience and training to be satisfactory and the applicant is eligible in all other respects, the OCMI will authorize the examination in accordance with the following requirements:

(i) Any applicant for a deck or engineer officer endorsement limited to vessels not exceeding 500 GRT, or an officer endorsement limited to uninspected fishing-industry vessels, may request an oral-assisted examination in lieu of any written or other textual examination. If there are textual questions that the applicant has difficulty reading and understanding, the OCMI will offer the oral-assisted examination. Each officer endorsement based on an oral-assisted examination is limited to the specific route and type of vessel upon which the applicant obtained the majority of service.

(ii) The general instructions for administration of examinations and the lists of subjects for all officer endorsements appear in subpart I of this part. The OCMI will place in the applicant's file a record indicating the subjects covered.

(2) When the application of any person has been approved, the applicant should take the required examination as soon as practicable. If the applicant cannot be examined without delay at the office where the application is made, the applicant may request that the examination be given at another office.

(3) The qualification requirements for radar observer are contained in § 11.480 of this part.

(4) An examination is not required for a staff officer or radio officer endorsement.

(g) *Practical demonstration of skills.* Each candidate for an original STCW endorsement must successfully complete any practical demonstrations required under this part and appropriate to the particular endorsement concerned, to prove that he or she is sufficiently proficient in skills required under subpart I of this part. The OCMI must be satisfied with the authenticity and acceptability of all evidence that each candidate has successfully completed the demonstrations required under this part in the presence of a designated examiner. The OCMI will place a written or electronic record of the skills required, the results of the practical demonstrations, and the identification of the designated examiner in whose presence the requirements were fulfilled in the file of each candidate.

§ 11.207 [Removed and Reserved]

■ 106. Remove and reserve newly redesignated § 11.207.

§ 11.209 [Removed and Reserved]

■ 107. Remove and reserve newly redesignated § 11.209.

§ 11.210 [Removed and Reserved]

■ 108. Remove and reserve newly redesignated § 11.210.

■ 109. In newly redesignated § 11.211—

■ a. Revise the section heading;

■ b. In paragraph (a), remove the words ''licensing purposes'' and add, in their place, the words, ''the purposes of this part''; and remove the words ''officials or licensed masters'' and add, in their place, the words ''officials, or individuals holding an officer endorsement or license as master'';

■ c. In paragraph (b) introductory text, remove the word ''license'' and add, in its place, the words ''officer endorsement'';

■ d. Revise paragraph (c); and

■ e. In paragraph (d), in the first sentence, remove the word ''licenses'' and add, in its place, the words ''officer endorsement''; and in the second sentence, remove the word ''license'' and add, in its place, the words ''officer endorsement''.

The revisions read as follows:

§ 11.211 Creditable service and equivalents for officer endorsements.

* * * * *

(c) Service on mobile offshore drilling units is creditable for raise of grade of officer endorsement. Evidence of one year's service as mate or equivalent while holding a license as third mate, or as engineering officer of the watch or equivalent while holding an officer endorsement or license as third assistant engineer, is acceptable for a raise of grade to second mate or second assistant engineer, respectively; however, any subsequent raises of grade of unlimited, nonrestricted officer licenses or endorsements must include a minimum of six months of service on conventional vessels.

* * * * *

§ 11.213 [Amended]

■ 110. In newly redesignated § 11.213—

■ a. In paragraph (a), in the first sentence, remove the word ''licenses'' and add, in its place, the words ''officer endorsements''; and in the fifth sentence, remove the word ''license'' and add, in its place, the words ''officer endorsement''; and in the last sentence, remove the word ''license'' and add, in its place, the words ''officer endorsement'';

■ b. In paragraph (b), remove the words ''licensing purposes'' wherever they appear and add, in their place, the words ''the purposes of this part'';

■ c. In paragraph (d), remove the word ''licenses'' wherever it appears and add, in its place, the words ''officer endorsements''; after the words ''submitted for the'' remove the word ''license'' and add, in its place, the word ''endorsement''; and after the words ''submitted for an original'', remove the word ''license'' and add, in its place, the words ''officer endorsement''; and

■ d. In paragraph (e), after the words ''in which a license'', add the words ''or officer endorsement''.

§ 11.215 [Removed and Reserved]

■ 111. Remove and reserve § 11.215.

§ 11.217 [Amended]

■ 112. In newly redesignated § 11.217—
■ a. In the section heading, remove the word ''licenses'' and add, in its place, the words ''officer endorsements'';
■ b. In paragraph (a)(1), after the words ''deck and engineer unlimited'', remove the word ''licenses'' and add, in its place, the words ''officer endorsements''; and remove the words ''table 10.109 in § 10.109'' and add, in their place, the words ''table 10.219(a) in § 10.219 of this chapter'';
■ c. In paragraph (a)(2), after words ''deck and engineer'', remove the words ''license'' and add, in its place, the words ''officer endorsement''; and remove the words ''table 10.109 in § 10.109'' and add, in their place, the words ''table 10.219(a) in § 10.219 of this chapter''; and
■ d. In paragraph (b), remove the word ''license'' and add, in its place, the word ''endorsement''; and remove the words ''the applicant is furnished'' and add, in their place, the words ''the Coast Guard will provide the applicant''.

§ 11.219 [Removed and Reserved]

■ 113. Remove and reserve newly redesignated § 11.219.

§ 11.221 [Removed and Reserved]

■ 114. Remove and reserve newly redesignated § 11.221.

§ 11.223 [Removed and Reserved]

■ 115. Remove and reserve newly redesignated § 11.223.

§ 11.302 [Amended]

■ 116. In newly redesignated § 11.302(e), remove the words ''parts 10, 12, 13 or 15,'' and add, in their place, the words ''parts 10, 11, 12, 13, or 15''.
■ 117. Revise newly designated § 11.304 paragraphs (a), (c), (d), (e), (f), (g)(2), (g)(3), (g)(6), (g)(7), (h) introductory text, (h)(5), (h)(7), (h)(8), and (j) to read as follows:

§ 11.304 Substitution of training for required service, use of training-record books, and use of towing officer assessment records.

(a) Satisfactory completion of certain training courses approved by the Commandant may be substituted for a portion of the required service for many deck and engineer officer endorsements and for qualified rating endorsements. The list of all currently approved courses of instruction, including the equivalent service and applicable endorsements, is maintained by the National Maritime Center. Satisfactory completion of an approved training course may be substituted for not more than two-thirds of the required service on deck or in the engine department for deck or engineer officer endorsements, respectively, and qualified rating endorsements.

* * * * *

(c) Training obtained before receiving an officer endorsement may not be used for subsequent raises of grade.

(d) Simulator training in combination with a Coast Guard-approved training course may be submitted to the Commanding Officer, National Maritime Center, for evaluation and determination of equivalency to required sea service. Simulator training cannot be substituted for recency requirements, but may substitute for a maximum of 25 percent of the required service for any officer endorsement transaction.

(e) Except as provided in § 11.202 of this part, when a candidate both applies for an STCW endorsement as OICNW, on the basis of training or sea service, and uses completion of approved training to substitute for required service, then not less than one year of the remaining service must be part of approved training that meets the appropriate requirements of Chapter II of STCW (incorporated by reference, see § 11.102) and the requirements of subpart C of this part. The training of a candidate must be documented in a Coast Guard-accepted training-record book.

(f) Except as provided in § 11.202 of this part, each candidate who applies for an STCW endorsement as an OICEW on the basis of training or sea service for service on seagoing vessels, shall complete onboard training as part of approved training that meets the appropriate requirements of Chapter III of STCW (incorporated by reference, see § 11.102) and the requirements of subpart C of this part. The training must be documented in a Coast Guard-accepted training-record book.

(g) * * *

(2) The tasks to be performed or the skills to be demonstrated, with reference to the standards of competence set forth in the tables of the appropriate sections in part A of the STCW Code (incorporated by reference, see § 11.102).

(3) The criteria to be used in determining that the tasks or skills have been performed properly, again with reference to the standards of competence set forth in the tables of the appropriate sections in part A of the STCW Code (incorporated by reference, see § 11.102).

* * * * *

(6) The identity of each qualified instructor, including any MMC endorsements, license, or document held, and the instructor's signature.

(7) The identity of each designated examiner, when any assessment of competence is recorded, including any MMC endorsement, license, or document held, and the examiner's signature confirming that his or her initials certify that he or she has witnessed the practical demonstration of a particular task or skill by the candidate.

(h) Each applicant for an endorsement as master or mate (pilot) of towing vessels, and each master or mate of self-propelled vessels of greater than 200 GRT seeking an endorsement for towing vessels, shall complete a towing officers' assessment record that contains at least the following:

* * * * *

(5) A place for a qualified instructor or credentialed officer (with authority to operate a towing vessel) to indicate by his or her initials that the candidate has received training in the proper performance of the tasks or skills.

* * * * *

(7) Identification of each qualified instructor or credentialed officer (with authority to operate a towing vessel) by full name, home address, employer, job title, ship name or business address, MMC, license, or document held, and personal signature.

(8) Identification of each designated examiner by full name, home address, employer, job title, ship name or business address, serial number of the TWIC, MMC, license, or document held, and personal signature confirming that his or her initials certify that he or she has witnessed the practical demonstration of a particular task or skill by the candidate.

* * * * *

(j) Substitution of a training program in lieu of required service for an endorsement as mate (pilot) of towing vessels is governed by § 11.465(a) and Table 11.465–1 of this part.

§ 11.309 [Amended]

■ 118. In newly redesignated § 11.309—
■ a. In paragraph (a) introductory text, remove the citation ''§ 10.302'' and add, in its place, the citation ''§ 11.302''; after the words ''hold an STCW'', remove the words ''certificate or''; and remove the words ''for service on or after February 1, 2002'';

■ b. In paragraph (a)(3)(iii), after the words ''level of license,'' add the word ''officer'';
■ c. In paragraph (a)(4), after the words ''maritime license'', add the words '', MMC,'';
■ d. In paragraph (b), in the second sentence, remove the word ''licenses'' and add, in its place, the word ''officer'';
■ e. In paragraph (c)(2), remove the words ''(G–MOC)'' and add, in their place, the words ''(CG–543)''; and
■ f. In paragraph (c)(3), remove the words ''STCW endorsement'' and add, in their place, the words ''officer or STCW endorsements''.

Subpart D—Professional Requirements for Deck Officers

■ 119. Revise the heading for subpart D to read as set forth above.
■ 120. Revise newly redesignated § 11.401 to read as follows:

§ 11.401 Ocean and near-coastal officer or STCW endorsements.

(a) Any license or MMC endorsement for service as master or mate on ocean waters qualifies the mariner to serve in the same grade on any waters, subject to the limitations of the endorsement.

(b) A license or MMC endorsement issued for service as master or mate on near-coastal waters qualifies the mariner to serve in the same grade on near-coastal, Great Lakes, and inland waters, subject to the limitations of the endorsement.

(c) Near-coastal endorsements for any gross tons require the same number of years of service as the ocean-unlimited endorsements. The primary differences in these endorsements are the nature of the service and the professional examination as explained in subpart I of this part.

(d) A mariner having a master or mate near-coastal license or MMC endorsement obtained with ocean service may have an MMC endorsed for ocean service by completing the appropriate examination deficiencies, provided that the additional service requirements of paragraph (e) of this section do not apply.

(e) Master or third mate near-coastal unlimited endorsements may be obtained by completing the prescribed examination in subpart I of this part and satisfying the requirements of paragraph (g) of this section while holding a license or MMC endorsement as unlimited master or mate, respectively, upon Great Lakes and inland waters. To have a near-coastal-unlimited endorsement obtained in this manner endorsed for ocean service, the mariner must obtain 12 months of service as a deck-watch officer or higher on ocean waters on vessels of 1,600 GRT or over, in addition to completing the examination topics.

(f) Masters and mates endorsements for service on vessels of more than 200 gross tons may be endorsed for sail or auxiliary sail as appropriate. The applicant must present the equivalent total qualifying service required for conventional officer endorsements including at least one year of deck experience on that specific type of vessel. For example, for an officer endorsement as a master of vessels of not more than 1,600 gross tons endorsed for auxiliary sail, the applicant must meet the total experience requirements for the conventional officer endorsement, including time as mate and the proper tonnage experience, including at least one year of deck service on appropriately sized auxiliary-sail vessels. For an endorsement to serve on vessels of 200 gross tons or less, see individual endorsement requirements.

(g) In order to obtain a master or mate endorsement with a tonnage limit above 200 gross tons, or an endorsement for 200 gross tons or less with an ocean route, whether an original, raise in grade, or increase in the scope of the endorsement authority to a higher tonnage category, the applicant must successfully complete the following training and examination requirements:

(1) Approved firefighting course;

(2) Approved radar-observer course; and

(3) Qualification as an able seaman unlimited or able seaman limited (able seaman special or able seaman offshore supply vessels satisfy the able seaman requirement for endorsements permitting service on vessels of 1,600 gross tons or less).

(h) Each applicant for a deck officer endorsement, which authorizes service on vessels above 1,600 gross tons on ocean or near-coastal waters, whether original or raise of grade, must pass a practical-signaling examination (flashing light). An applicant who fails in practical signaling, but passes every other part of the examination, may be issued an endorsement with a 1,600 gross ton limitation. The tonnage limitation can be removed upon successful completion of the signaling examination.

■ 121. In newly redesignated § 11.402—
■ a. Revise the section heading;
■ b. In paragraph (a), remove the word ''license'' and add, in its place, the word ''endorsement'';
■ c. Revise paragraph (b);
■ d. In paragraph (c)(1), remove the word ''licensed'' and add in its place, the word ''endorsed'';
■ e. In paragraph (c)(2), remove the words ''licensed capacity'' and add, in their place, the words ''capacity as an officer''; after the words ''for which'', remove the word ''licensed'' and add, in its place, the word ''endorsed''; after the words ''next higher grade'', remove the word ''license'' and add, in its place, the word ''endorsement''; and after the words ''limited license'', add the words ''or MMC endorsement'';
■ f. In paragraph (c)(3), after the words ''a license'', add the words ''or endorsement''; and after the words ''third mate's license'', add the words ''or MMC endorsement''; and
■ g. In paragraph (d), after the word ''licenses'', wherever it appears, add the words ''or endorsements''.

The revisions read as follows:

§ 11.402 Tonnage requirements for ocean or near coastal endorsements for vessels of over 1600 gross tons.

* * * * *

(b) If the applicant for an endorsement as master or mate does not have the service on vessels over 1600 gross tons required by paragraph (a) of this section, or is qualifying for third mate under the provisions of § 11.407(c) of this subpart, a tonnage limitation is placed on the endorsement based on the applicant's qualifying experience. The endorsement is limited to the maximum tonnage on which at least 25 percent of the required experience was obtained, or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated. When the calculated limitation equals or exceeds 10,000 gross tons, the applicant is issued an unlimited tonnage endorsement.

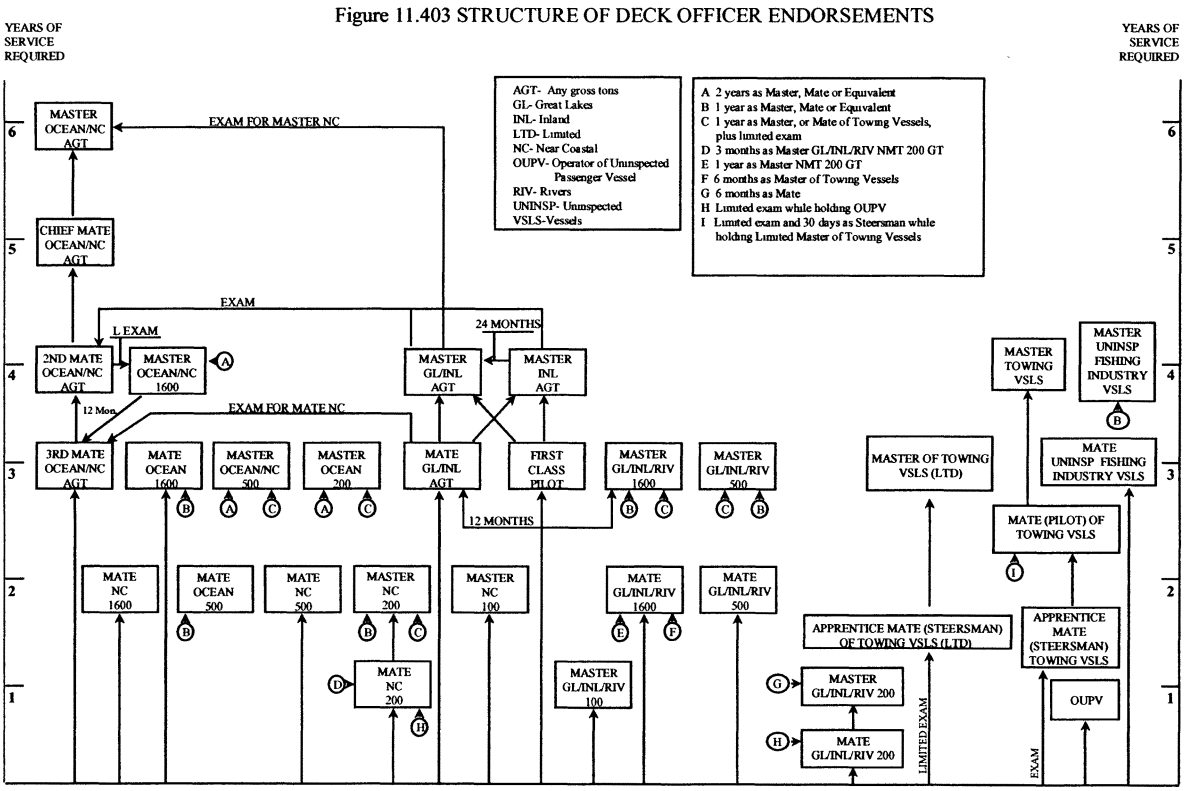
* * * * *

■ 122. Revise § 11.403 to read as follows:

§ 11.403 Structure of deck officer endorsements.

The following diagram illustrates the deck officer endorsement structure, including cross over points. The section numbers on the diagram refer to the specific requirements applicable.

Figure 11.403 STRUCTURE OF DECK OFFICER ENDORSEMENTS



§ 11.404 [Amended]

■ 123. In newly redesignated § 11.404—
■ a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement''; and
■ b. In paragraph (b) introductory text, after the words ''holding a license'', add the words ''or MMC endorsement''.

§ 11.405 [Amended]

■ 124. In newly redesignated § 11.405, after the words ''qualify an applicant for'' remove the word ''license'' and add, in its place, the words ''an endorsement''; and after the words ''holding a license'', add the words ''or MMC endorsement''.

§ 11.406 [Amended]

■ 125. In newly redesignated § 11.406—
■ a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement'';
■ b. In paragraph (a), after the words ''holding a license'', add the words ''or endorsement'';
■ c. In paragraph (b) introductory text, after the words ''holding a license'', add the words ''or MMC endorsement'';
■ d. In paragraph (b)(2), after the words ''holding a certificate'', add the words ''or MMC endorsement''; and
■ e. In paragraph (c), remove the words ''A licensed'' and add, in their place, the words ''An individual holding an endorsement or license as''; and after the words ''may obtain'', remove the words ''a license'' and add, in their place, the words ''an endorsement''.

§ 11.407 [Amended]

■ 126. In newly redesignated § 11.407—
■ a. In paragraph (a) introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement'';
■ b. In paragraph (a)(1), after the words ''a certificate'', add the words ''or endorsement''; and remove the word ''license'' and add, in its place, the words ''officer endorsement'';
■ c. In paragraph (b), remove the words ''a license'' and add, in their place, the words ''an endorsement''; and
■ d. In paragraph (c), after the words ''holding a license'', add the words ''or MMC endorsement''; and after the words ''qualify the applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''.

§ 11.410 [Amended]

■ 127. In newly redesignated § 11.410—
■ a. In the section heading, remove the word ''licenses'' and add, in its place, the words ''officer endorsements'';
■ b. In paragraph (a) introductory text, remove the word ''Licenses'' and add, in its place, the word ''Endorsements'';
■ c. In paragraph (b), remove the word ''license'' and add, in its place, the word ''endorsement''; and
■ d. In paragraph (c), remove the words ''A license'' and add, in their place, the words ''An officer's endorsement''.

