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Presidential Documents

Proclamation 7455 of July 12, 2001

Captive Nations Week, 2001

By the President of the United States of America

A Proclamation

The 21st century must become the ''Century of Democracy.'' Democracy and freedom have taken root across the globe, and the United States will continue to stand for greater consolidation of pluralism and religious freedom, wider access to information, and respect for human rights and for the rule of law. Our Nation and many of our allies share this vision for the world. In the words of President Ronald Reagan, ''For the sake of peace and justice, let us move toward a world in which all people are at last free to determine their own destiny.''

During the 20th century, dictators, monarchs, and colonialism gave way to democracy through ballot boxes, pressure from citizens, and negotiated settlements to conflicts. However, freedom and liberty remained out of reach for many. In 1959, the Congress promulgated a Joint Resolution authorizing and requesting the President to declare the third week of July as Captive Nations Week and to continue this annual statement ''until such time as freedom and independence shall have been achieved for all the captive nations of the world.''

Worldwide, many nations have successfully made transitions to democracy since President Eisenhower signed the Captive Nations Resolution. These democracies, whether nascent or consolidated, are found in areas that the great General and 34th President could have barely imagined would find freedom before the 20th century closed.

In spite of the proliferation of democracies over the past century, many people across the globe are held captive by their governments. More than a decade after the Berlin Wall fell, more than 2 billion people still live under authoritarian regimes. America must remain vigilant in our support of those living under authoritarianism. There remain people in Asia, the Americas, Europe, the Middle East, Africa, and Central Asia who do not enjoy the right to choose their own governments and to hold those governments accountable.

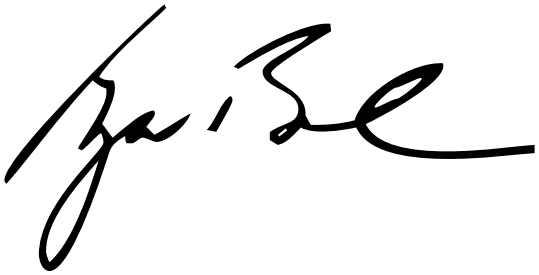
Americans and the 3 billion others across the globe living in democracies desire the same freedoms for the remaining 42 percent of the world's population who live without them. But as long as governments like those in Afghanistan, Burma, Cuba, Iraq, and Sudan exist, freedom is not accessible to all. Greater access to robust marketplaces of ideas, as well as freedom of worship and expression, will empower those living in closed societies. Strong and transparent judicial systems and respect for human rights and the rule of law also serve as necessary foundations for democracy.

To promote the development of democratic practices worldwide, I reaffirm America's support for freedom, justice, and pluralism. I have asked my Administration to examine our programs to support democracy and human rights movements closely and to ensure that these programs advance American policy. In addition, I want to make certain that our annual State Department human rights, trafficking in persons, and religious freedom reports are integrated into American foreign policy.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as ''Captive Nations Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim July 15–21, 2001, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities and to reaffirm their devotion to the aspirations of all peoples for liberty, justice, and self-determination.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of July, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–17966
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Presidential Documents

Memorandum of July 11, 2001

Implementing Government Reform

Memorandum for the Heads of Executive Departments and Agencies

Throughout the campaign and in my Budget, I have called for ''active, but limited'' Government: one that empowers States, cities, and citizens to make decisions; ensures results through accountability; and promotes innovation through competition. Thus, if reform is to help the Federal Government adapt to a rapidly changing world, its primary objectives must be a Government that is:

- Citizen-centered—not bureaucracy centered;
- Results-oriented—not process-oriented; and
- Market-based—actively promoting, not stifling, innovation and competition.