§ 11.412 [Amended]

■ 128. In newly redesignated § 11.412—
■ a. In the introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement'';
■ b. In paragraph (a), after the words ''holding a license'', add the words ''or MMC endorsement''; and remove the words ''master, mate master or mate (pilot)'' wherever they appear and add, in their place, the words ''master, mate, master or mate (pilot)''; and
■ c. In paragraph (b), after the words ''holding a license'', add the words ''or MMC endorsement''; and after the words ''eligible for this'', remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 11.414 [Amended]

■ 129. In newly redesignated § 11.414—
■ a. In the introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement''; and
■ b. In paragraph (a), after the words ''holding a license'' add the words ''or MMC endorsement''; and remove the words ''master, mate master or mate

(pilot)'' wherever they appear and add, in their place, the words ''master, mate, master or mate (pilot)''.

§ 11.416 [Amended]

■ 130. In newly redesignated § 11.416 text, remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''holding a certificate'', add the words ''or endorsement''.

§ 11.418 [Amended]

■ 131. In newly redesignated § 11.418—
■ a. In the introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement'';
■ b. In paragraph (a), after the words ''holding a license'', add the words ''or MMC endorsement'';
■ c. In paragraph (b), after the words ''The holder of a license'', add the words ''or MMC endorsement''; and after the words ''is eligible for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''.

§ 11.420 [Amended]

■ 132. In newly redesignated § 11.420 text, after the words ''qualify an applicant for'' remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''position while holding a license'', add the words ''or endorsement''.

§ 11.421 [Amended]

■ 133. In newly redesignated § 11.421 text, remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''holding a certificate'', add the words ''or endorsement''.

§ 11.422 [Amended]

■ 134. In newly redesignated § 11.422—
■ a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';
■ b. In paragraph (a), remove the word ''licenses'' and add, in its place, the word ''endorsements''; and remove the word ''license'' and add, in its place, the word ''endorsement'';
■ c. In paragraph (b) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'';
■ d. In paragraphs (b)(1) and (b)(2), remove the word ''license'' wherever it appears and add, in its place, the word ''endorsement'';
■ e. In paragraph (b)(3), remove the word ''license'' and add, in its place, the words ''officer endorsement'';
■ f. In paragraph (b)(4), after the words ''increment on the'', remove the word ''license'' and add, in its place, the words ''officer's license or MMC endorsement'';
■ g. In paragraph (c), after the words ''vessels upon which'', remove the words ''licensed personnel are not required'' and add, in their place, the words ''no personnel need an officer endorsement or license''; and after the words ''required to engage'', remove the words ''licensed individuals'' and add, in their place, the words ''individuals with officer endorsements''; and
■ h. In paragraph (e), remove the word ''license'' and add, in its place, the words ''officer endorsement''.

§ 11.424 [Amended]

■ 135. In newly redesignated § 11.424—
■ a. In paragraph (a) introductory text, remove the words ''a license'' and add, in their place, the words ''an officer endorsement'';
■ b. In paragraph (a)(1), after the words ''holding a license'', add the words ''or MMC endorsement'';
■ c. In paragraph (a)(2), remove the word ''licensed'';
■ d. In paragraph (b), remove the words ''endorsement on this license'' and add, in their place, the words ''officer endorsement''; and after the words ''master's license'', add the words ''or MMC endorsement''; and
■ e. In paragraph (c), remove the words ''§ 10.401(g) of this subpart'' and add, in their place, the words ''§ 11.401(g)''.

§ 11.426 [Amended]

■ 136. In newly redesignated § 11.426—
■ a. In paragraph (a) introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement'';
■ b. In paragraph (a)(1), after the words ''holding a license'' add the words ''or endorsement'';
■ c. In paragraph (a)(2), remove the word ''licensed''; and
■ d. In paragraph (b), remove the words ''an endorsement on this license'' and add, in its place, the words ''this officer endorsement''; and after the words ''of the master's license'', add the words ''or MMC endorsement''.

§ 11.427 [Amended]

■ 137. In newly redesignated § 11.427—
■ a. In paragraph (a) introductory text, remove the word ''license'' and add, in its place, the word ''endorsement'';
■ b. In paragraph (a)(2), after the words ''holding a license'', add the words ''or MMC endorsement'';
■ c. In paragraph (b), after the words ''holder of a license'', add the words ''or MMC endorsement''; and after the words ''may obtain this'', remove the word ''license'' and add, in its place, the word ''endorsement'';
■ d. In paragraph (c), remove the words ''an endorsement on this license'' and add, in its place, the words ''this officer endorsement'';
■ e. In paragraph (d), after the words ''A license'', add the words ''or MMC endorsement''; and
■ f. In paragraph (e), after the words ''a tonnage endorsement'', remove the word ''of'' and add, in its place, the word ''for''.

§ 11.428 [Amended]

■ 138. In newly redesignated § 11.428—
■ a. In paragraph (a), remove the words ''a license'' and add, in their place, the words ''an endorsement''; and
■ b. In paragraph (b), remove the words ''endorsement on this license'' and add, in their place, the word ''endorsement''; and after the words ''issuance of the license'', add the words ''or MMC endorsement''.

§ 11.429 [Amended]

■ 139. In newly redesignated § 11.429—
■ a. In paragraph (a) introductory text, after the words ''Limited masters'', remove the word ''licenses'' and add, in its place, the word ''endorsements''; after the words ''educational institutions.'', remove the words ''A license'' and add, in their place, the words ''An endorsement''; and after the words ''obtain this restricted'', remove the word ''license'' and add, in its place, the word ''endorsement'';
■ b. In paragraph (a)(1), after the words ''for which the'' remove the word ''license'' and add, in its place, the word ''endorsement'';
■ c. In paragraph (b), remove the words ''§ 10.205(h) of this part'' and add, in their place, the words ''§ 11.205(e)''; and
■ d. In paragraph (c), after the words ''obtain an endorsement'', remove the words ''on this license'' and after the words ''issuance of the license'' add the words ''or MMC endorsement''.

§ 11.430 [Amended]

■ 140. In newly redesignated § 11.430—
■ a. In the section heading, remove the word ''Licenses'' and add, in its place, the word ''Endorsements''; and
■ b. In the text, after the words ''Any license'', wherever they appear, add the words ''or MMC endorsement''; after the word ''licenses'', wherever it appears, add the words ''and MMC endorsements''; and, after the words ''COLREGS or the'', remove the words ''license must be endorsed with an exclusion from'' and add, in their place, the words ''endorsement must exclude''.

§ 11.431 [Amended]

■ 141. In newly redesignated § 11.431—

■ a. In the section heading, remove the word ''licenses'', and add, in its place, the word ''endorsements'';
■ b. In paragraph (a), remove the word ''licenses'', and add, in its place, the word ''endorsements''; and
■ c. In paragraph (b), remove the word ''licenses'', and add, in its place, the word ''endorsements''; and remove the citation ''§ 10.402'' and add, in its place, the citation ''§ 11.402''.

§ 11.433 [Amended]

■ 142. In newly redesignated § 11.433—
■ a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement''; and
■ b. In paragraph (c), after the words ''holding a license'', add the word ''or MMC endorsement''.

§ 11.435 [Amended]

■ 143. In newly redesignated § 11.435—
■ a. In the introductory text, remove the word ''license'', and add, in its place, the word ''an endorsement''; and
■ b. In paragraph (b), after the words ''mate/first class pilot license'', add the words ''or MMC endorsement''.

§ 11.437 [Amended]

■ 144. In newly redesignated § 11.437—
■ a. In paragraph (a) introductory text, remove the word ''license'', and add, in its place, the words ''an endorsement''; and
■ b. In paragraph (a)(3), after the words ''holding a license'', add the words ''or MMC endorsement''.

§ 11.442 [Amended]

■ 145. In newly redesignated § 11.442—
■ a. In the introductory text, remove the words ''a license'', and add, in their place, the words ''an endorsement''; and
■ b. In paragraphs (a) and (b), after the words ''holding a license'', wherever they appear, add the words ''or MMC endorsement''.

§ 11.444 [Amended]

■ 146. In newly redesignated § 11.444—
■ a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement'';
■ b. In paragraph (a), after the words ''holding a certificate'', add the words ''or endorsement''; and
■ c. In paragraph (b), after the words ''holding a license'', add the words ''or MMC endorsement''.

§ 11.446 [Amended]

■ 147. In newly redesignated § 11.446—
■ a. In the introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement'';
■ b. In paragraph (a), after the words ''holding a license'', add the words ''or MMC endorsement''; and
■ c. In paragraph (b), after the words ''holding a license'', wherever they appear, add the words ''or MMC endorsement''; and after the words ''eligible for this'', remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 11.448 [Amended]

■ 148. In newly redesignated § 11.448 text, after the words ''an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''holding a certificate'', add the words ''or endorsement''.

§ 11.450 [Amended]

■ 149. In newly redesignated § 11.450—
■ a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';
■ b. In paragraph (a), remove the word ''licenses'' and add, in its place, the word ''endorsements''; and remove the citation ''§ 10.422'' each time it appears and add, in its place, the citation ''§ 11.422'';
■ c. In paragraph (c), after the words ''vessels upon which'', remove the words ''licensed personnel'' and add, in their place, the words ''personnel with licenses or endorsements''; and, after the words ''required to engage'', remove the words ''licensed individuals'' and add, in their place, the words ''individuals with endorsements''; and
■ d. In paragraph (d), remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 11.452 [Amended]

■ 150. In newly redesignated § 11.452—
■ a. In paragraph (a), after the words ''qualify an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; after the words ''holding a license'', add the words ''or MMC endorsement''; and after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement''; and
■ b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license''; and after the words ''master's license'' add the words ''or MMC endorsement''.

§ 11.454 [Amended]

■ 151. In newly redesignated § 11.454—
■ a. In paragraph (a), after the words ''qualify an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement'';
■ b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license'';
■ c. In paragraph (c), before the words ''as master of steam'', remove the words ''A license'' and add, in their place, the words ''An endorsement''; and
■ d. In paragraph (d), after the words ''The holder of a license'', add the words ''or MMC endorsement''; after the words ''may obtain this'', remove the word ''license'' and add, in its place, the word ''endorsement''; and after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 11.455 [Amended]

■ 152. In newly redesignated § 11.455—
■ a. In paragraph (a), after the words ''qualify an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement''; and
■ b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license''; and after the words ''issuance of the'', remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 11.456 [Amended]

■ 153. In newly redesignated § 11.456—
■ a. In the introductory text, in the first sentence, after the words ''Limited masters''', remove the word ''licenses'' and add, in its place, the word ''endorsements''; in the second sentence, remove the words ''A license'' and add, in their place, the words ''An endorsement''; and in the last sentence, remove the word ''license'' and add, in its place, the word ''endorsement'';
■ b. In paragraph (a), remove the word ''license'' and add, in its place, the word ''endorsement''; and
■ c. In paragraph (d), after the words ''required by'', remove the citation ''§ 10.205(h)'' and add, in its place, the citation ''§ 11.205(e)''.

§ 11.457 [Amended]

■ 154. In newly redesignated § 11.457—
■ a. In paragraph (a), after the words ''An applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''requirements of'', remove the citation ''§ 10.452'' and add, in its place, the citation ''§ 11.452''; and
■ b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license''; and after the words ''issuance of the license'', add the words ''or MMC endorsement''.

§ 11.459 [Amended]

■ 155. In newly redesignated § 11.459—

■ a. In paragraph (a), after the words ''An applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and

■ b. In paragraph (b), after the words ''An applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''and inland steam or motor'', remove the word ''license'' and add, in its place, the word ''endorsement''.

■ 156. In newly designated § 11.462, revise the heading and paragraphs (a) introductory text, (b), (c) introductory text, (c)(1) through (3), (c)(4) introductory text, (c)(4)(v), (c)(4)(vi), (d) introductory text, (d)(1) through (3), (d)(4) introductory text, and (d)(4)(iv) through (vi) to read as follows:

§ 11.462 Endorsements for master or mate of uninspected fishing industry vessels.

(a) This section applies to endorsements for masters and mates of all vessels, however propelled navigating the high seas, which are documented to engage in the fishing industry, with the exception of:

* * * * *

(b) Endorsements as master or mate of uninspected fishing industry vessels are issued for either ocean or near-coastal routes, depending on the examination completed. To qualify for an uninspected fishing industry vessel endorsement, the applicant must satisfy the training and examination requirements of § 11.401(g) of this subpart.

(c) An applicant for an endorsement as master of uninspected fishing industry vessels must have four years of total service on ocean or near coastal routes. Service on Great Lakes or inland waters may substitute for up to two years of the required service. One year of the required service must have been as master, mate, or equivalent supervisory position while holding a license or MMC endorsement as master, mate, master or mate (pilot) of towing vessels, or OUPV.

(1) To qualify for an endorsement for not more than 500 gross tons, at least two years of the required service, including the one year as master, mate or equivalent, must have been on vessels of more than 50 gross tons.

(2) To qualify for an endorsement for not more than 1,600 gross tons, at least two years of the required service, including the one year as master, mate, or equivalent, must have been on vessels of more than 100 gross tons.

(3) To qualify for an endorsement for more than 1,600 gross tons, but not more than 5,000 gross tons, the vessel tonnage upon which the four years of required service was obtained will be used to compute the tonnage. The endorsement is limited to the maximum tonnage on which at least 25 percent of the required service was obtained or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1,000 gross tons, using the next higher figure when an intermediate tonnage is calculated. An endorsement as master of uninspected fishing industry vessels authorizing service on vessels more than 1,600 gross tons also requires one year as master, mate, or equivalent on vessels more than 100 gross tons.

(4) The tonnage limitation for this endorsement may be raised using one of the following methods but cannot exceed 5,000 gross tons. Limitations are in multiples of 1,000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

* * * * *

(v) Two years of service as a deckhand on a vessel while holding a license or MMC endorsement as master results in a limitation on the MMC equal to 150 percent of the tonnage of that vessel up to 5,000 gross tons; or

(vi) One year of service as deckhand on a vessel while holding a license or MMC endorsement as master results in a limitation on the MMC equal to the tonnage of that vessel.

(d) An applicant for an endorsement as mate of uninspected fishing industry vessels must have three years of total service on ocean or near-coastal routes. Service on Great Lakes or inland waters may substitute for up to 18 months of the required service.

(1) To qualify for an endorsement of not more than 500 gross tons, at least one year of the required service must have been on vessels of more than 50 gross tons.

(2) To qualify for an endorsement of not more than 1,600 gross tons, at least one year of the required service must have been on vessels of more than 100 gross tons.

(3) To qualify for an endorsement of more than 1,600 gross tons, but not more than 5,000 gross tons, the vessel tonnage upon which the three years of required service was obtained will be used to compute the tonnage. The endorsement is limited to the maximum tonnage on which at least 25 percent of the required service was obtained, or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1,000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

(4) The tonnage limitation on this endorsement may be raised using one of the following methods, but cannot exceed 5,000 gross tons. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

* * * * *

(iv) One year of service as deckhand on vessels more than 1,600 gross tons while holding a license or MMC endorsement as mate, results in raising the limitation on the MMC to 5,000 gross tons;

(v) Two years of service as a deckhand on a vessel while holding a license or MMC endorsed as mate results in a limitation on the MMC equal to 150 percent of the tonnage of that vessel up to 5,000 gross tons; or

(vi) One year of service as deckhand on a vessel while holding a license or MMC endorsement as mate results in a limitation on the MMC equal to the tonnage of that vessel.

* * * * *

§ 11.463 [Amended]

■ 157. In newly redesignated § 11.463—

■ a. In the section heading, remove the words ''licenses for'' and add, in their place, the words ''endorsements as'';

■ b. In paragraph (a) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements''; and

■ c. In paragraphs (b) and (c), remove the words ''a license'' wherever they appear and add, in their place, the words ''an endorsement''.

■ 158. In newly redesignated § 11.464, revise the section heading, paragraphs (a) through (e), and paragraphs (f) introductory text, (f)(2)(i), and (f)(3) to read as follows:

§ 11.464 Requirements for endorsements as master of towing vessels.

(a) If you would like to obtain an endorsement as master of towing vessels with a route listed in column 1 of table 11.464(a) of this section, then you must complete the service requirements indicated in columns 2 through 5. You may serve on the subordinate routes listed in column 6 without further endorsement.

TABLE 11.464(A)—REQUIREMENTS FOR ENDORSEMENT AS MASTER OF TOWING VESSELS [1]

Route endorsed	Total service [2]	TOS [3] on T/V as mate (pilot)	TOS [3] on T/V as mate (pilot) not as harbor assist	TOS [3] on particular route	Subordinate route authorized
1	2	3	4	5	6
(1) OCEANS (O)	48	18 of 48	12 of 18	3 of 18	NC, GL–I
(2) NEAR-COASTAL (NC)	48	18 of 48	12 of 18	3 of 18	GL–I
(3) GREAT LAKES—INLAND (GL–I)	48	18 of 48	12 of 18	3 of 18.	
(4) WESTERN RIVERS (WR)	48	18 of 48	12 of 18	3 of 18.	

[1] If you hold an endorsement as master of towing vessels you may have an endorsement-as mate (pilot) of towing vessels for a route superior to your current route on which you have no operating experience—placed on your MMC after passing an examination for that additional route. After you complete 90 days of experience and complete a Towing Officer's Assessment Record on that route, we will add it to your endorsement as master of towing vessels and remove the one for mate (pilot) of towing vessels.
[2] Service is in months.
[3] TOS is time of service.

(b) If you would like to obtain an endorsement as master of towing vessels (limited), then you must complete the requirements listed in columns 2 through 5 of table 11.464(b) of this section.

TABLE 11.464(B)—REQUIREMENTS FOR ENDORSEMENT AS MASTER OF TOWING VESSELS

[Limited]

Route endorsed	Total service [1]	TOS [2] on T/V as limited apprentice mate (steersman)	TOAR or an approved course	TOS [2] on particular route
1	2	3	4	5
LIMITED LOCAL AREA (LLA)	36	18 of 48	12 of 18	3 of 18.

[1] Service is in months.
[2] TOS is time of service.

(c) If you hold a license or MMC endorsement as mate (pilot) of towing vessels, you may have master of towing vessels (limited) added to your MMC for a limited local area within the scope of your current route.

(d) Before you serve as master of towing vessels on the Western Rivers, you must possess 90 days of observation and training and have your MMC include an endorsement for Western Rivers.

(e) Each company must maintain evidence that every vessel it operates is under the direction and control of a mariner with the appropriate endorsement and experience, including 30 days of observation and training on the intended route other than Western Rivers.

(f) If you hold a license or MMC endorsement as a master of steam or motor vessels of greater than 200 gross register tons, you may operate towing vessels within any restrictions on your endorsement if you:

(2) * * *

(i) Hold a completed Towing Officer's Assessment Record (TOAR) described in § 11.304(h) that shows evidence of assessment of practical demonstration of skills; or

* * * * *

(3) Your license or MMC does not need to include a towing endorsement if you hold a TOAR or complete an approved training course.

* * * * *

■ 159. In newly redesignated § 11.465, revise the heading and paragraphs (a) through (c), (d) introductory text, (d)(2), (e) introductory text, (e)(1), and (f), and designate the undesignated text following (d)(2) as (d)(3) to read as follows:

§ 11.465 Requirements for endorsements as mate (pilot) of towing vessels.

(a) If you would like to obtain an endorsement as mate (pilot) of towing vessels endorsed with a route listed in column 1 of table 11.465(a) of this section, then you must complete the service in columns 2 through 5. If you hold a license or MMC endorsement as master of towing vessels (limited) and would like to upgrade it to mate (pilot) of towing vessels, then you must complete the service in columns 5 and 6. An endorsement with a route endorsed in column 1 authorizes service on the subordinate routes listed in column 7 without further endorsement. Time of service requirements as an apprentice mate (steersman) of towing vessels may be reduced by an amount equal to the time specified in the approval letter for the completed Coast Guard-approved training programs.

TABLE 11.465–1—REQUIREMENTS FOR ENDORSEMENT AS MATE (PILOT [1]) OF TOWING VESSELS

Route endorsed	Total service [2]	TOS [3] on T/V as apprentice mate (steersman) [5]	TOS [3] on particular route	TOAR [4] or an approved course	30 days of observation and training while holding master (limited) and pass a limited examination	Subordinate route authorized
1	2	3	4	5	6	7
(1) OCEANS (O)	30	12 of 30	3 of 12	YES	YES	NC, GL–I

TABLE 11.465–1—REQUIREMENTS FOR ENDORSEMENT AS MATE (PILOT [1]) OF TOWING VESSELS—Continued

Route endorsed	Total service [2]	TOS [3] on T/V as apprentice mate (steersman) [5]	TOS [3] on particular route	TOAR [4] or an approved course	30 days of observation and training while holding master (limited) and pass a limited examination	Subordinate route authorized
1	2	3	4	5	6	7
(2) NEAR-COASTAL (NC).	30	12 of 30	3 of 12	YES	YES	GL–I
(3) GREAT LAKES-INLAND (GL-I).	30	12 of 30	3 of 12	YES	YES	
(5) WESTERN RIVERS (WR).	30	12 of 30	3 of 12	YES	NO (90 days service required).	

[1] For all inland routes, as well as Western Rivers, the endorsement as pilot of towing vessels is equivalent to that as mate of towing vessels. All qualifications and equivalencies are the same.
[2] Service is in months unless otherwise indicated.
[3] TOS is time of service.
[4] TOAR is Towing Officers' Assessment Record.
[5] Time of service requirements as an apprentice mate (steersman of towing vessels may be reduced by an amount equal to the time specified in the approval letter for a completed Coast Guard-approved training program.

(b) Before you serve as mate (pilot) of towing vessels on the Western Rivers, you must possess 90 days of observation and training and have your MMC include an endorsement for Western Rivers.

(c) Each company must maintain evidence that every vessel it operates is under the direction and control of a mariner with the appropriate endorsement and experience, including 30 days of observation and training on the intended route other than Western Rivers.

(d) If you hold a license or MMC endorsement as a mate of inspected, self-propelled vessels of greater than 200 GRT or one as first-class pilot, then you may operate towing vessels within any restrictions on your credential if you:

* * * * *

(2) Hold a completed Towing Officer's Assessment Record (TOAR) described in § 11.304(h) that shows evidence of assessment of practical demonstration of skills.

(3) Your license or MMC does not need to include a towing endorsement if you hold a TOAR or a course completion certificate.

(e) If you hold any endorsement as a master of steam or motor vessels of any tonnage that is 200 GRT or less, except for the limited masters endorsements specified in 46 CFR 11.429 and 11.456, then you may obtain an endorsement as mate (pilot) of towing vessels by meeting the following requirements:

(1) Providing proof of 36 months of service as a master under the authority of an endorsement described in paragraph (e) of this section;

* * * * *

(f) An approved training course for mate (pilot) of towing vessels must include formal instruction and practical demonstration of proficiency either onboard a towing vessel or at a shoreside training facility before a designated examiner, and must cover the material (dependent upon route) required by § 11.910–2 for apprentice mate (steersman), towing vessels on ocean and near coastal routes; apprentice mate (steersman), towing vessels on Great Lakes and inland routes; or, steersman, towing vessels on Western Rivers routes.

* * * * *

■ 160. In newly redesignated § 11.466—

■ a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

■ b. In paragraph (a), after the words ''As Table'' remove the designation ''10.466–1'' and add, in its place, the designation ''11.466(a)''; and after the words ''like to obtain'', remove the words ''a license'' and add, in their place, the words ''an endorsement'';

■ c. Redesignate table 10.466–1 as table 11.466(a) and revise it to read as follows; and

■ d. In paragraph (b), in the first sentence, after the words ''hold a license'' add the words ''or endorsement''; in the second sentence, after the words ''endorsement will go on your'', remove the word ''license'' and add, in its place, the word ''MMC''; and in the third sentence, after the words ''may have the'', remove the words ''restricted endorsement'' and add, in their place, the word ''restriction'':

§ 11.466 Requirements for endorsements as apprentice mate (steersman) of towing vessels.

* * * * *

TABLE 11.466(A)—REQUIREMENTS FOR ENDORSEMENT AS APPRENTICE MATE (STEERSMAN) OF TOWING VESSELS

Endorsement	Route endorsed	Total service [1]	TOS [2] on T/V	TOS [2] on particular route	Pass examination [3]
1	2	3	4	5	6
(1) APPRENTICE MATE (STEERSMAN).	OCEANS (0)	18	12 of 18	3 of 18	YES.
	NEAR-COASTAL (NC)	18	12 of 18	3 of 18	YES.
	GREAT LAKES	18	12 of 18	3 of 18	YES.
	INLAND (GL–I)	18	12 of 18	3 of 18	YES.
	WESTERN RIVERS (WR)	18	12 of 18	3 of 18	YES.

TABLE 11.466(A)—REQUIREMENTS FOR ENDORSEMENT AS APPRENTICE MATE (STEERSMAN) OF TOWING VESSELS—Continued

Endorsement	Route endorsed	Total service [1]	TOS [2] on T/V	TOS [2] on particular route	Pass examination [3]
1	2	3	4	5	6
(2) APPRENTICE MATE (STEERSMAN) (LIMITED).	NOT APPLICABLE	18	12 of 18	3 of 18	YES.

[1] Service is in months.
[2] TOS is time of service.
[3] The examination for apprentice mate is specified in subpart I of this part. The examination for apprentice mate (limited) is a limited examination.
[4] For all inland routes, as well as Western Rivers, the endorsement as steersman is equivalent to that as apprentice mate. All qualifications and equivalencies are the same.

* * * * *

■ 161. Revise newly redesignated § 11.467 to read as follows—

§ 11.467 Endorsement as operators of uninspected passenger vessels of less than 100 gross tons.

(a) This section applies to an applicant for the endorsement to operate an uninspected vessel of less than 100 gross tons, equipped with propulsion machinery of any type, carrying six or less passengers.

(b) An endorsement for OUPV issued for ocean waters will be limited to near-coastal waters not more than 100 miles offshore. An endorsement issued for inland waters will include all inland waters, except Great Lakes. An endorsement may be issued for a particular local area under paragraph (g) of this section.

(c) For an endorsement as OUPV on near-coastal waters, an applicant must have a minimum of 12-months experience in the operation of vessels, including at least three-months service on vessels operating on ocean or near-coastal waters.

(d) For an endorsement as OUPV on the Great Lakes and inland waters, an applicant must have 12-months service on Great Lakes or inland waters, including at least three-months service operating vessels on Great Lakes waters.

(e) For an endorsement as OUPV on inland waters, an applicant must have a minimum of 12-months experience in the operation of vessels.

(f) An endorsement as OUPV, limited to undocumented vessels, may be issued to a person who is not a citizen of the United States.

(g) Limited OUPV endorsements may be issued to applicants to be employed by organizations such as formal camps, yacht clubs, educational institutions, and marinas. An endorsement issued under this paragraph will be limited to the specific activity and the locality of the camp, yacht club, or marina. In order to obtain this restricted endorsement, an applicant must:

(1) Have three-months service in the operation of the type of vessel for which the endorsement is requested;

(2) Satisfactorily complete a safe-boating course approved by the National Association of State Boating Law Administrators, or those public education courses conducted by the U.S. Power Squadron or the American National Red Cross or a Coast Guard-approved course;

(3) Pass a limited examination appropriate for the activity to be conducted and the route authorized; and

(4) The first aid and cardiopulmonary resuscitation (CPR) course certificates required by § 11.205(e) of this part will only be required when, in the opinion of the OCMI, the geographic area over which service is authorized precludes obtaining medical services within a reasonable time.

§ 11.468 [Amended]

■ 162. In newly redesignated § 11.468—

■ a. In the section heading and text, remove the word ''Licenses'' wherever it appears and add, in its place, the words ''Officer endorsements''; and

■ b. In the text, remove the word ''license'' and add, in its place, the word ''endorsement''.

■ 163. In newly redesignated § 11.470, revise the heading and paragraphs (a) introductory text, (b) introductory text, (b)(2)(i), (b)(2)(iv), (c), (d) introductory text, (d)(2)(i), (d)(2)(iv), (e), (f) introductory text, (f)(2)(i), (f)(2)(iii), (g) introductory text, (h) introductory text, (h)(2)(iii), (i), (j) introductory text, (j)(2)(i), (j)(2)(iii), and (k) introductory text to read as follows:

§ 11.470 Officer endorsements as offshore installation manager.

(a) Officer endorsements as offshore installation manager (OIM) include:

* * * * *

(b) To qualify for an endorsement as OIM unrestricted, an applicant must:

(2) * * *

(i) A certificate from a Coast Guard-approved stability course approved for a license or MMC endorsement as OIM unrestricted;

* * * * *

(iv) A certificate from a firefighting training course as required by § 11.205(d) of this part; and

* * * * *

(c) An applicant for an endorsement as OIM unrestricted who holds an unlimited license or MMC endorsement as master or chief mate must satisfy the requirements in paragraphs (b)(2) and (b)(3) of this section and have at least 84 days of service on surface units and at least 28 days of service on bottom bearing units.

(d) To qualify for an endorsement as OIM surface units on location, an applicant must:

* * * * *

(2) * * *

(i) A certificate from a Coast Guard-approved stability course approved for a license or MMC endorsement as OIM surface units;

* * * * *

(iv) A certificate from a firefighting training course as required by § 11.205(d) of this part.

(e) An applicant for an endorsement as OIM surface units on location who holds an unlimited license or MMC endorsement as master or chief mate must satisfy the requirements of paragraph (d)(2) of this section and have at least 84 days of service on surface units.

(f) To qualify for an endorsement as OIM surface units underway, an applicant must:

* * * * *

(2) * * *

(i) A certificate from a Coast Guard-approved stability course approved for an OIM surface units endorsement;

* * * * *

(iii) A certificate from a firefighting training course as required by § 11.205(d) of this part.

(g) An applicant for endorsement as OIM surface units underway who holds an unlimited license or MMC endorsement as master or chief mate must satisfy the requirements in paragraph (f)(2) of this section and provide a company recommendation signed by a senior company official which:

* * * * *

(h) To qualify for an endorsement as OIM bottom bearing units on location, an applicant must:

* * * * *

(2) * * *

(iii) A certificate from a firefighting training course as required by § 11.205(d) of this part.

(i) An applicant for an endorsement as OIM bottom bearing units on location who holds an unlimited license or MMC endorsement as master or chief mate must satisfy paragraph (h)(2) of this section and have at least 28 days of service on bottom bearing units.

(j) To qualify for an endorsement as OIM bottom bearing units underway, an applicant must:

* * * * *

(2) * * *

(i) A certificate from a Coast Guard-approved stability course approved for a license or MMC endorsement as OIM bottom bearing units;

* * * * *

(iii) A certificate from a firefighting training course as required by § 11.205(d) of this part.

(k) An applicant for endorsement as OIM bottom bearing units underway who holds an unlimited license or MMC endorsement as master or chief mate must satisfy the requirements in paragraph (j)(2) of this section and provide a company recommendation signed by a senior company official, which:

* * * * *

§ 11.472 Officer endorsements as barge supervisor.

■ 164. In newly redesignated § 11.472—

■ a. Revise the section heading as set forth above;

■ b. In paragraph (a) introductory text, remove the words ''a license or'' and add, in their place, the word ''an'';

■ c. In paragraph (a)(2)(i), remove the words ''barge supervisor license or endorsement'' and add, in their place, the words ''license or MMC endorsement as barge supervisor'';

■ d. In paragraph (a)(2)(iii), remove the citation ''§ 10.205(g)'' and add, in its place, the citation ''§ 11.205(d)''; and

■ e. In paragraph (b), after the words ''unlimited license'' add the words ''or MMC endorsement''.

§ 11.474 Officer endorsements as ballast control operator.

■ 165. In newly redesignated § 11.474—

■ a. Revise the section heading as set forth above;

■ b. In paragraph (a) introductory text, remove the words ''a license or'' and add, in its place, the words ''an'';

■ c. In paragraph (a)(1)(i) and (ii), remove the words ''a licensed'' wherever they appear and add, in their place, the words ''an individual holding a license or MMC endorsement as'';

■ d. In paragraph (a)(2)(i), remove the words ''barge supervisor or ballast control operator license or endorsement'' and add, in their place, the words ''license or MMC endorsement as barge supervisor or ballast control operator'';

■ e. In paragraph (a)(2)(iii), remove the citation ''§ 10.205(g)'' and add, in its place, the citation ''§ 11.205(d)''; and

■ f. In paragraph (b), after the words ''unlimited license'', add the words ''or MMC endorsement''; and remove the word ''licensed'' and add, in its place, the words ''an individual holding an endorsement as''.

§ 11.476 [Removed and Reserved]

■ 166. Remove and reserve § 11.476.

§ 11.480 [Amended]

■ 167. In newly redesignated § 11.480—

■ a. In paragraph (b) introductory text, remove the words ''deck officer's license'' and add, in their place, the word ''MMC'';

■ b. In paragraph (c), remove the words ''Endorsement as'' wherever they appear;

■ c. In paragraph (f), remove the last sentence;

■ d. In paragraph (h), after the words ''a license'', add the words ''or MMC''; and after the words ''may renew'', remove the words ''the license''; and

■ e. In paragraph (i), after the words ''grade of a license'' add the words ''or MMC endorsement''.

■ 168. In newly redesignated § 11.482—

■ a. Revise paragraph (a) to read as set out below;

■ b. In paragraph (c), remove the words ''An assistance towing endorsement on a license as master, mate, or operator authorizes the holder'' and replace them with ''The holder of a license or MMC for master, mate, or operator endorsed for assistance towing is authorized''; and after the words ''scope of the license'', add the words ''or MMC''; and

■ c. In paragraph (d), after the words ''same as the license'', add the words ''or MMC''; remove the words ''on which it is endorsed'' and add, in their place, the words ''on which it is included''; and after the words ''renewed with the'', remove the word ''license'' and add, in its place, the word ''MMC''.

§ 11.482 Assistance towing.

(a) This section contains the requirements to qualify for an endorsement authorizing a mariner to engage in assistance towing. The endorsement applies to all MMCs except master and mate (pilot) of towing vessels and master or mate authorizing service on inspected vessels over 200 gross tons. Holders of any of these endorsements may engage in assistance towing within the scope of their MMC or license.

* * * * *

§ 11.491 [Amended]

■ 169. In newly redesignated § 11.491—

■ a. In the section heading, remove the word ''Licenses'' and add, in its place, the word ''Officer endorsements''; and

■ b. In the text, before the words ''for service on'', remove the word ''license'' and add, in its place, the words ''officer endorsement''; and after the words ''restrictions placed on the license'', add the words ''or MMC''.

§ 11.493 [Amended]

■ 170. In newly redesignated § 11.493(a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

§ 11.495 [Amended]

■ 171. In newly redesignated § 11.495(a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

§ 11.497 [Amended]

■ 172. In newly redesignated § 11.497(a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

Subpart E—Professional Requirements for Engineer Officer

■ 173. Revise the heading for subpart E as set forth above.

§ 11.501 [Amended]

■ 174. In newly redesignated § 11.501—

■ a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

■ b. In paragraph (a) introductory text, remove the word ''Licenses'' and add, in its place, the words ''Engineer endorsements'';

■ c. In paragraph (b) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'';
■ d. In paragraph (c) introductory text, after the words ''Engineer licenses'' add the words ''or MMC endorsements'';
■ e. In paragraph (d), remove the words ''Engineer licenses are endorsed to authorize'' and add, in its place, the words ''An engineer officer's license or MMC endorsement authorizes''; and after the words ''vessels or may be'', remove the words ''be endorsed for'' and add, in their place, the word ''authorize''; and
■ f. In paragraph (e), after the words ''holding an engineer license'' add the words ''or MMC endorsement''; and after the words ''limitations of the license'', add the words ''or MMC''.

§ 11.502 [Amended]

■ 175. In newly redesignated § 11.502—
■ a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';
■ b. In paragraph (a), after the words ''engineer licenses'' add the words ''or MMC endorsements'';
■ c. In paragraph (b) introductory text, remove the words ''a licensed applicant desires to obtain an endorsement on an engineer license in the other propulsion mode (steam or motor)'' and add, in their place, the words ''an applicant desires to add a propulsion mode to his or her endorsement''; and after the words ''holding a license'', add the words ''or MMC endorsement'';
■ d. In paragraph (b)(1), remove the words ''licensed capacity'' and add, in their place, the words ''capacity as their endorsement'';
■ e. In paragraph (b)(2), remove the words ''a licensed officer at a lower license level'' and add, in their place, the words ''an engineer officer at a lower level''; and
■ f. In paragraph (c), after the words ''of an engineer license'', add the words ''or MMC endorsement''; and remove the citation ''§ 10.205(g)'' and add, in its place, the citation ''§ 11.205(d)''.

■ 176. Revise newly redesignated § 11.503 to read as follows—

§ 11.503 Horsepower limitations.

(a) Engineer licenses and endorsements of all grades and types may be subject to horsepower limitations. Other than as provided in § 11.524 of this part for the designated duty engineer (DDE), the horsepower limitation placed on a license or MMC endorsement is based on the applicant's qualifying experience considering the total shaft horsepower of each vessel on which the applicant has served.

(b) When an applicant for an original or raise of grade of an engineer license or MMC endorsement, other than a DDE, has not obtained at least 50 percent of the required qualifying experience on vessels of 4,000 or more horsepower, a horsepower limitation is placed on the MMC based on the applicant's qualifying experience. The endorsement is limited to the maximum horsepower on which at least 25 percent of the required experience was obtained, or 150 percent of the maximum horsepower on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1,000 horsepower, using the next higher figure when an intermediate horsepower is calculated. When the limitation as calculated equals or exceeds 10,000 horsepower, an unlimited horsepower endorsement is issued.

(c) The following service on vessels of 4,000 horsepower or over will be considered qualifying for the raising or removing of horsepower limitations placed on an engineer license or MMC endorsement:

(1) Six months of service in the highest-grade endorsed: removal of all horsepower limitations.

(2) Six months of service as an officer in any capacity other than the highest grade for which licensed or endorsed: Removal of all horsepower limitations for the grade in which service is performed and raise the next higher grade endorsement to the horsepower of the vessel on which service was performed. The total cumulative service before and after issuance of the limited license or MMC endorsement may be considered in removing all horsepower limitations.

(3) Twelve months of service as oiler or junior engineer while holding a license or MMC endorsement as third assistant engineer or assistant engineer (limited oceans): removal of all horsepower limitations on third assistant engineer or assistant engineer's (limited oceans) endorsement.

(4) Six months of service as oiler or junior engineer while holding a license or MMC endorsement as second assistant engineer: removal of all horsepower limitations on third assistant engineer's endorsement.

(d) Raising or removing horsepower limitations based on service required by paragraph (c) of this section may be granted without further written examination providing the OCMI who issued the applicant's license or MMC endorsement, considers further examination unnecessary.

§ 11.504 [Amended]

■ 177. In newly redesignated § 11.504—
■ a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements''; and
■ b. In the text, remove the words ''a license'' and add, in their place, the words ''an endorsement''.

■ 178. In newly redesignated § 11.505—
■ a. Revise the section heading as set forth below;
■ b. In the text, remove the word ''license'' and add, in its place, the word ''endorsement''; and
■ c. Redesignate Figure 10.505 as Figure 11.505 and revise it to read as follows:

§ 11.505 Engineer officer structure.

* * * * *

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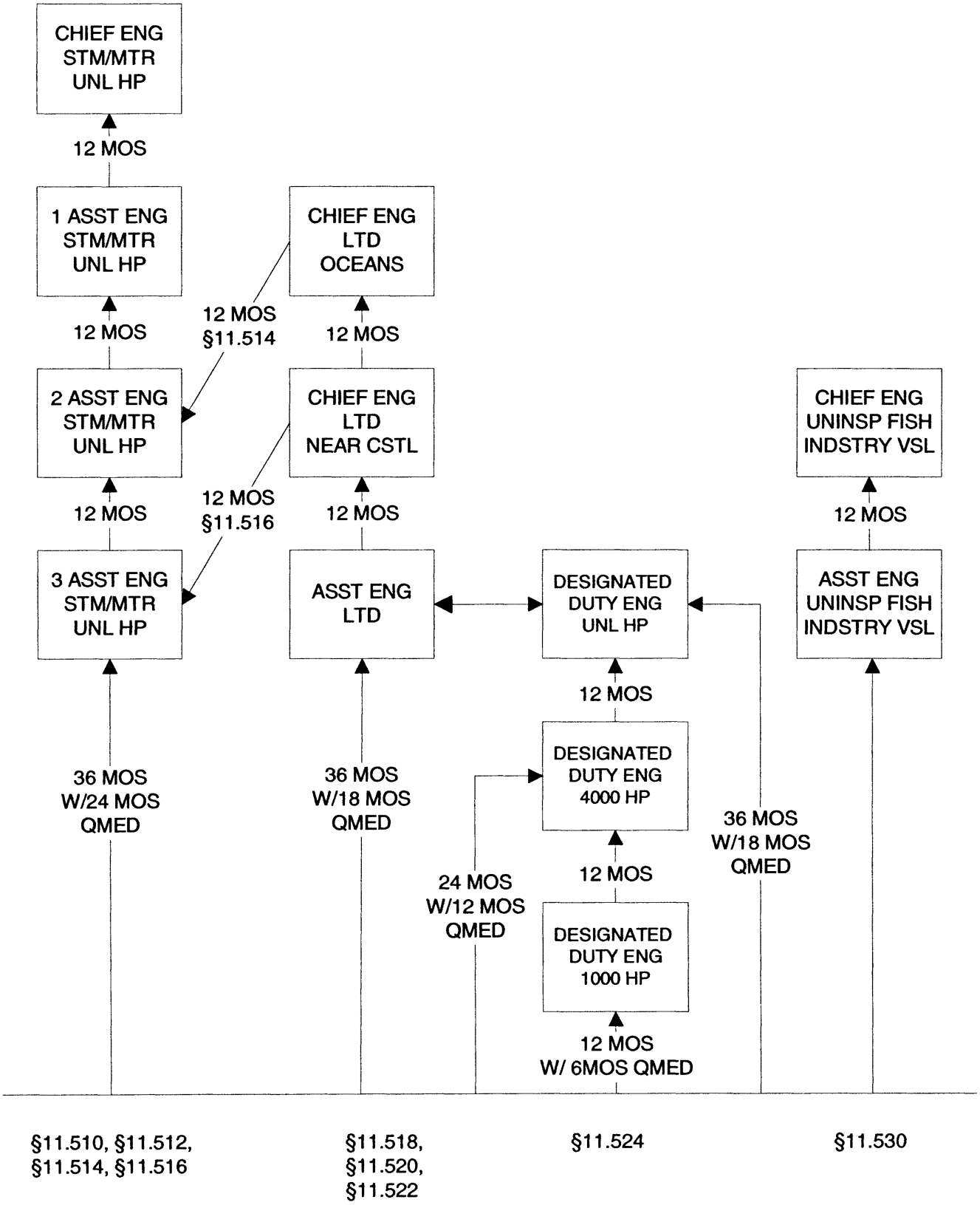
Figure 11.505—Engineer officer endorsement structure



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§ 11.510 [Amended]

■ 179. In newly redesignated § 11.510—
■ a. In the introductory text, remove the word, ''license'', and add, in its place, the word ''endorsement''; and
■ b. In paragraph (b), after the words, ''holding a license'', add the words, ''or MMC endorsement''.

§ 11.512 [Amended]

■ 180. In newly redesignated § 11.512—
■ a. After the words, ''qualify an applicant for'', remove the word ''license'', and add, in its place, the word ''endorsement''; and
■ b. After the words ''holding a license'', add the words, ''or MMC endorsement''.

§ 11.514 [Amended]

■ 181. In newly redesignated § 11.514—
■ a. In the introductory text, after the words, ''qualify an applicant for'', remove the word, ''license'', and add, in its place, the word, ''endorsement''; and
■ b. In paragraph (a) and paragraph (b) introductory text, after the words, ''holding a license'', add the words, ''or MMC endorsement''.

§ 11.516 [Amended]

■ 182. In newly redesignated § 11.516, in paragraph (a) introductory text, after the words, ''an applicant for'', remove the word ''license'', and add, in its place, the word, ''endorsement''.
■ 183. Revise newly redesignated § 11.518 to read as follows:

§ 11.518 Service requirements for chief engineer (limited oceans) of steam and/or motor vessels.

The minimum service required to qualify an applicant for endorsement as chief engineer (limited oceans) of steam and/or motor vessels is five years total service in the engineroom of vessels. Two years of this service must have been as an engineer officer. Thirty months of the service must have been as a qualified member of the engine department (QMED) or equivalent supervisory position.
■ 184. Revise newly redesignated § 11.520 to read as follows:

§ 11.520 Service requirements for chief engineer (limited near coastal) of steam and/or motor vessels.

The minimum service required to qualify an applicant for endorsement as chief engineer (limited near coastal) of steam and/or motor vessels is four years total service in the engineroom of vessels. One year of this service must have been as an engineer officer. Two years of the service must have been as a QMED or equivalent supervisory position.
■ 185. Revise newly redesignated § 11.522 to read as follows:

§ 11.522 Service requirements for assistant engineer (limited oceans) of steam and/or motor vessels.

The minimum service required to qualify an applicant for endorsement as assistant engineer (limited oceans) of steam and/or motor vessels is three years of service in the engineroom of vessels. Eighteen months of this service must have been as a QMED or equivalent supervisory position.
■ 186. In newly redesignated § 11.524, revise paragraphs (a) and (b) introductory text to read as follows:

§ 11.524 Service requirements for designated duty engineer of steam and/or motor vessels.

(a) DDE endorsements are issued in three levels of horsepower limitations dependent upon the total service of the applicant and completion of appropriate examination. These MMCs are limited to vessels of not more than 500 gross tons on certain waters as specified in § 11.501 of this part.

(b) The service requirements for endorsements as DDE are:

* * * * *

■ 187. Revise newly redesignated § 11.530 to read as follows:

§ 11.530 Endorsements for engineers of uninspected fishing industry vessels.

(a) This section applies to endorsements for chief and assistant engineers of all vessels, however propelled, navigating the high seas, which are documented to engage in the fishing industry, with the exception of:

(1) Wooden ships of primitive build;

(2) Unrigged vessels; and,

(3) Vessels of less than 200 gross tons.

(b) Endorsements as chief engineer and assistant engineer of uninspected fishing industry vessels are issued for ocean waters and with horsepower limitations in accordance with the provisions of § 11.503 of this part.

(c) For an endorsement as chief engineer, the applicant must have served four years in the engineroom of vessels. One year of this service must have been as an assistant-engineer officer or equivalent supervisory position.

(d) For an endorsement as assistant engineer, an applicant must have served three years in the engine room of vessels.

(e) Two-thirds of the service required under this section must have been on motor vessels.

(f) Applicants may request an orally assisted examination on the subjects listed in subpart I of this part.
■ 188. Revise newly redesignated § 11.540 to read as follows:

§ 11.540 Endorsements for engineers of mobile offshore drilling units.

Endorsements as chief engineer (MODU) or assistant engineer (MODU) authorize service on certain self-propelled or non-self-propelled units of any horsepower where authorized by the vessel's certificate of inspection.

§ 11.542 [Amended]

■ 189. In newly redesignated § 11.542—
■ a. In the section heading, remove the words ''License for'' and add, in their place, the words ''Endorsement as'';
■ b. In the introductory text and paragraph (c), remove the words ''a license'' wherever they appear and add, in their place, the words ''an endorsement''; and
■ c. In paragraph (b), remove the citation, ''10.205(g)'', and add, in its place, the citation, ''11.205(d)''.

§ 11.544 [Amended]

■ 190. In newly redesignated § 11.544—
■ a. In the section heading, remove the words, ''License for'', and add, in their place, the words, ''Endorsement as'';
■ b. In the introductory text and paragraph (c), remove the words, ''a license'', wherever they appear, and add, in their place, the words, ''an endorsement'';
■ c. In paragraph (a)(3), remove the words, ''Commanding Officer,'', and add, in their place, the word, ''The''; and
■ d. In paragraph (b), remove the citation ''10.205(g)'', and add, in its place, the citation, ''11.205(d)''.
■ 191. Revise newly redesignated § 11.551 to read as follows:

§ 11.551 Endorsements for service on offshore supply vessels.

Each endorsement for service on OSVs as chief engineer (OSV) or engineer (OSV) authorizes service on OSVs as defined in 46 U.S.C. 2101(19) and as interpreted under 46 U.S.C. 14104(b), subject to any restrictions placed on the MMC.

§ 11.553 [Amended]

■ 192. In newly redesignated § 11.553(a), remove the words, ''a license'', and add, in their place, the words, ''an endorsement''.

§ 11.555 [Amended]

■ 193. In newly redesignated § 11.555(a), remove the words, ''a license'', and add, in their place, the words, ''an endorsement''.

Subpart F—Credentialing of Radio Officers

■ 194. Revise the heading for subpart F to read as set forth above.

■ 195. In newly redesignated § 11.601, revise paragraphs (a)–(c) to read as follows:

§ 11.601 Applicability.

This subpart provides for endorsement as radio officers for employment on vessels, and for the issue of STCW endorsements for those qualified to serve as radio operators on vessels subject to the provisions on the Global Maritime Distress and Safety System (GMDSS) of Chapter IV of SOLAS. SOLAS is available from the *International Maritime Organization (IMO)*, 4 Albert Embankment, London SE1 7SR, England, telephone: + 44 (0)20 7735 7611, *http://www.imo.org*.

■ 196. Revise newly redesignated § 11.603 to read as follows:

§ 11.603 Requirements for radio officers' endorsements and STCW endorsements for GMDSS radio operators.

(a) Each applicant for an original endorsement or renewal of license shall present a current first or second class radiotelegraph operator license issued by the Federal Communications Commission. The applicant shall enter on the endorsement application form the number, class, and date of issuance of his or her Federal Communications Commission license.

(b) [Reserved]

(c) Each applicant who furnishes evidence that he or she meets the standard of competence set out in STCW Regulation IV/2 (incorporated by reference, see § 11.102), including the competence to transmit and receive information using subsystems of GMDSS, to fulfill the functional requirements of GMDSS, and to provide radio services in emergencies is entitled to hold an STCW endorsement suitable for performing duties associated with GMDSS.

Subpart G—Professional Requirements for Pilots

■ 197. Revise the heading for subpart G to read as set forth above.

■ 198. Revise newly redesignated § 11.701 to read as follows:

§ 11.701 Scope of pilot endorsements.

(a) An applicant for an endorsement as first-class pilot need not hold any other officer endorsement issued under this part.

(b) The issuance of an endorsement as first-class pilot to an individual qualifies that individual to serve as pilot over the route(s) specified on the endorsement, subject to any limitations imposed under paragraph (c) of this section.

(c) The OCMI issuing an endorsement as first-class pilot, imposes appropriate limitations commensurate with the experience of the applicant, with respect to class or type of vessel, tonnage, route, and waters.

(d) A license or MMC endorsement issued for service as a master, mate, or operator of uninspected towing vessels authorizes service as a pilot under the provisions of § 15.812 of this subchapter. Therefore, first-class pilot endorsements will not be issued with tonnage limitations of 1,600 gross tons or less.

■ 199. In newly redesignated § 11.703—

■ a. Revise paragraphs (a) introductory text and (c), to read as set out below; and

■ b. In paragraph (d), after the words, ''holding a license'', add the words, ''or MMC endorsement'':

§ 11.703 Service requirements.

(a) The minimum service required to qualify an applicant for an endorsement as first-class pilot is predicated upon the nature of the waters for which pilotage is desired.

* * * * *

(c) Completion of a course of pilot training approved by the National Maritime Center under subpart C of this part may be substituted for a portion of the service requirements of this section in accordance with § 11.304 of this part. Additionally, round trips made during this training may apply toward the route familiarization requirements of § 11.705 of this part. An individual using substituted service must have at least nine months of shipboard service.

* * * * *

■ 200. In newly redesignated § 11.705, revise paragraphs (b) and (c) to read as follows:

§ 11.705 Route familiarization requirements.

* * * * *

(b) An applicant holding no other deck officer endorsement seeking an endorsement as first-class pilot shall furnish evidence of having completed a minimum number of round trips, while serving as quartermaster, wheelsman, able seaman, apprentice pilot, or in an equivalent capacity, standing regular watches at the wheel or in the pilot house as part of routine duties, over the route sought. Evidence of having completed a minimum number of round trips while serving as an observer, properly certified by the master and/or pilot of the vessel, is also acceptable. The range of round trips for an endorsement is a minimum of 12 round trips and a maximum of 20 round trips. An applicant may have additional routes added to the first-class pilot endorsement by meeting the requirements in paragraph (c) of this section.

(c) An applicant who currently holds a deck officer license or MMC endorsement seeking an endorsement as first-class pilot for a particular route shall furnish evidence of having completed the number of round trips over the route, specified by the OCMI, within the range limitations of this paragraph, for the particular grade of existing license or MMC endorsement held. The range of round trips for an endorsement is a minimum of eight round trips and a maximum of 15 round trips.

* * * * *

■ 201. Revise newly redesignated § 11.707 to read as follows:

§ 11.707 Examination requirements.

(a) An applicant for an endorsement as first-class pilot, except as noted in paragraph (b) of this section, is required to pass the examination described in subpart I of this part.

(b) An applicant for an extension of route, or an applicant holding a license or MMC endorsement as master or mate authorized to serve on vessels of over 1,600 gross tons seeking an endorsement as first-class pilot, is required to pass those portions of the examination described in subpart I of this part that concern the specific route for which endorsement is sought.

■ 202. In newly redesignated § 11.709, revise paragraphs (b), (c), (d), and (e) to read as follows:

§ 11.709 Annual physical examination requirements.

* * * * *

(b) Every person holding a license or MMC endorsement as first-class pilot shall have a thorough physical examination each year.

(c) Each annual physical examination must meet the requirements specified in § 10.215 of this chapter.

(d) An individual's first class pilot credential becomes invalid on the first day of the month following the first anniversary of the individual's most recent physical examination satisfactorily completed; the individual may not operate under the authority of that credential until a physical examination has been satisfactorily completed.

(e) A first class pilot must provide the Coast Guard with a copy of his or her most recent physical examination.

§ 11.711 [Amended]

■ 203. In newly redesignated § 11.711—
■ a. In paragraphs (a) and (d), after the words, ''first class pilot'', remove the words, ''license or''; and
■ b. In paragraph (b), after the words ''1,600 gross tons, the'' remove the words ''license or'', and, after the words, ''contained in § '' remove the number ''10.705'', and add, in its place, the number ''11.705''.

§ 11.713 [Amended]

■ 204. In newly redesignated § 11.713—
■ a. In paragraphs (a) and (b), wherever the words ''license or endorsement'' appear, add the word ''MMC'' before the word ''endorsement''; and
■ b. In paragraph (b), in the last sentence, after the words, ''of the renewed'', remove the words, ''license or''.

§ 11.803 [Removed and Reserved]

■ 205. Remove and reserve newly redesignated § 11.803.

■ 206. Revise newly redesignated § 11.805 to read as follows:

§ 11.805 General requirements.

(a) The applicant for an endorsement as staff officer is not required to take any examination; however, the applicant shall present to the OCMI a letter justifying the need for the endorsement.

(b) [Reserved]

(c) An applicant for a higher grade in the staff department shall apply in the same manner as for an original endorsement and shall surrender the previous Coast Guard-issued credentials upon issuance of the new MMC. A staff officer may serve in a lower grade of service for which he or she is registered.

(d) Title 46 U.S.C. 8302 addresses uniforms for staff officers who are members of the Naval Reserve.

(e) A duplicate MMC may be issued by the OCMI. (See § 10.229 of this chapter.)

(f) An MMC is valid for a term of five years from the date of issuance. Procedures for renewing endorsements are found in § 10.227 of this chapter.

(g) Each applicant for an original or a higher grade of endorsement, as described by paragraph (c) of this section, shall produce evidence of having passed a chemical test for dangerous drugs or of qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued an MMC.

■ 207. Amend newly redesignated § 11.807 by adding paragraphs (a)(7) and (8) and revising paragraphs (c) and (d) to read as follows:

§ 11.807 Experience requirements for registry.

(a) The applicant for an endorsement as staff officer shall submit evidence of experience as follows:

* * * * *

(7) *Marine physician assistant.* Successful completion of an accredited course of instruction for a physician's assistant or nurse practitioner program.

(8) *Hospital corpsman.* A rating of at least hospital corpsman or health services technician, first class in the U.S. Navy, U.S. Coast Guard, U.S. Marine Corps, or an equivalent rating in the U.S. Army (not less than staff sergeant, Medical Department, U.S.A.), or in the U.S. Air Force (not less than technical sergeant, Medical Department, U.S.A.F.), and a period of satisfactory service of at least one month in a military hospital or U.S. Public Health Service Hospital.

* * * * *

(c) In computing the length of service required of an applicant for an endorsement, service of one season on vessels on the Great Lakes is counted as service of one year.

(d) In the event an applicant for an endorsement, other than medical doctor or professional nurse, presents evidence of other qualifications which, in the opinion of the Officer in Charge, Marine Inspection, is equivalent to the experience requirements of this section and is consistent with the duties of a staff officer, the Officer in Charge, Marine Inspection may issue the MMC.

§ 11.809 [Removed and Reserved]

■ 208. Remove and reserve newly redesignated § 11.809.

Subpart I—Subjects of Examinations and Practical Demonstrations of Competence

■ 209. Revise the heading for subpart I to read as set forth above.

■ 210. In newly redesignated § 11.901—
■ a. In paragraph (a), remove the word, ''license'', and add, in its place, the word, ''endorsement''; and remove the citation, ''10.903(b)'' and add, in its place, the citation, ''11.903(b)'';
■ b. Revise paragraph (b) to read as set out below; and
■ c. In paragraph (c) introductory text, after the words, ''as provided in §§ '', remove the citations, ''10.202 and 10.209'' and add, in their place, the citations, ''11.202 and 10.227''; and after the words ''reference in'', remove the citation, ''10.102'', and add, in its place, the citation, ''11.102'':

§ 11.901 General provisions.

* * * * *

(b) If the endorsement is to be limited in a manner which would render any of the subject matter unnecessary or inappropriate, the examination may be amended accordingly by the OCMI. Limitations which may affect the examination content are:

(1) MMCs endorsed for restricted routes for reduced service (master or mate of vessels of not more than 200 gross tons, OUPV or master or mate (pilot) of towing vessels); or

(2) Engineer endorsements with horsepower restrictions.

* * * * *

§ 11.903 [Amended]

■ 211. In newly redesignated § 11.903—
■ a. Redesignate ''Table 10.903–1'' as ''Table 11.903(c)''; and
■ b. Revise paragraphs (a) introductory text, (b) introductory text, (b)(2), (b)(3), (c) introductory text, and (d) to read as follows:

§ 11.903 Endorsements requiring examination.

(a) The following endorsements require examinations for issuance:

* * * * *

(b) The following endorsements do not require examinations:

* * * * *

(2) Master ocean or near coastal not more than 200 gross tons, when raising grade from mate near coastal not more than 200 gross tons. Master ocean not more than 200 gross tons would, however, require an examination in celestial navigation.

(3) Master Great Lakes and inland, inland, and rivers not more than 200 gross tons when raising grade from mate of the same route not more than 200 gross tons.

* * * * *

(c) Each candidate for any of the following endorsements shall meet the requirements of the appropriate STCW regulations and standards of competence and those in part A of the STCW Code (incorporated by reference, see § 11.102), as indicated in table 11.903(c) of this section:

* * * * *

(d) Any candidate for an endorsement listed in paragraph (c) of this section, who meets the requirements of the appropriate regulations and standards of competence in STCW and part A of the STCW code (incorporated by reference, see § 11.102) as indicated in table 11.903(c) of this section, need not

comply with §§ 11.910 or 11.950, of this part.

■ 212. In newly redesignated § 11.910—

■ a. Revise the section heading and introductory text as set out below;

■ b. Redesignate table 10.910–1 as table 11.910–1, and revise the heading and subheading to read as set out below;

■ c. Redesignate table 10.910–2 as table 11.910–2;

■ d. In the heading for newly redesignated table 11.910–2, remove the word ''License'' and add, in its place, the word ''Endorsement'';

■ e. In newly redesignated table 11.910–2, in the first column entitled, ''Examination topics'', under the entry for ''National Maritime Law'', remove the words, ''Licensing & Certification'', and add, in their place, the word, ''Credentialing'';

■ f. In footnotes 6 and 7 to newly redesignated table 11.910–2, remove the word ''licenses'' wherever it appears and add, in its place, the words ''officer endorsements''; and

■ g. In footnote 8 to newly redesignated table 11.910–2, remove the word ''licenses'':

§ 11.910 Subjects for deck officer endorsements.

Table 11.910–1 gives the codes used in table 11.910–2 for all deck officers. Table 11.910–2 indicates the examination subjects for each endorsement, by code number. Figures in the body of the table, in place of the letter ''x'', refer to notes.

Table 11.910–1—Codes for Deck Officer Endorsements

Deck Officer Endorsements:

* * * * *

■ 213. In newly redesignated § 11.920—

■ a. Revise the section heading and introductory text to read as set out below;

■ b. Redesignate table 10.920–1 as table 11.920–1 and revise it to read as set out below;

■ c. Redesignate table 10.920–2 as table 11.920–2; and

■ d. In newly redesignated table 11.920–2, in the first column entitled, ''Examination topics'', under the entry for, ''National Maritime Law'', remove the words, ''Licensing and certification'', and add, in their place, the word, ''Credentialing'':

§ 11.920 Subjects for MODU endorsements.

Table 11.920–1 gives the codes used in table 11.920–2 for MODU endorsements. Table 11.920–2 indicates the examination subjects for each endorsement by the code number.

Table 11.920–1—Codes for MODU Endorsements

* * * * *

■ 214. Revise the section heading and table heading to newly redesignated § 11.950 to read as follows:

§ 11.950 Subjects for engineer endorsements.

Table 11.950—Subjects for Engineer Endorsements

* * * * *

■ 215. Revise newly redesignated § 11.1005 to read as follows:

§ 11.1005 General requirements for officers.

To serve on a Ro-Ro passenger ship, a person endorsed as master, chief mate, mate, chief engineer, or engineer shall meet the appropriate requirements of STCW Regulation V/2 and Section A–V/2 of the STCW Code (incorporated by reference, see § 11.102) and shall hold documentary evidence to show his or her meeting these requirements.

■ 216. Revise newly redesignated § 11.1105 section heading, introductory text, and paragraph (a) to read as follows:

§ 11.1105 General requirements for officer's endorsements.

If you are a master, mate, chief mate, engineer, or chief engineer, then, before you may serve on a passenger ship, you must—

(a) Meet the appropriate requirements of the STCW Regulation V/3 and of section A–V/3 of the STCW Code (incorporated by reference, see § 11.102); and

* * * * *

PART 12—REQUIREMENTS FOR RATING ENDORSEMENTS

■ 217. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701, and 70105; Department of Homeland Security Delegation No. 0170.1.

■ 218. Revise the heading for part 12 to read as set forth above.

§ 12.01–1 [Amended]

■ 219. In § 12.01–1—

■ a. In paragraph (a)(2), after the words, ''and to receive the'', remove the words, ''certificate or'', and after the words ''required by STCW'', remove the words, ''(incorporated by reference in § 12.01–3)''; and

■ b. Remove paragraphs (a)(3) and (c).

■ 220. Revise § 12.01–3 to read as follows:

§ 12.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental Standards (CG–5221), 2100 Second Street, SW., Washington, DC 20593–0001, 202–372–1405 and is available from the sources indicated in this section.

(b) *International Maritime Organization (IMO)*, 4 Albert Embankment, London, SE1 7SR, England, telephone: + 44 (0)20 7735 7611, *http://www.imo.org.*

(1) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended 1995 (the STCW Convention or the STCW), incorporation by reference approved for §§ 12.02–7, 12.02–11, 12.05–3, 12.05–11, 12.10–3; 12.10–5, 12.10–7, 12.10–9, 12.15–3, 12.30–5, and 12.35–5.

(2) The Seafarers' Training, Certification and Watchkeeping Code, as amended 1995 (the STCW Code), incorporation by reference approved for §§ 12.02–11, 12.03–1, 12.05–3, 12.05–7, 12.10–5, 12.10–9, 12.15–3, 12.15–7, 12.25–45, 12.30–5, and 12.35–5.

§ 12.01–6 [Removed and Reserved]

■ 221. Remove and reserve § 12.01–6.

§ 12.01–7 [Removed and Reserved]

■ 222. Remove and reserve § 12.01–7.

§ 12.01–11 [Removed and Reserved]

■ 223. Remove and reserve § 12.01–11.

§ 12.02–3 [Removed and Reserved]

■ 224. Remove and reserve § 12.02–3.

§ 12.02–4 [Removed and Reserved]

■ 225. Remove and reserve § 12.02–4.

§ 12.02–5 [Removed and Reserved]

■ 226. Remove and reserve § 12.02–5.

■ 227. In § 12.02–7, revise paragraphs (a) through (e) and (f) introductory text to read as follows:

§ 12.02–7 When documents are required.

(a) Every seaman employed on any merchant vessel of the United States of 100 gross tons or upward, except vessels employed exclusively in trade on the navigable rivers of the United States, must carry a valid merchant mariner credential (MMC) or merchant mariner's document (MMD) with all appropriate endorsements for the position served and, beginning on April 15, 2009, a valid Transportation Worker Identification Credential (TWIC). Provisions of this section are not applicable to unrigged vessels except seagoing barges and certain tank barges.

(b) Every seaman, as referred to in paragraph (a) of this section, shall produce a valid MMC or MMD with all applicable rating endorsements for the position sought and, beginning on April 15, 2009, a valid TWIC to the master of the vessel at the time of his or her employment before signing articles of agreement. Seamen who do not possess one of these credentials may be employed at a foreign port or place.

(c)(1) Every person employed on any merchant vessel of the United States of 100 gross tons and upward, except those navigating rivers exclusively and the smaller inland lakes, below the grades of officer and staff officer, must possess a valid MMC or MMD with all appropriate endorsements for the positions served;

(2) No endorsements are required of any person below the rank of officer employed on any unrigged vessel except seagoing barges and certain tank barges.

(3) No endorsements are required of any person below the rank of officer employed on any sail vessel of less than 500 net tons while not carrying passengers for hire and while not operating outside the line dividing inland waters from the high seas, as defined in section 2 of the act of February 19, 1895, as amended (33 U.S.C. 151) and in 33 CFR part 82.

(d) Each person serving as an able seaman or a rating forming part of a navigational watch on a seagoing ship of 500 gross tonnage (200 GRT) or more shall hold an STCW endorsement certifying him or her as qualified to perform the navigational function at the support level, in accordance with STCW (incorporated by reference, see § 12.01–3).

(e) Each person serving as a qualified member of the engine department (QMED) or a rating forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine-room, on a seagoing ship driven by main propulsion machinery of 750 kW [1,000 hp] of propulsion power or more, shall hold an STCW endorsement certifying him or her as qualified to perform the marine-engineering function at the support level, in accordance with STCW.

(f) Notwithstanding any other rule in this part, no person subject to this part serving on any of the following vessels needs to hold an STCW endorsement, either because he or she is exempt from application of the STCW, or because the vessels are not subject to further obligation under STCW, on account of their special operating conditions as small vessels engaged in domestic voyages:

* * * * *

§ 12.02–9 [Removed and Reserved]

■ 228. Remove and reserve § 12.02–9.

§ 12.02–10 [Removed and Reserved]

■ 229. Remove and reserve § 12.02–10.

■ 230. Revise § 12.02–11 to read as follows:

§ 12.02–11 General provisions respecting rating endorsements.

(a)(1) An MMC with a deck officer endorsement will authorize the holder to serve in any rating capacity in the deck department, except able seaman. If a deck officer qualifies as able seaman, the MMC will be endorsed with the appropriate able seaman and lifeboatman endorsement. STCW endorsements as RFPNW and PSC will also be entered upon qualification.

(2) An MMC issued to an engineer officer endorsed for inspected vessels of over 2,000 horsepower will authorize the holder to serve in any rating capacity in the engine department. If an engineer officer qualifies as a lifeboatman, the appropriate lifeboatman endorsement will be placed on the MMC. STCW endorsements as RFPEW and PSC will also be entered upon qualification.

(b) The authorized holder of any valid rating endorsement may serve in any capacity in the staff department of a vessel, except in those capacities requiring a staff officer; except that whenever the service includes the handling of food, no person may be so employed unless his or her credential bears the food handler's endorsement ''(F.H.)''.

(c) A rating endorsement as able seaman or lifeboatman authorizes service as lifeboatman.

(d) The OCMI will issue an STCW endorsement if the applicant for or holder of an MMC is qualified for the endorsement. The OCMI will issue an STCW endorsement for the following ratings:

(1) A rating forming part of a navigational watch on a seagoing ship of 500 GT or more if the holder of the credential is qualified according to STCW Regulation II/4 of the STCW Code (incorporated by reference, see § 12.01–3) to perform the navigational function at the support level.

(2) A rating forming part of a watch in a manned engineroom, or designated to perform duties in a periodically unmanned engineroom, on a seagoing ship driven by main propulsion machinery of 750 kW (1,000 hp) of propulsion power or more, if the holder is qualified in according to STCW Regulation III/4 and Section A-III/4 of the STCW Code, (incorporated by reference, see § 12.01–3) to perform the marine-engineering function at the support level.

(e) At the request of the holder of the document, the OCMI may add an endorsement to indicate that a qualified holder has received basic-safety training or instruction required under Chapter VI of STCW (incorporated by reference, see § 12.01–3).

§ 12.02–12 [Removed and Reserved]

■ 231. Remove and reserve § 12.02–12.

§ 12.02–13 [Removed and Reserved]

■ 232. Remove and reserve § 12.02–13.

§ 12.02–14 [Removed and Reserved]

■ 233. Remove and reserve § 12.02–14.

§ 12.02–15 [Removed and Reserved]

■ 234. Remove and reserve § 12.02–15.

■ 235. Revise § 12.02–17 to read as follows—

§ 12.02–17 Examination procedures and denial of rating endorsements.

(a) Upon application for a rating endorsement, any required examination will be given as soon as practicable.

(b) An applicant for a rating endorsement who has been duly examined and refused a certificate by the Coast Guard may come before the Coast Guard for reexamination at any time after the date of the initial examination. The Coast Guard sets the time of reexamination based on the applicant's performance on the initial examination. However, the maximum waiting period after the initial failure will be 30 days, and the maximum waiting period after a second or subsequent failure will be 90 days.

(c) An applicant who has been examined and refused a certificate by the Coast Guard may not again make application for examination until 30 days after the applicant's last failure of an examination or reexamination.

§§ 12.02–18 through 12.02–27 [Removed and Reserved]

■ 236. Remove and reserve §§ 12.02–18 through 12.02–27.

■ 237. In § 12.03–1 revise paragraphs (a) introductory text, (a)(3)(iii), (a)(4), (b), (c) introductory text, and (c)(2) to read as follows:

§ 12.03–1 Coast Guard-accepted training other than approved courses.

(a) When the training and assessment of competence required by parts 10 or 12 of this subchapter are not subject to approval under § 11.302 of this chapter, but are used to qualify an applicant to hold an STCW or rating endorsement, the training and assessment must meet the following requirements:

* * * * *

(3) * * *

(iii) Hold the level of Coast Guard credential or other professional credential required of those who would apply, on board a vessel, the relevant level of knowledge, skills, and abilities described in the training objectives.

(4) Neither a specialist in a particular field of non-maritime education, such as mathematics or first aid, nor a person with at least 3 years of service as a member of the Armed Forces of the United States, specializing in a particular field, need hold a Coast Guard credential to conduct training in that field.

* * * * *

(b) The Coast Guard will maintain a list of training each of whose offerors submits a certificate, initially not less than 45 calendar days before offering training under this section, and annually thereafter, signed by the offeror or its authorized representative, stating that the training fully complies with requirements of this section, and identifying the Coast Guard-accepted QSS being used for independent monitoring. Training on this list will offer the training necessary for both officer and STCW endorsements under this part. The Coast Guard will update this list periodically and make it available to members of the public on request.

(c) If the Coast Guard determines, on the basis of observations or conclusions either of its own or of someone authorized by it to monitor the training, that the particular training does not satisfy one or more of the conditions described in paragraph (a) of this section—

* * * * *

(2) The offeror may, within a period specified in the notice, either appeal the observations or conclusions to the National Maritime Center (NMC) or bring the training into compliance; and

* * * * *

§ 12.05–1 [Amended]

■ 238. In § 12.05–1—

■ a. In paragraph (a), remove the words, ''employed in a rating'', and add, in their place, the words, ''serving under the authority of a rating endorsement''; and remove the words, ''a merchant mariner's document'', and add, in their place, the words, ''an MMC or MMD endorsement''; and

■ b. In paragraph (b), remove the word, ''certificate'' and add, in its place, the words, ''MMD or MMC endorsed''.

■ 239. In § 12.05–3—

■ a. In paragraph (a) introductory text, remove the word, ''certification'', and add, in its place, the words, ''an endorsement'';

■ b. In paragraph (a)(2), remove the word, ''examination'' and add, in its place, the words, ''and medical examination in § 10.215 of this subchapter'';

■ c. In paragraph (b) introductory text, remove the words, ''valid for any period on or after February 1, 2002,''; and

■ d. Revise paragraph (c) to read as follows:

§ 12.05–3 General requirements.

* * * * *

(c) An STCW endorsement as rating forming part of the navigational watch will be issued or renewed when the candidate for an endorsement meets the requirements of STCW Regulation II/4 and of Section A–II/4 of the STCW Code (incorporated by reference, see § 12.01–3).

§ 12.05–5 [Removed and Reserved]

■ 240. Remove and reserve § 12.05–5.

§ 12.05–7 [Amended]

■ 241. In § 12.05–7—

■ a. In paragraph (a) introductory text, after the words, ''categories of'', remove the words, ''able seaman is as'', and add, in their place, the words, ''endorsement as able seamen are'';

■ b. In paragraph (b) introductory text, after the words, ''approved by'', remove the words ''Commanding Officer,''; and

■ c. Remove paragraphs (c), (d), and (e).

■ 242. In § 12.05–9—

■ a. In paragraph (a) introductory text, remove the word, ''certified'', and add, in its place, the words, ''issued an endorsement''; and

■ b. Revise paragraph (e) to read as follows:

§ 12.05–9 Examination and demonstration of ability.

* * * * *

(e) Any person who holds a valid MMC or MMD endorsed as able seaman, any waters-12 months and who can produce documentary evidence of sufficient service to qualify for an endorsement as able seaman, any waters-unlimited, may be issued a new MMC bearing this endorsement without additional professional examination. The applicant shall surrender for cancellation the credential bearing the limited endorsement. No physical examination will be required at the time of this exchange unless it is found that the applicant obviously suffers from some physical or mental infirmity to a degree that in the opinion of the Officer in Charge, Marine Inspection, would render him incompetent to perform the usual duties of an able seaman at sea. If such condition is believed to exist, the applicant shall be required to undergo an examination to determine his competency as set forth in § 10.215 of this chapter.

■ 243. In § 12.05–11, revise paragraphs (a) and (b) to read as follows:

§ 12.05–11 General provisions respecting endorsements for service as able seamen.

(a) The holder of an MMC or MMD endorsed for the rating of able seamen may serve in any rating in the deck department without obtaining an additional endorsement; provided, however, that the holder shall hold the appropriate endorsement under the STCW (incorporated by reference, see § 12.01–3) when serving as a rating forming part of a navigational watch (RFPNW) on a seagoing ship of 500 GT or more.

(b) An MMC or MMD endorsed as able seaman will also be considered an endorsement as lifeboatman.

* * * * *

■ 244. Revise § 12.10–1 to read as follows:

§ 12.10–1 Credentials required.

Every person serving under the authority of a rating endorsement as lifeboatman on any United States vessel requiring lifeboatmen must produce an MMC or MMD endorsed as lifeboatman or able seaman to the United States Customs and Border Protection Port Director or his or her representative or master before signing articles of agreement. No endorsement as lifeboatman is required of any person employed on any unrigged vessel, except on a seagoing barge and on a tank barge navigating waters other than rivers and/or canals.

§ 12.10–3 [Amended]

■ 245. In § 12.10–3—

■ a. In paragraph (a) introductory text, remove the word, ''certification'', and add, in its place, the words, ''an endorsement'';
■ b. In paragraphs (a)(2), (a)(5), and (a)(6) after the words, ''by the'', remove the words, ''Commanding Officer,'';
■ c. In paragraph (a)(5), after the words, ''National Maritime Center,'', remove the word, ''and'', and add, in its place, the word, ''or'';
■ d. In paragraph (b), remove the word, ''certification'', and add, in its place, the words, ''an endorsement''; and
■ e. In paragraph (c), remove the word, ''certified'', and add, in its place, the words, ''eligible for an endorsement''.

§ 12.10–5 [Amended]

■ 246. In § 12.10–5—
■ a. In paragraph (a) introductory text, remove the word, ''certified'', and add, in its place, the words, ''issued an endorsement''; and
■ b. In paragraph (d), remove the words, ''After July 31, 1998, each'', and add, in their place, the word, ''Each''; and remove the words, ''certificate endorsed for'', and add, in their place, the words, ''endorsement with an STCW endorsement for''.

■ 247. Revise § 12.10–7 to read as follows:

§ 12.10–7 General provisions respecting an MMC or MMD endorsed as lifeboatman.

An MMC or MMD endorsed as able seaman is the equivalent of an endorsement as lifeboatman and will be accepted wherever a lifeboatman is required by law; provided, however, that, when an able seaman has to be endorsed as either proficient in survival craft and rescue boats or proficient in fast rescue boats, he or she shall hold an endorsement under the STCW (incorporated by reference, see § 12.01–3).

■ 248. In § 12.10–9, revise the heading, paragraphs (a), (b) introductory text, and (b)(2) to read as follows:

§ 12.10–9 Endorsement for proficiency in fast rescue boats.

(a) Each person engaged or employed as a lifeboatman proficient in fast rescue boats must hold an appropriately endorsed MMC or MMD.

(b) To be eligible for an MMC endorsed for proficiency in fast rescue boats, an applicant must:

* * * * *

(2) Furnish satisfactory proof that he or she has met the requirements for training and competence of STCW Regulation, VI/2 paragraph 2, and the appropriate requirements of Section A-VI/2 of the STCW Code (incorporated by reference in § 12.01–3).

§ 12.13–3 [Amended]

■ 249. In § 12.13–3, remove the words, ''license or document'' and add, in their place, the word, ''MMC''.

■ 250. Revise § 12.15–1 to read as follows:

§ 12.15–1 Credentials required.

(a) Every person serving under the authority of a rating endorsement as qualified member of the engine department on any United States vessel requiring qualified members of the engine department shall produce an endorsement as qualified member of the engine department to the United States Customs and Border Protection Port Director or his or her representative or master before signing articles of agreement.

(b) No endorsement as qualified member of the engine department is required of any person employed on any unrigged vessel, except seagoing barges.

■ 251. In § 12.15–3 revise paragraphs (a) through (c), (d) introductory text, and (e) to read as follows:

§ 12.15–3 General requirements.

(a) A qualified member of the engine department is any person below officer and above the rating of coal passer or wiper, who holds an MMC or MMD endorsed as qualified member of the engine department issued by the Coast Guard.

(b) For purposes of administering this part the rating of assistant electrician is considered a rating equal to coal passer or wiper.

(c) An applicant, to be eligible for an endorsement as qualified member of the engine department, shall be able to speak and understand the English language as would be required in the rating of qualified member of the engine department and in an emergency aboard ship.

(d) An STCW endorsement will be issued or renewed only when the candidate for endorsement as a qualified member of the engine department also produces satisfactory evidence, on the basis of assessment of a practical demonstration of skills and abilities, of having achieved or maintained within the previous 5 years the minimum standards of competence for the following 4 areas of basic safety:

* * * * *

(e) An STCW endorsement will be issued or renewed only when the candidate for endorsement as a qualified member of the engine department meets the standards of competence set out in STCW Regulation III/4 and Section A-III/4 of the STCW Code (incorporated by reference, see § 12.01–3), if the candidate will be serving as a rating forming part of a watch in a manned engine-room, or designated to perform duties in a periodically unmanned engine-room, on a seagoing ship driven by main propulsion machinery of 750 kW [1,000 hp] propulsion power or more.

■ 252. Revise § 12.15–5 to read as follows:

§ 12.15–5 Physical and medical requirements.

The physical and medical requirements for an endorsement as QMED are found in § 10.215 of this chapter.

§ 12.15–7 [Amended]

■ 253. In § 12.15–7—
■ a. In paragraph (a), after the words, ''applicant for'', remove the words, ''a certificate of service'', and add, in their place, the words, ''an endorsement'';
■ b. In paragraph (b)(1), after the words, ''graduate of a school ship may'', remove the words, ''be rated'', and add, in their place, the words, ''qualify for a rating endorsement''; and
■ c. In paragraph (c), in the first sentence, after the words, ''qualified rating'', add the words, ''in the engine department''.

§ 12.15–9 [Amended]

■ 254. In § 12.15–9—
■ a. In paragraph (a), remove the word, ''certification'' and add, in its place, the word, ''endorsement''; and
■ b. In paragraphs (c) and (d), remove the word ''certification'' wherever it appears and add, in its place, the words, ''an endorsement''.

■ 255. Revise § 12.15–11 heading and introductory text to read as follows:

§ 12.15–11 General provisions respecting an endorsement as qualified member of the engine department.

The holder of an endorsement with one or more qualified members of the engine department ratings may serve in any unqualified rating in the engine department without obtaining an additional endorsement. This does not mean that an endorsement of one qualified member of the engine department rating authorizes the holder to serve in all qualified member of the engine department ratings. Each qualified member of the engine department rating must be a separate endorsement. When, however, the applicant qualifies for all ratings covered by an endorsement as a QMED, the endorsement may read QMED—any rating. The ratings are as follows:

* * * * *

§ 12.15–13 [Amended]

■ 256. In § 12.15–13—

■ a. In paragraph (a) introductory text, remove the words, ''a certificate'', and add, in their place, the words ''an endorsement''; and remove the words, ''a merchant mariner's document'', and add, in their place, the words, ''an MMC or MMD'';

■ b. In paragraph (b), remove the words, ''merchant mariner's document'' and add, in their place, the word ''MMC''; and

■ c. In paragraph (c), remove the words, ''a merchant mariner's document'', and add, in their place, the words, ''an MMC or MMD''; remove the word ''unlicensed''; and after the words, ''entered on his'', remove the word ''document'', and add, in its place, the words, ''or her credential''.

■ 257. In § 12.15–15, revise paragraphs (a) introductory text, (b), and (c) to read as follows:

§ 12.15–15 Engineman.

(a) An applicant for an endorsement as engineman shall be a person holding an MMC or MMD document endorsed as fireman/watertender and oiler, or junior engineer. The applicant shall be eligible for such endorsement upon furnishing one of the following:

* * * * *

(b) The Officer in Charge, Marine Inspection, who is satisfied that an applicant for the rating of engineman meets the requirements specified in this section, will endorse this rating on the applicant's MMC.

(c) Any holder of an MMC or MMD endorsed for any rating in the engine department, QMED—any rating or deck engine mechanic is qualified as an engineman and that endorsement will not be entered on his or her credential.

§ 12.25–1 [Amended]

■ 258. In § 12.25–1—

■ a. In the section heading, remove the word, ''Certification'', and add, in its place, the word, ''Credentials''; and

■ b. In the text, remove the word ''certificated''; remove the words, ''a merchant mariner's document'', and add, in their place, the words, ''an MMC or MMD with the appropriate endorsement''.

■ 259. Revise § 12.25–10 to read as follows:

§ 12.25–10 General requirements.

(a) Rating endorsements shall be issued without professional examination to applicants in capacities other than able seaman, lifeboatman, tankerman, or QMED. For example, ordinary seaman, wiper, and steward's department (F.H.) endorsements do not require an exam. Holders of MMCs or MMDs endorsed as ordinary seaman may serve in any unqualified rating in the deck department. Holders of MMCs or MMDs endorsed as wiper may serve in any unqualified rating in the engine department. MMCs or MMDs endorsed as steward's department (F.H.) will authorize the holder's service in any capacity in the steward's department. (See § 12.02–11(b) of this part for unqualified ratings in the staff department.)

(b) When the holder of an endorsement is qualified as a food handler, the steward's department endorsement will be followed by the further endorsement (F.H.).

■ 260. Revise § 12.25–20 to read as follows:

§ 12.25–20 Physical and medical requirements.

The physical and medical requirements for this subpart are found in part 10 of this chapter.

■ 261. Revise § 12.15–25 to read as follows:

§ 12.25–25 Members of Merchant Marine Cadet Corps.

No ratings other than cadet (deck) or cadet (engine), as appropriate, and lifeboatman will be shown on an MMC issued to a member of the U.S. Merchant Marine Cadet Corps. The MMC will also indicate that it is valid only while the holder is a cadet in the U.S. Maritime Administration training program. The MMC must be surrendered upon the holder being endorsed in any other rating or upon being issued an officer's endorsement and the rating of cadet (deck) or cadet (engine) will be omitted.

§ 12.25–30 [Amended]

■ 262. In § 12.25–30, remove the words, ''merchant mariner's document'', and add, in their place, the words, ''MMC endorsed''; remove the words, ''documents or certificates'', and add, in their place, the word, ''endorsements''.

§ 12.25–35 [Amended]

■ 263. In § 12.25–35—

■ a. In paragraph (a), remove the words, ''a merchant mariner's document'', and add, in their place, the words, ''an endorsement''; and

■ b. In paragraph (b), remove the words, ''merchant mariner's documents with''.

§ 12.25–40 [Amended]

■ 264. In § 12.25–40 text, remove the words, ''a merchant mariner's document'', and add, in their place, the words, ''an endorsement''.

§ 12.25–45 [Amended]

■ 265. In § 12.25–45, remove the words, ''certificate or''.

§ 12.30–1 [Amended]

■ 266. In § 12.30–1, remove the words, ''certification of'', and add, in their place, the words, ''endorsements for''.

§ 12.30–3 [Removed and Reserved]

■ 267. Remove and reserve § 12.30–3.

§ 12.30–5 [Amended]

■ 268. In § 12.30–5, remove the words, ''after January 31, 1997,''; and remove the word, ''MMD'', and add, in its place, the word, ''endorsement''.

§ 12.35–1 [Amended]

■ 269. In § 12.35–1, remove the word ''certification'' and add, in its place, the word ''qualification''; remove the citation, ''§ 12.35–3'', and add, in its place, the words ''part 10 of this chapter''.

§ 12.35–3 [Removed and Reserved]

■ 270. Remove and reserve § 12.35–3.

§ 12.35–5 [Amended]

■ 271. In § 12.35–5—

■ a. In the introductory text, remove the words, ''If you are an unlicensed person, then, before you'', and add, in their place, the words, ''A mariner with no endorsements,''; and remove the words, ''you must'', and add, in their place, the words, ''only after meeting the following conditions''; and

■ b. In paragraph (b), remove the words, ''you do meet'', and add, in their place, the words, ''the mariner meets''.

Subpart 12.40—Non-resident Alien Members of the Steward's Department on U.S.-Flag Large Passenger Vessels

■ 272. Revise the heading for the subpart 12.40 to read as set forth above.

§ 12.40–1 [Amended]

■ 273. In § 12.40–1, remove the words, ''merchant mariner's documents'', and add, in their place, the words, ''merchant mariner credentials''.

§ 12.40–3 [Removed and Reserved]

■ 274. Remove and reserve § 12.40–3.

§ 12.40–5 [Amended]

■ 275. In § 12.40–5—

■ a. In paragraph (a), remove the words, ''merchant mariner's documents'', and add, in their place, the words, ''merchant mariner credentials''; and

■ b. In paragraph (b) remove the words, ''merchant mariner's document'', and add, in their place, the words, ''merchant mariner credential''.

§ 12.40–7 [Amended]

■ 276. In § 12.40–7, remove the words, ''merchant mariner's document'', wherever they occur, and add, in their place, the words, ''merchant mariner credential''.

§ 12.40–9 [Amended]

■ 277. In § 12.40–9—
■ a. Remove the words, ''merchant mariner's document'', wherever they occur, and add, in their place, the words, ''merchant mariner credential''; and
■ b. After the words, ''denial established in'', remove the words, ''§ 12.02–4 of this part'', and add, in their place, the words, ''§§ 10.209, 10.211, and 10.213 of this subchapter''.

§ 12.40–11 [Amended]

■ 278. In § 12.40–11—
■ a. In paragraph (a), remove the words, ''§§ 12.02–10, 12.02–12 and 12.02–14 of this part'', and add, in their place, the words, ''§ 10.221 of this subchapter''; remove the words, ''merchant mariner's document'', and add, in their place, the words, ''merchant mariner credential''; and
■ b. In paragraph (c) remove the words, ''merchant mariner's document'', and add, in their place, the words, ''merchant mariner credential''.

§ 12.40–13 [Amended]

■ 279. In § 12.40–13—
■ a. In paragraphs (a), (b), and (c), remove the words ''merchant mariner's document'', wherever they occur, and add, in their place, the words, ''merchant mariner credential''; and
■ b. In paragraph (c)(2), remove the words, ''§§ 12.02–10, 12.02–12 and 12.02–14 of this part'', and add, in their place, the words, ''§ 10.221 of this subchapter''.

§ 12.40–15 [Amended]

■ 280. In § 12.40–15—
■ a. In paragraph (a) remove the words, ''merchant mariner's document'', and add, in their place, the words, ''merchant mariner credential''.

PART 13—CERTIFICATION OF TANKERMEN

■ 281. The authority citation for part 13 continues to read as follows:

Authority: 46 U.S.C. 3703, 7317, 8105, 8703, 9102; Department of Homeland Security Delegation No. 0170.1.

§ 13.101 [Amended]

■ 282. In § 13.101, remove the words, ''to a merchant mariner's document'', and add, in their place, the words, ''on a merchant mariner credential''.

§ 13.103 [Removed and Reserved]

■ 283. Remove and reserve § 13.103.

■ 284. Add new § 13.106 to read as follows:

§ 13.106 Requirement to hold an MMC.

An applicant for any endorsement in this part must also meet the requirements for the MMC on which the endorsement would appear. These requirements are set out in part 10 of this chapter.

§ 13.107 [Amended]

■ 285. In § 13.107—
■ a. In paragraphs (a), (b), (c), (d), (e), and (f), remove the word, ''MMD'', wherever it appears, and add, in its place, the word, ''MMC'';
■ b. In paragraph (a), remove the words, ''engineer's license'', and add, in its place, the words, ''engineer license or engineer endorsement'';
■ c. In paragraph (d), place quotation marks (''') before and after the words, ''Tankerman-Engineer''; after the words ''No person licensed'', add the words, ''or credentialed''; and remove the citation, ''part 10'', and add, in its place, the citation ''part 11'';
■ d. In paragraph (e), remove the citation, ''13.103'' and add, in its place, the citation, ''10.107''; and
■ e. In paragraph (f), remove the citation ''10.105'', and add, in its place, the citation ''10.217''; remove the word ''chapter'', and add, in its place, the word, ''title''.

§ 13.109 [Amended]

■ 286. In § 13.109(c), remove the citation, ''10.105'', and add, in its place, the citation, ''10.217''; and remove the word, ''MMD'', and add, in its place, the word, ''MMC''.

§ 13.111 [Amended]

■ 287. In § 13.111—
■ a. In the section heading, after the word, ''Restricted'', add the word, ''tankerman'';
■ b. In paragraph (a), remove the citation, ''46 CFR 10.105'', and add, in their place, the words, ''§ 10.217 of this chapter'';
■ c. In paragraph (d)(3), after the words, ''passing a physical'', add the words, ''and medical''; remove the words ''in accordance with § 13.125'', and add, in their place, the words, ''according to § 10.215 of this chapter''; and
■ d. In paragraph (f), after the words ''Seafarers, 1978'', add the words '', as amended''.

§ 13.119 [Amended]

■ 288. In § 13.119, remove the word, ''MMD'', and add, in its place, the words, ''merchant mariner's document or merchant mariner credential on which the endorsement appears''.

§ 13.120 [Amended]

■ 289. In § 13.120, in the section heading, before the word, ''endorsement'', add the word, ''tankerman''; remove the citation, ''12.02–27'', and add, in its place, the citation, ''10.227''; and remove the word, ''MMD'', and add, in its place, the word, ''MMC''.

§ 13.121 [Amended]

■ 290. In § 13.121—
■ a. In the section heading, remove the word, ''training'', and after the word, ''tankerman'', add the word, ''endorsements''; and
■ b. In paragraph (a), remove the text, ''10.203 and 10.304'', and add, in its place, the text, ''11.302 and 11.304''.

§ 13.125 [Amended]

■ 291. In § 13.125—
■ a. In the section heading, after the word, ''Physical'', add the words, ''and medical''.
■ b. In the text, remove the words, ''10.205(d) of this chapter, excluding paragraph (d)(2) of that section'', and add, in their place, the words, ''10.215 of this chapter''.

§ 13.129 [Amended]

■ 292. In § 13.129—
■ a. In the section heading, after the word, ''tankerman'', add the word, ''endorsements''.
■ b. In table 13.129, in the column, ''Physical required'', remove the numbers ''13.125'', ''13.111(b)'', ''13.111(c)'', and ''13.111(d)(3)'' wherever they appear and add, in their place, the number ''10.215''.

§ 13.201 [Amended]

■ 293. In paragraph (c), after the word, ''physical'', add the words, ''and medical''; and remove the words, ''in accordance with § 13.125'', and add, in their place, the words, ''according to § 10.215 of this chapter''.

§ 13.203 [Amended]

■ 294. In § 13.203—
■ a. In paragraph (a)(1), after the words, ''service as a'', remove the word, ''licensed''; after the words, ''deck officer or'', remove the words, ''a licensed''; and before the word, ''engineering'', add the word, ''an'';
■ b. In paragraph (a)(2), remove the word, ''unlicensed'', and add, in its place, the word, ''rating''; and
■ c. In paragraph (c) introductory text, after the word, ''MMD'', add the words ''or MMC''.

§ 13.207 [Amended]

■ 295. In § 13.207, remove the words, ''license or a tankerman endorsement'', and add, in their place, the words, ''license, tankerman endorsement, or officer endorsement on an MMC''.

§ 13.301 [Amended]

■ 296. In § 13.301(c), after the word, ''physical'', add the words, ''and medical''; and remove the words, ''in accordance with § 13.125'', and add, in their place, the words, ''according to § 10.215 of this chapter''.

§ 13.303 [Amended]

■ 297. In § 13.303(c) introductory text, after the word, ''MMD'', add the words, ''or MMC''.

§ 13.307 [Amended]

■ 298. In § 13.307(a), remove the words, ''license or a tankerman endorsement'', and add, in their place, the words, ''license, tankerman endorsement on an MMD or MMC, or an officer endorsement on an MMC''.

§ 13.401 [Amended]

■ 299. In § 13.401(c), after the word, ''physical'', add the words, ''and medical''; and remove the words, ''in accordance with § 13.125'', and add, in their place, the words, ''according to § 10.215 of this chapter''.

§ 13.403 [Amended]

■ 300. In § 13.403(b) introductory text, after the word, ''MMD'', add the words, ''or MMC''.

§ 13.407 [Amended]

■ 301. In § 13.407, remove the words, ''for a license or endorsement'', and add, in their place, the words, ''to the Coast Guard for any other endorsement or credential''.

§ 13.501 [Amended]

■ 302. In § 13.501(c), after the word, ''physical'', add the words, ''and medical''; remove the words, ''in accordance with § 13.125'', and add, in their place, the words, ''according to § 10.215 of this chapter''.

§ 13.503 [Amended]

■ 303. In § 13.503—

■ a. In paragraph (a)(1), remove the words, ''a licensed'', and add, in their place, the word, ''an''; after the words, ''engineering officer'', remove the word, ''of'', and add, in its place, the word, ''on'';

■ b. In paragraph (a)(2), remove the word, ''unlicensed'', and add, in its place, the word, ''rating''; and

■ c. In paragraph (b), after the word, ''MMD'', add the words, ''or MMC''.

§ 13.505 [Amended]

■ 304. In § 13.505(a)(2), remove the words, ''licensed and unlicensed'', and add, in their place, the words, ''officer, rating, and cadet''.

§ 13.507 [Amended]

■ 305. In § 13.507 text, remove the words, ''for a license or tankerman endorsement'', and add, in their place, the words, ''to the Coast Guard for any other endorsement or credential''.

PART 14—SHIPMENT AND DISCHARGE OF MERCHANT MARINERS

■ 306. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 552; 46 U.S.C. Chapters 103 and 104; 46 U.S.C. 70105.

§ 14.205 [Amended]

■ 307. In § 14.205, after the words, ''every document, certificate,'' add the word, ''credential,''.

§ 14.207 [Amended]

■ 308. In § 14.207(a)(1), after the words, ''specify at least the name, the'', remove the words, ''number of the license or merchant mariner's document'', and add the words, ''license, MMD, or MMC number,''.

§ 14.307 [Amended]

■ 309. In § 14.307(a), remove the words, ''and merchant mariner's document number'', and add, in their place, the words, ''MMD or MMC number''.

PART 15—MANNING REQUIREMENTS

■ 310. The authority citation for part 15 is revised to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, 9102, and 70105; and Department of Homeland Security Delegation No. 0170.1.

§ 15.103 [Amended]

■ 311. In § 15.103—

■ a. In paragraph (b), remove the words, ''of licensed individuals and members of the crew'', and add, in their place, the words, ''number of officers and rated crew''; and after the words, ''minimum qualifications concerning licenses'', add the words, ''and MMC endorsements'';

■ b. In paragraph (c), remove the words, ''licensed individuals'', and add, in their place, the word, ''officers''; and

■ c. In paragraph (g), remove the words, ''Licensed personnel'', and add, in their place, the word, ''Personnel''; after the words, ''an appropriate STCW'', remove the words ''certificate or endorsement'', and add, in their place, the words, ''endorsement on their license or MMC''; and before the words, ''endorsement will be expressly limited'', remove the words, ''certificate or''.

Subpart B—[Removed and Reserved]

■ 312. Remove and reserve subpart B, consisting of § 15.301.

■ 313. Revise § 15.401 to read as follows:

§ 15.401 Employment and service within restrictions of credential.

A person may not employ or engage an individual, and an individual may not serve, in a position in which an individual is required by law or regulation to hold a license, certificate of registry, merchant mariner's document, transportation worker identification credential, and/or merchant mariner credential, unless the individual holds all credentials required, as appropriate, authorizing service in the capacity in which the individual is engaged or employed and the individual serves within any restrictions placed on the credential. Beginning April 15, 2009, all mariners holding an active license, certificate of registry, MMD, or MMC issued by the Coast Guard must also hold a valid transportation worker identification credential (TWIC) issued by the Transportation Security Administration under 49 CFR part 1572.

§ 15.405 [Amended]

■ 314. In § 15.405, remove the words, ''licensed, registered, or certificated'', and add, in their place, the word, ''credentialed''.

§ 15.410 [Amended]

■ 315. In § 15.410—

■ a. In the section heading, remove the word, ''Licensed'' and add, in its place, the word, ''Credentialed''; and

■ b. In the text, remove the words, ''a licensed individual authorized'', and add, in their place, the words, ''an individual holding a license or MMC authorizing them''.

§ 15.415 [Removed and Reserved]

■ 316. Remove and reserve § 15.415.

§ 15.515 [Amended]

■ 317. In § 15.515(b) introductory text, remove the words, ''issued by the Coast Guard'', and add, in their place, the words, ''or appropriate officer endorsement on their MMC''.

■ 318. In § 15.520, revise paragraphs (b) through (i) and (l) to read as follows:

§ 15.520 Mobile offshore drilling units.

* * * * *

(b) The OCMI determines the minimum number of officers and crew (including lifeboatmen) required for the safe operation of inspected MODUs. In addition to other factors listed in this part, the specialized nature of the MODU is considered in determining the specific manning levels.

(c) A license or officer endorsement on an MMC as offshore installation manager (OIM), barge supervisor (BS), or ballast control operator (BCO) authorizes service only on MODUs. A license or endorsement as OIM is restricted to the MODU type and mode of operation specified on the credential.

(d) A self-propelled MODU other than a drillship must be under the command of an individual who holds a license as master endorsed as OIM or an MMC with master and OIM officer endorsements.

(e) A drillship must be under the command of an individual who holds a license or MMC officer endorsement as master. When a drillship is on location, the individual in command must hold a license as master endorsed as OIM or an MMC with master and OIM officer endorsements.

(f) A non-self-propelled MODU must be under the command of an individual who holds a license or MMC officer or endorsement as OIM.

(g) An individual serving as mate on a self-propelled surface unit other than a drillship must hold an appropriate license or MMC officer endorsement as mate and an endorsement as BS or BCO. An individual holding a license or MMC officer endorsement as barge supervisor or ballast control operator may be substituted for a required mate when a self-propelled surface unit other than a drillship is on location or under tow, under certain circumstances as determined by the cognizant OCMI.

(h) An individual holding a license or MMC officer endorsement as barge supervisor is required on a non-self-propelled surface unit other than a drillship.

(i) An individual holding a license or MMC officer endorsement as barge supervisor may serve as ballast control operator.

* * * * *

(l) A surface mobile offshore drilling unit underway or on location, when afloat and equipped with a ballast control room, must have that ballast control room manned by an individual holding a license or MMC officer endorsement authorizing service as ballast control operator.

§ 15.530 [Amended]

■ 319. In § 15.530—

■ a. Remove paragraph (a) and redesignate paragraphs (b) through (g) as paragraphs (a) through (f), respectively;

■ b. In newly redesignated paragraphs (a), (b), (d) and (e), remove the words, ''merchant mariner's document'', wherever they occur, and add, in their place, the words, ''merchant mariner credential''; and

■ b. In newly redesignated paragraph (c), remove the words, ''unlicensed seamen'', and add, in their place, the word, ''ratings''.

§ 15.605 [Amended]

■ 320. In § 15.605—

■ a. In the section heading, remove the word, ''Licensed'', and add, in its place, the word, ''Credentialed'';

■ b. In the introductory text, remove the word, ''licensed'', and add, in its place, the word, ''credentialed'';

■ c. In paragraph (a), remove the words, '', carrying not more than six passengers,''; after the words, ''holding a license'', add the words, ''or MMC endorsed''; after the words, ''as operator'', add the words, ''of uninspected passenger vessels''; and

■ d. In paragraph (b), remove the word, ''licensed'', and add, in its place, the word, ''credentialed''.

§ 15.610 [Amended]

■ 321. In § 15.610—

■ a. In paragraph (a), after the words, ''and control of a person'', remove the word, ''licensed'', and add, in its place, the words, ''holding a license or MMC officer endorsement''; and after the words, ''endorsement on his or her license'', add the words, ''or MMC'';

■ b. Remove paragraph (b);

■ c. Redesignate paragraph (c) as paragraph (b); and

■ d. In newly redesignated paragraph (b) introductory text, remove the words, ''who holds a first-class pilot's license or endorsement for that route, or'', and add, in their place, the words, ''meeting the requirements of paragraph (a) of this section who holds either a first-class pilot's endorsement for that route, MMC officer endorsement for the Western Rivers, or meets the requirements of paragraph (a) and''; and remove the words, ''paragraph (c)(1) or paragraph (c)(2)'', and add, in their place, the words, ''paragraphs (b)(1) or (b)(2)''.

§ 15.701 [Amended]

■ 322. In § 15.701—

■ a. In paragraph (b), after the words, ''must hold a license'', add the words, ''or MMC officer endorsement''; and remove the words, ''part 10'', and add, in their place, the words, ''parts 10 and 11''; and

■ b. In paragraph (c), after the words, ''employees of the'', remove the word, ''Customs'', and add, in their place, the words, ''Customs and Border Protection''.

§ 15.705 [Amended]

■ 323. In § 15.705—

■ a. In paragraph (b), in the first sentence, remove the words, ''licensed individuals'', and add, in their place, the word, ''officers''; and in the second sentence, after the words, ''deck department other than'', remove the word, ''licensed'';

■ b. In paragraph (c) introductory text, remove the words, ''licensed individuals'', and add, in their place, the word, ''officers''; and

■ c. In paragraphs (d), (e)(1) introductory text, and (e)(2), remove the word ''licensed'' wherever it appears.

§ 15.710 [Amended]

■ 324. In § 15.710 introductory text, in the first sentence, after the words, ''on the working hours of'', remove the words, ''licensed individuals'', and add, in their place, the words, ''credentialed officers''; and in the third sentence, after the words, ''master or other'', remove the words, ''licensed individual'', and add, in their place, the words, ''credentialed officer''.

■ 324. In § 15.720, revise paragraphs (a), (b) introductory text, and (d) to read as follows:

§ 15.720 Use of non-U.S. credentialed personnel.

(a) United States vessels which need to replace one or more persons while on a foreign voyage and outside the jurisdiction of the United States, in order to meet manning requirements, may use non-U.S. credentialed personnel without a TWIC, except for the positions of master and radio officer, until the vessel returns to a port at which in the most expeditious manner replacements who are citizens of the United States can be obtained.

(b) The citizenship requirements of 46 U.S.C. 8103(a) and (b) and the TWIC requirement of 46 U.S.C. 70105 are waived, except for the requirement that the master must be a U.S. citizen holding a TWIC, with respect to the following vessels:

* * * * *

(d) The master shall assure that any replacements of crewmembers by non-U.S. citizens made in accordance with this section will be with an individual who holds a credential which is equivalent in experience, training, and other qualifications to the U.S.

credential required for the position and that the person possesses or will possess the training required to communicate to the extent required by § 15.730 of this part.

§ 15.725 [Amended]

■ 325. In § 15.725, in the first sentence, remove the words, ''licensed or documented'', and add, in their place, the word, ''credentialed''.

§ 15.730 [Amended]

■ 326. In § 15.730(d), remove the words, ''licensed individuals'', wherever they appear, and add, in their place, the word, ''officers''; and in the fourth sentence, after the words ''spoken directly by the'', remove the words, ''licensed individual'', and add, in their place, the word, ''officer''.

§ 15.805 [Amended]

■ 327. In § 15.805—

■ a. In paragraph (a) introductory text, after the words, ''license as'', add the words, ''or a valid MMC with endorsement as master'';

■ b. In paragraph (a)(5) introductory text, remove the word, ''licensed'', and add, in its place, the words, ''holding a license or MMC endorsed''; and

■ c. In paragraph (a)(5)(ii), remove the word, ''endorsed'' and add, in its place, the words, ''or MMC with officer endorsement''.

§ 15.810 [Amended]

■ 328. In § 15.810—

■ a. In paragraph (a), remove the word ''licensed'';

■ b. In paragraph (b) introductory text, remove the word, ''licensed mates'' and add, in its place, the words ''mariners holding a license or MMC officer endorsement as mate'';

■ c. In paragraphs (b)(1) through (5), remove the word, ''licensed'', wherever it appears;

■ d. In paragraph (c), after the words, ''appropriate license'', add the words, ''or MMC'';

■ e. In paragraph (d) introductory text, remove the words, ''hold a license'', and add, in their place, the words, ''satisfy the requirements of § 15.805(a)(5) of this part or hold a license or MMC'';

■ f. In paragraph (d)(2) introductory text, after the words, ''officer's license'', add the words, ''or MMC''; and

■ g. In paragraph (d)(2)(ii), remove the word, ''endorsed'', and add, in its place, the words, ''or MMC with officer endorsement''.

■ 329. In § 15.812—

■ a. In table 15.812(e)(1), in the heading to the second column, after the words, ''First Class Pilot's licenses'', add the words, ''or MMC officer endorsements'';

■ b. In table 15.812(e)(2), in the heading to the second column, after the words, ''First Class Pilot's licenses'', add the words, ''or MMC officer endorsements''; remove the word, ''Operator'', wherever it appears and add, in its place, the words, ''Master, Mate (Pilot) of towing vessels''; and

■ c. Revise paragraphs (b), (c), (f)(1) introductory text, (f)(1)(i), and (f)(2) introductory text to read as follows:

§ 15.812 Pilots.

* * * * *

(b) The following individuals may serve as a pilot for a vessel subject to paragraph (a) of this section, when underway on the navigable waters of the United States that are designated areas:

(1) An individual holding a valid first class pilot's license or MMC with a first class pilot's endorsement, operating within the restrictions of his or her credential, may serve as pilot on any vessel to which this section applies.

(2) An individual holding a valid license or MMC officer endorsement as master or mate, employed aboard a vessel within the restrictions of his or her credential, may serve as pilot on a vessel of not more than 1,600 gross tons propelled by machinery, described in paragraphs (a)(1) and (a)(3) of this section, provided he or she:

(i) Is at least 21 years old;

(ii) Complies with the currency of knowledge provisions of § 11.713 of this chapter; and

(iii) Has completed a minimum of four round trips over the route to be traversed while in the wheelhouse as watchstander or observer. At least one of the round trips must be made during the hours of darkness if the route is to be traversed during darkness

(3) An individual holding a valid license or MMC officer endorsement as master, mate, or operator employed aboard a vessel within the restrictions of his or her credential, may serve as pilot on a tank barge or tank barges totaling not more than 10,000 gross tons, described in paragraphs (a)(1) and (a)(3) of this section, provided he or she:

(i) Is at least 21 years old;

(ii) Complies with the currency of knowledge provisions of § 11.713 of this chapter;

(iii) Has a current physical examination in accordance with the provisions of § 11.709 of this chapter;

(iv) Has at least six-months service in the deck department on towing vessels engaged in towing operations; and

(v) Has completed a minimum of twelve round trips over the route to be traversed, as an observer or under instruction in the wheelhouse. At least three of the round trips must be made during the hours of darkness if the route is to be traversed during darkness.

(c) An individual holding a valid license or MMC officer endorsement as master, mate, or operator, employed aboard a vessel within the restrictions of his or her credential, may serve as a pilot for a vessel subject to paragraphs (a)(1) and (a)(2) of this section, when underway on the navigable waters of the United States that are not designated areas of pilotage waters, provided he or she:

(1) Is at least 21 years old;

(2) Complies with the currency of knowledge provisions of § 11.713 of this chapter; and

(3) Has a current physical examination in accordance with the provisions of § 11.709 of this chapter.

* * * * *

(f) * * *

(1) When operating from 60°49′ north latitude to the Port of Valdez be under the direction and control of an individual holding a valid license or MMC endorsed as pilot who:

(i) Is operating under the authority of a license or MMC;

* * * * *

(2) Navigate with either two credentialed deck officers on the bridge or an individual holding a valid license or MMC endorsed as pilot when operating south of 60°49′ north latitude and in the approaches through Hinchinbrook Entrance and in the area bounded:

* * * * *

§ 15.815 [Amended]

■ 330. In § 15.815—

■ a. In paragraph (a), remove the words, ''licensed deck individuals'', and add, in their place, the words, ''deck officers''; and

■ b. In paragraph (c), remove the words, ''be licensed'', and add, in their place, the words, ''hold a license or MMC officer endorsement''; and after the words, ''service as master'', remove the words, '', mate, or operator'', and add, in their place, the words ''or mate''.

§ 15.820 [Amended]

■ 331. In § 15.820—

■ a. In paragraph (a) introductory text, remove the words, ''appropriate license'', and add, in their place, the words, ''MMC or license endorsed''; and after the words, ''as chief engineer or'', remove the words, ''a license'', and add, in their place, the words, ''other credential'';

■ b. In paragraph (a)(3), remove the words, ''a licensed individual'', and add, in their place, the words, ''an individual with a license or the

appropriate MMC officer endorsement''; and

■ c. In paragraph (b), remove the words, ''appropriate license'' and add, in their place, the words, ''appropriately endorsed license or MMC''.

§ 15.825 [Amended]

■ 332. In § 15.825—

■ a. In paragraph (a), remove the words, ''appropriate license'' and add, in their place, the words, ''appropriately endorsed license or MMC''; and

■ b. In paragraph (b), remove the word, ''licensed'', and add, in its place, the word, ''credentialed''.

§ 15.835 [Amended]

■ 333. In § 15.835 text, remove the number, ''10'', and add, in its place, the number, ''11''.

§ 15.840 [Amended]

■ 334. In § 15.840(a), remove the words, ''licensed individuals'', and add, in their place, the words, ''individuals serving as officers''.

§ 15.860 [Amended]

■ 335. In § 15.860—

■ a. In paragraph (a), after the words, ''merchant mariner's documents'', add the words, ''or MMCs'';

■ b. In paragraph (f) introductory text, after the words, ''merchant mariner's documents'', add the words, ''or MMCs'';

■ c. In paragraph (f)(3), remove the words, ''licensed person'', and add, in their place, the words, ''credentialed officer'';

■ d. In paragraph (f)(4), remove the words, ''licensed or unlicensed person'', and add, in their place, the words, ''officer or crewmember''; and

■ e. In table 15.860(a)(2), in the first column, sixth row, remove the words, ''Licensed Person'', and add, in their place, the words, ''Credentialed Officer''; and in the first column, seventh row, remove the words ''Licensed or Unlicensed Person'', and add, in their place, the words, ''Credentialed Officer or Crewmember''.

§ 15.901 [Amended]

■ 336. In § 15.901, paragraphs (a), (b), (c), and (d), after the words ''holding a license'', wherever they appear, add the words, ''or MMC endorsed''; after the words, ''on the individual's license'', wherever they appear, add the words, ''or MMC''; and remove the words, ''authorizing service'', wherever they appear.

§ 15.905 [Amended]

■ 337. In § 15.905 (a), (b), and (c), after the words, ''holding a license'', wherever they appear, add the words, ''or MMC endorsed''; and after the words, ''on the individual's license'', wherever they appear, add the words, ''or MMC''.

■ 338. Revise § 15.910 to read as follows:

§ 15.910 Towing vessels.

No person may serve as a master or mate (pilot) of any towing vessel without meeting the requirements of §§ 15.805(a)(5) or 15.810(d) of this part.

§ 15.915 Engineer Officer Endorsements.

■ 339. In § 15.915—

■ a. Revise the heading to read as set forth above.

■ b. In the introductory text, after the words, ''following licenses'', add the words, ''and MMC officer endorsements''; and after the words, ''on the license'', add the words, ''or MMC''; and

■ c. In paragraphs (a) introductory text, (b), (c), and (d), after the word, ''license'', wherever it appears, add the words, ''or endorsement''.

§ 15.1001 [Amended]

■ 340. In § 15.1001, remove the words, ''an appropriately endorsed Federal first class pilot's license issued by the Coast Guard'', and add, in their place, the words, ''a valid MMC or license with appropriate endorsement as a first-class pilot''.

■ 341. In § 15.1103—

■ a. Revise the section heading;

■ b. In paragraph (c), remove the words, ''After January 31, 2002, on'', and add, in their place, the word, ''On''; and

■ c. Revise paragraphs (d), (e) introductory text, (f), and (h).

The revisions read as follows:

§ 15.1103 Employment and service within the restrictions of an STCW endorsement or of a certificate of training.

* * * * *

(d) You must hold documentary evidence to show you meet the requirements of §§ 11.1005 or 12.30–5 of this chapter, as appropriate, if you are a master or crewmember on board a Ro-Ro passenger ship to which a certificate signifying compliance with the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS) (SOLAS is available from the *International Maritime Organization (IMO),* 4 Albert Embankment, London, SE1 7SR, England, telephone: + 44 (0)20 7735 7611, *http://www.imo.org*), has been issued.

(e) You must hold documentary evidence to show you meet the requirements of §§ 11.1005 or 12.30–5 of this chapter, as appropriate, if you are a master or crewmember on board a vessel that is—

* * * * *

(f) On board a seagoing vessel required to comply with provisions of the Global Maritime Distress and Safety System (GMDSS) in Chapter IV of SOLAS, no person may employ or engage any person to serve, and no person may serve, as the master, chief mate, or officer of the navigational watch, unless the person serving holds the appropriate certificate or endorsement for operator of radio in GMDSS.

* * * * *

(h) On board a seagoing vessel fitted with an Automatic Radar Plotting Aid (ARPA), no person may employ or engage any person to serve, and no person may serve, as the master, chief mate, or officer of the navigational watch, unless the person so serving has been trained in the use of ARPA according to §§ 11.205 or 11.209 of this chapter, whichever is appropriate.

§ 15.1105 [Amended]

■ 342. In § 15.1105(a) introductory text, (b), and (c) introductory text, remove the words, ''After January 31, 1997, on'', wherever they appear and add, in their place, the word, ''On''.

§ 15.1107 [Amended]

■ 343. In § 15.1107—

■ a. In the introductory text, after the words, ''mariner holding a license'', add the words, '', MMC,''; and

■ b. In paragraph (c), remove the words, ''licenses, documents, or endorsements'', and add, in their place, the word, ''credentials''.

§ 15.1111 [Amended]

■ 344. In § 15.1111, paragraph (a), remove the words, ''After January 31, 1997, each'', and add, in their place, the word, ''Each''.

PART 16—CHEMICAL TESTING

■ 345. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; Department of Homeland Security Delegation No. 0170.1.

■ 346. In § 16.105, add, in alphabetical order, a definition for ''credential'' as set out below; in the definition for ''crewmember'', redesignate paragraphs (a), (b) introductory text, (b)(1), (b)(2), (b)(3) and (b)(4) as paragraphs (1), (2), (2)(i), (2)(ii), (2)(iii), and (2)(iv) respectively; and revise newly redesignated paragraphs (1) and (2) introductory text of the definition for ''crewmember'' to read as follows:

§ 16.105 Definitions of terms used in this part.

* * * * *

Credential is a term used to refer to any or all of the following:

(1) Merchant mariner's document.

(2) Merchant mariner's license.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

Crewmember means an individual who is—

(1) Onboard a vessel acting under the authority of a credential issued under this subchapter, whether or not the individual is a member of the vessel's crew; or

(2) Engaged or employed onboard a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a credential issued under this subchapter, except for the following:

* * * * *

§ 16.113 [Amended]

■ 347. In § 16.113(a), remove the words, ''documented and licensed'', and add, in their place, the word, ''credentialed''.

§ 16.201 [Amended]

■ 348. In § 16.201—

■ a. In paragraph (c), after the words, ''If an individual holding'', remove the words, ''a license, certificate of registry, or merchant mariner's document'', and add, in their place, the words, ''a credential''; after the words, ''against his or her'', remove the words, ''license, certificate of registry, or merchant mariner's document'', and add, in their place, the word ''credential''; and

■ b. In paragraph (d), remove the words, ''a license, certificate of registry, or merchant mariner's document'', and add, in their place, the words, ''a credential''.

■ 349. Revise § 16.220(a) and (b) to read as follows:

§ 16.220 Periodic testing requirements.

(a) Except as provided by paragraph (c) of this section and § 10.227(e) of this chapter, an applicant must pass a chemical test for dangerous drugs for—

(1) An original issuance of a license, COR, MMD, or MMC;

(2) The first issuance, raise of grade, or renewal of an officer endorsement on a merchant mariner credential;

(3) A raise of grade of a license or COR;

(4) The first endorsement as an able seaman, lifeboatman, qualified member of the engine department, or tankerman; or

(5) A reissuance of a credential with a new expiration date. The applicant must provide the results of the test to the Coast Guard Regional Examination Center (REC) at the time of submitting an application. The test results must be completed and dated not more than 185 days before submission of the application.

(b) Unless excepted under paragraph (c) of this section, each pilot required by this subchapter to receive an annual physical examination must pass a chemical test for dangerous drugs as a part of that examination, and provide the results to the Coast Guard. Applicants need not submit additional copies of their annual chemical test for dangerous drugs pursuant to paragraph (a) of this section if the applicant submitted passing results of a chemical test for dangerous drugs to the Coast Guard within 12 months of the date of application.

* * * * *

§ 16.230 [Amended]

■ 350. In § 16.230—

■ a. In paragraph (b)(1), remove the words, ''issued by the Coast Guard hold a license'', and add, in their place the words, ''hold a license or MMC endorsed as master, mate, or operator''; and

■ b. In paragraph (k), remove the words, ''license or merchant mariner's document'', and add, in their place, the word, ''credential''.

§ 16.250 [Amended]

■ 351. In § 16.250, in paragraph (a), remove the words ''license, certificate of registry, or merchant mariner's document'' and add, in their place, the word, ''credential''.

PART 26—OPERATIONS

■ 352. The authority citation for part 26 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; Pub. L. 103–206, 107 Stat. 2439; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

Subpart 26.20—Exhibition of Coast Guard Credential

■ 353. Revise the heading to subpart 26.20 as set forth above.

§ 26.20–1 [Amended]

■ 354. In § 26.20–1, after the words, ''valid Coast Guard license'', add the words ''or MMC officer endorsement''; and after the words, ''must have the license'', add the words, ''or MMC''.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

■ 355. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.1.

§ 28.275 [Amended]

■ 356. In § 28.275—

■ a. In paragraph (a)(2) introductory text, remove the words, ''merchant mariner's license'' and add, in their place, the words, ''license or officer endorsement''; remove the words ''64 CFR'' and add, in their place, the text ''§ ''; and

■ b. In paragraph (a)(3) introductory text, remove the words, ''merchant mariner's license'', and add, in their place, the words, ''license or officer endorsement''; and remove the words, ''46 CFR'' and add, in their place, the text, ''§''.

PART 30—GENERAL PROVISIONS

■ 357. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; Department of Homeland Security Delegation No. 0170.1; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.10–71 [Amended]

■ 358. In § 30.10–71 introductory text, remove the words, ''merchant mariners' documents'' and add, in their place, the word, ''endorsements''.

PART 31—INSPECTION AND CERTIFICATION

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 31.10–21 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.15–1 [Amended]

■ 360. In § 31.15–1, in the section heading, remove the words, ''Licensed officers'' and add, in their place, the word, ''Officers''.

PART 35—OPERATIONS

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 35.05–1 [Amended]

■ 362. In § 35.05–1—
■ a. In the section heading, remove the words, ''Licensed officers'', and add, in their place, the word, ''Officers''; and
■ b. In the text, remove the words ''licensed'' and ''certificated'' wherever they appear.

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

■ 363. The authority citation for part 42 continues to read as follows:

Authority: 46 U.S.C. 5101–5116; Department of Homeland Security Delegation No. 0170.1; section 42.01–5 also issued under the authority of 44 U.S.C. 3507.

■ 364. Add new § 42.05–27 to read as follows:

§ 42.05–27 Credential.

As used in this subchapter, *credential* means any or all of the following:
(a) Merchant mariner's document.
(b) Merchant mariner's license.
(c) STCW endorsement.
(d) Certificate of registry.
(e) Merchant mariner credential.

§ 42.07–50 [Amended]

■ 365. In § 42.07–50(b)(5), remove the words, ''license or merchant mariner's document'', and add, in their place, the word, ''credential''.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

■ 366. The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 58.16–19 [Amended]

■ 367. In § 58.16–19(b), remove the word, ''licensed'', and add, in its place, the word, ''credentialed''.

PART 61—PERIODIC TESTS AND INSPECTIONS

■ 368. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 61.15–10 [Amended]

■ 369. In § 61.15–10(a), remove the words, ''a licensed'', and add, in their place, the words, ''an appropriately credentialed''.

PART 78—OPERATIONS

■ 370. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

Subpart 78.65—[Amended]

■ 371. In the heading to subpart 78.65, remove the word, ''License'', and add, in its place, the words, ''Merchant Mariner Credential'';
■ 372. Revise § 78.65–1 to read as follows:

§ 78.65–1 Officers.

All officers on a vessel must have their licenses or officer endorsements conspicuously displayed.

PART 97—OPERATIONS

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757; 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

Subpart 97.53—Exhibition of Merchant Mariner Credential

■ 374. Revise the heading to subpart 97.53 to read as set forth above.
■ 375. Revise § 97.53–1 to read as follows:

§ 97.53–1 Officers.

All officers on a vessel must have their licenses or officer endorsements conspicuously displayed.

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

■ 376. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3307, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 98.30–17 [Amended]

■ 377. In § 98.30–17—
■ a. In paragraph (b)(1), before the words, ''merchant mariner's document'', add the words, ''endorsement on his or her merchant mariner credential or''; and
■ b. In paragraph (b)(2), remove the words, ''license or certificate'', and add, in their place, the words, ''merchant mariner credential, license, or certificate''; and remove the words, ''on his or her MMD''.

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

■ 378. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 4502; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

§ 105.05–10 [Amended]

■ 379. In § 105.05–10(c)(2), remove the word, ''licensed''.

§ 105.45–1 [Amended]

■ 380. In § 105.45–1—
■ a. In paragraph (a)(1), remove the word, ''documents'' and add, in its place, the words, ''merchant mariner credentials or merchant mariner's documents'';
■ b. In paragraph (b)(1), before the words, ''merchant mariner's document'', add the words, ''merchant mariner credential or''; and
■ c. In paragraph (b)(2), after the word, ''license'', add the words, ''or merchant mariner credential''.

PART 114—GENERAL PROVISIONS

■ 381. The authority citation for part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security No. 0170.1; § 114.900 also issued under 44 U.S.C. 3507.

§ 114.400 [Amended]

■ 382. In § 114.400(b), in the definition for, ''Master'', after the word, ''license'', add the words, ''or merchant mariner credential''.

PART 115—INSPECTION AND CERTIFICATION

■ 383. The authority citation for part 115 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 115.113 [Amended]

■ 384. In § 115.113(b)(1)(iii), remove the word, ''licensed'' and add, in its place, the word ''credentialed''.

PART 122—OPERATIONS

■ 385. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 122.402 [Amended]

■ 386. In § 122.402—

■ a. In the section heading, remove the word, ''Licenses'', and add, in its place, the word ''Officers''; and

■ b. In the text, remove the words, ''licensed individual'', and add, in their place, the word ''officer''; remove the words, ''shall have his or her ''license'', and add, in their place, the words, ''must have his or her license or merchant mariner credential''.

§ 122.910 [Amended]

■ 387. In § 122.910 text, after the words, ''An individual holding a'', add the words, ''merchant mariner credential,''; and after the words, ''suspension or revocation of a'', remove the words, ''license, certificate, or document'', and add, in their place, the word, ''credential''.

PART 125—GENERAL

■ 388. The authority for part 125 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1.

■ 389. In § 125.160, add, in alphabetical order, a definition for the term ''credential'' to read as follows:

§ 125.160 Definitions.

* * * * *

Credential means any or all of the following:

(1) Merchant mariner's document.
(2) Merchant mariner's license.
(3) STCW endorsement.
(4) Certificate of registry.
(5) Merchant mariner credential.

* * * * *

PART 131—OPERATIONS

■ 390. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 10104; E.O. 12234, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 131.410 [Amended]

■ 391. In § 131.410, before the words, ''merchant mariner's document'' wherever they appear, add the words, ''merchant mariner credential or''.

§ 131.905 [Amended]

■ 392. In § 131.905(b), after the words, ''the suspension or revocation of'', add the words, ''credentials''.

■ 393. Revise § 131.955 to read as follows:—

§ 131.955 Display of merchant mariner credential.

Each officer on a vessel must conspicuously display his or her license or officer endorsements as required by 46 U.S.C. 7110.

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

■ 394. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; Department of Homeland Security Delegation No. 0170.1.

§ 151.03–53 [Amended]

■ 395. In § 151.03–53 introductory text, before the words, ''merchant mariner's documents'', add the words, ''merchant mariner credentials or''.

PART 166—DESIGNATION AND APPROVAL OF NAUTICAL SCHOOL SHIPS

■ 396. The authority citation for part 166 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 8105; 46 U.S.C. App. 1295g; Department of Homeland Security Delegation No. 0170.1.

§ 166.01 [Amended]

■ 397. In § 166.01(a), before the words, ''or merchant mariner's documents'', add the words, ''on merchant mariner credentials''.

PART 169—SAILING SCHOOL VESSELS

■ 398. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Pub. L. 103–206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1; § 169.117 also issued under the authority of 44 U.S.C. 3507.

§ 169.107 [Amended]

■ 399. In § 169.107, in the definition for, ''Master'', remove the word, ''licensed'', and add, in its place, the word, ''credentialed''.

§ 169.805 [Amended]

■ 400. In § 169.805—

■ a. In the section heading, remove the word, ''licenses'', and add, in its place, the words, ''merchant mariner credentials''; and

■ b. In the text, remove the words, ''Licensed personnel'' and add, in their place, the word ''Officers''; remove the words, ''shall have their licenses'', and add, in their place, the words, ''must have their license or merchant mariner credential''.

PART 175—GENERAL PROVISIONS

■ 401. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; 175.900 also issued under authority of 44 U.S.C. 3507.

§ 175.118 [Amended]

■ 402. Revise § 175.118(c)(3) to read as follows:

§ 175.118 Vessels operating under an exemption afforded in the Passenger Vessel Safety Act of 1993 (PVSA).

* * * * *

(c) * * *

(3) The owner or operator must crew the vessel under the requirements of this subchapter. All officers must be endorsed for the appropriate vessel tonnage. The OCMI may require an appropriately endorsed engineer officer for those vessels of at least 200 gross tons. Vessels carrying more than 50 passengers must have an additional deckhand, and all deckhands on vessels carrying more than 50 passengers must be adequately trained. The crew members on a vessel of at least 200 gross tons, except those operated exclusively on lakes and rivers, are required to hold merchant mariner credentials or merchant mariner documents and 50 percent of the merchant mariner credentials or at least an able seaman.

* * * * *

§ 175.400 [Amended]

■ 403. In § 175.400, in the definition for, ''Master'', remove the word, ''license'', and add, in its place, the words, ''merchant mariner credential''.

PART 176—INSPECTION AND CERTIFICATION

■ 404. The authority citation is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 176.113 [Amended]

■ 405. In § 176.113(b)(1)(iii), remove the word, ''licensed''.

PART 185—OPERATIONS

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

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 407. Revise § 185.402 to read as follows:

§ 185.402 Officers.

Each officer employed on any vessel subject to this subchapter must have his or her license or merchant mariner credential onboard and available for examination at all times when the vessel is operating.

§ 185.910 [Amended]

■ 408. In § 185.910, after the words, ''individual holding a'', add the words, ''merchant mariner credential,''; and after the words, ''suspension or revocation of a'', add the words, ''merchant mariner credential,''.

PART 196—OPERATIONS

■ 409. The authority citation for part 196 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2213, 3306, 5115, 6101; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

Subpart 196.53—Exhibition of Credential

■ 410. Revise the heading to subpart 196.53 to read as set forth above.

■ 411. Revise § 196.53–1 to read as follows:

§ 196.53–1 Officers.

All officers on a vessel must have their licenses or officer endorsements conspicuously displayed.

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

■ 412. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; Department of Homeland Security Delegation No. 0170.1.

§ 199.30 [Amended]

■ 413. In § 199.30, in the definition for, ''Certificated person'', after the words, ''merchant mariner's document'', add the words, ''or merchant mariner credential''.

PART 401—GREAT LAKES PILOTAGE REGULATIONS

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

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304 and 70105; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 415. In § 401.110—

■ a. In paragraph (a)(8), after the word, ''license'', add the words, ''or merchant mariner credential''; and

■ b. In paragraph (a)(12), after the words, ''who holds a license'', add the words, ''or merchant mariner credential endorsed''; and

■ c. Add a new paragraph (a)(17) to read as follows:

§ 401.110 Definitions.

(a) * * *

(17) *Merchant mariner credential or MMC* means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 401.210 [Amended]

■ 416. Revise § 401.210(a)(1) and (a)(6) to read as follows:

§ 401.210 Requirements and qualifications for registration.

(a) * * *

(1) The individual holds a license or MMC endorsed as a master, mate, or pilot, issued under the authority of the provisions of Title 52 of the Revised Statutes, and has acquired at least twenty-four months service as a licensed or credentialed officer or comparable experience on vessels or integrated tugs and tows, of 4,000 gross tons, or over, operating on the Great Lakes or oceans. Those applicants qualifying with ocean service must have obtained at least six months of service as a licensed or credentialed officer or comparable experience on the Great Lakes. Those applicants qualifying with comparable experience must have served a minimum of twelve months as a deck officer under the authority of their license or MMC.

* * * * *

(6) Until April 15, 2009, the individual possesses a validated Merchant Mariner's Document issued by the Coast Guard or a valid Transportation Worker Identification Credential (TWIC). After April 15, 2009, the individual must posses a valid TWIC.

§ 401.220 [Amended]

■ 417. In § 401.220(d), remove the word, ''license'', and add, in its place, the word, ''endorsement''.

§ 401.230 [Amended]

■ 418. In § 401.230(a), remove the word, ''license'', and add, in its place, the word, ''endorsement''.

§ 401.250 [Amended]

■ 419. In § 401.250(d), after the words, ''whenever his or her license'', add the words, ''or MMC officer endorsement''; after the words, ''simultaneously with his or her license'', add the words, ''and/or MMC''; after the words, ''If the license'', add the words, ''or officer endorsement''; and after the words, ''with the suspended license'', add the words, ''or officer endorsement''.

PART 402—GREAT LAKES PILOTAGE RULES AND ORDERS

■ 420. The authority citation for part 402 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

§ 402.220 [Amended]

421. In § 402.220(a)(1), (a)(2), and (a)(3), after the word, ''license'', wherever it appears, add the words, ''or endorsement''.

Dated: January 15, 2009.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security & Stewardship.

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Monday,
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Part III

The President

Executive Order 13506—Establishing a White House Council on Women and Girls

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Presidential Documents

Title 3—

The President

Executive Order 13506 of March 11, 2009

Establishing a White House Council on Women And Girls

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. *Policy.* Over the past generation, our society has made tremendous progress in eradicating barriers to women's success. A record number of women are attending college and graduate school. Women make up a growing share of our workforce, and more women are corporate executives and business owners than ever before, helping boost the U.S. economy and foster U.S. competitiveness around the world. Today, women are serving at the highest levels of all branches of our Government.

Despite this progress, certain inequalities continue to persist. On average, American women continue to earn only about 78 cents for every dollar men make, and women are still significantly underrepresented in the science, engineering, and technology fields. Far too many women lack health insurance, and many are unable to take time off to care for a new baby or an ailing family member. Violence against women and girls remains a global epidemic. The challenge of ensuring equal educational opportunities for women and girls endures. As the current economic crisis has swept across our Nation, women have been seriously affected.

These issues do not concern just women. When jobs do not offer family leave, that affects men who wish to help care for their families. When women earn less than men for the same work, that affects families who have to work harder to make ends meet. When our daughters do not have the same educational and career opportunities as our sons, that affects entire communities, our economy, and our future as a Nation.

The purpose of this order is to establish a coordinated Federal response to issues that particularly impact the lives of women and girls and to ensure that Federal programs and policies address and take into account the distinctive concerns of women and girls, including women of color and those with disabilities.

Sec. 2. *White House Council on Women and Girls.* There is established within the Executive Office of the President a White House Council on Women and Girls (Council).

(a) **Membership of the Council.** The Council shall consist of the following members:

(1) the Senior Advisor and Assistant to the President for Intergovernmental Affairs and Public Liaison, who shall serve as Chair of the Council;
(2) the Secretary of State;
(3) the Secretary of the Treasury;
(4) the Secretary of Defense;
(5) the Attorney General;
(6) the Secretary of the Interior;
(7) the Secretary of Agriculture;
(8) the Secretary of Commerce;
(9) the Secretary of Labor;
(10) the Secretary of Health and Human Services;
(11) the Secretary of Housing and Urban Development;
(12) the Secretary of Transportation;
(13) the Secretary of Energy;

(14) the Secretary of Education;
(15) the Secretary of Veterans Affairs;
(16) the Secretary of Homeland Security;
(17) the Representative of the United States of America to the United Nations;
(18) the United States Trade Representative;
(19) the Director of the Office of Management and Budget;
(20) the Administrator of the Environmental Protection Agency;
(21) the Chair of the Council of Economic Advisers;
(22) the Director of the Office of Personnel Management;
(23) the Administrator of the Small Business Administration;
(24) the Assistant to the President and Director of the Domestic Policy Council;
(25) the Assistant to the President for Economic Policy and Director of the National Economic Council; and
(26) the heads of such other executive branch departments, agencies, and offices as the President may, from time to time, designate.

A member of the Council may designate, to perform the Council functions of the member, a senior-level official who is a part of the member's department, agency, or office, and who is a full-time officer or employee of the Federal Government. At the direction of the Chair, the Council may establish subgroups consisting exclusively of Council members or their designees under this section, as appropriate.

(b) **Administration of the Council.** The Department of Commerce shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations. The Chair shall convene regular meetings of the Council, determine its agenda, and direct its work. The Chair shall designate an Executive Director of the Council, who shall coordinate the work of the Council and head any staff assigned to the Council.

Sec. 3. *Mission and Functions of the Council.* The Council shall work across executive departments and agencies to provide a coordinated Federal response to issues that have a distinct impact on the lives of women and girls, including assisting women-owned businesses to compete internationally and working to increase the participation of women in the science, engineering, and technology workforce, and to ensure that Federal programs and policies adequately take those impacts into account. The Council shall be responsible for providing recommendations to the President on the effects of pending legislation and executive branch policy proposals; for suggesting changes to Federal programs or policies to address issues of special importance to women and girls; for reviewing and recommending changes to policies that have a distinct impact on women in the Federal workforce; and for assisting in the development of legislative and policy proposals of special importance to women and girls. The functions of the Council are advisory only.

Sec. 4. *Outreach.* Consistent with the objectives set out in this order, the Council, in accordance with applicable law, in addition to regular meetings, shall conduct outreach with representatives of nonprofit organizations, State and local government agencies, elected officials, and other interested persons that will assist with the Council's development of a detailed set of recommendations.

Sec. 5. *Federal Interagency Plan.* The Council shall, within 150 days of the date of this order, develop and submit to the President a Federal interagency plan with recommendations for interagency action consistent with the goals of this order. The Federal interagency plan shall include an assessment by each member executive department, agency, or office of the status and scope of its efforts to further the progress and advancement of women and girls. Such an assessment shall include a report on the status of any offices or programs that have been created to develop, implement, or monitor targeted initiatives concerning women or girls. The Federal interagency plan shall also include recommendations for issues, programs, or initiatives that

should be further evaluated or studied by the Council. The Council shall review and update the Federal interagency plan periodically, as appropriate, and shall present to the President any updated recommendations or findings.

Sec. 6. *General Provisions.* (a) The heads of executive departments and agencies shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out the functions of the Council. Each executive department and agency shall bear its own expense for participating in the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect:

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

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

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

THE WHITE HOUSE,
March 11, 2009.

[FR Doc. E9–5802
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