In order to establish and implement Government reform throughout the executive branch, I hereby direct the following:

1. *Establish Chief Operating Officers.*

Each agency head shall designate a Chief Operating Officer, who shall be the senior official with agency-wide authority on behalf of the Secretary or agency head. The Chief Operating Officer, the equivalent of the Deputy Secretary, shall report directly to the agency head and shall be responsible for:

(a) implementing the President's and agency head's goals and the agency's mission;
(b) providing overall organization management to improve agency performance;
(c) assisting the agency head in promoting Government reform, developing strategic plans, and measuring results; and
(d) overseeing agency-specific efforts to integrate performance and budgeting, expand competitive sourcing, strengthen their workforce, improve financial management, advance e-government, apply information policy and technology policies, and other Government-wide management reforms.

2. *Implement Additional Agency Reforms.*

Each agency head shall identify and implement additional changes within the agency that will promote the principles of government reform.

3. *Establishment of President's Management Council.*

In order to advise and assist the President in ensuring that Government reform is implemented throughout the executive branch, I hereby establish the President's Management Council (''Council''). The Council shall comprise:

(a) The Deputy Director, Office of Management and Budget;
(b) The Chief Operating Officers from the following agencies:
    (1) Department of State;
    (2) Department of the Treasury;
    (3) Department of Defense;
    (4) Department of Justice;
    (5) Department of the Interior;
    (6) Department of Agriculture;
    (7) Department of Commerce;
    (8) Department of Labor;

(9) Department of Health and Human Services;
(10) Department of Housing and Urban Development;
(11) Department of Transportation;
(12) Department of Energy;
(13) Department of Education; and
(14) Department of Veterans Affairs.

(c) The following central management agency representatives:
(1) Director of the Office of Personnel Management;
(2) Administrator of General Services;

(d) Chief Operating Officers of the following agencies:
(1) Environmental Protection Agency;
(2) National Aeronautics and Space Administration;
(3) National Science Foundation;
(4) Social Security Administration; and
(5) Federal Emergency Management Agency.

(e) Chief Operating Officers of three other executive branch agencies designated by the Chairperson, in his or her discretion;

(f) Assistant to the President and Cabinet Secretary;

(g) Deputy Assistant to the President for Management and Administration; and

(h) Deputy Chief of Staff to the Vice President; and

(i) Such other officials of the executive departments and agencies as the Director of the Office of Management and Budget or I may, from time to time, designate.

The Deputy Director of the Office of Management and Budget shall serve as Chairperson of the Council. The Chairperson of the Council may appoint a Vice-Chairperson from the Council's membership to assist the Chairperson in conducting affairs of the Council.

The functions of the Council shall include, among others:

(a) improving overall executive branch management, including implementation of the President's Management Agenda;

(b) coordinating management-related efforts to improve Government throughout the executive branch and, as necessary, resolving specific interagency management issues;

(c) ensuring the adoption of new management practices in agencies throughout the executive branch; and

(d) identifying examples of, and providing mechanisms for, interagency exchange of information about best management practices.

The Council shall seek advice and information as appropriate from nonmember Federal agencies, particularly smaller agencies. The Council shall also consider the management reform experience of corporations, nonprofit organizations, State and local governments, Government employees, public sector unions, and customers of Government services.

Agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

4. *Independent Agencies.*

Independent agencies are requested to comply with this memorandum.

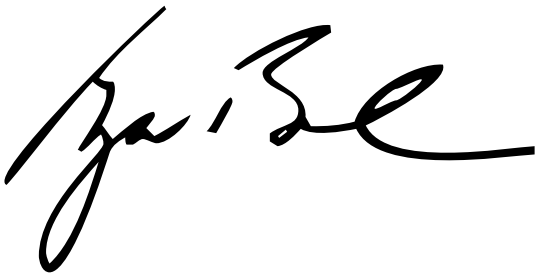
5. *Revocation and Judicial Review.*

(a) the memorandum of October 1, 1993, entitled ''Implementing Management Reform in the Executive Branch'' is revoked.

(b) this memorandum is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

6. *Publication.*

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, July 11, 2001

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Federal Register
Vol. 66, No. 137
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Presidential Documents

Title 3—

The President

Presidential Determination No. 2001–20 of July 2, 2001

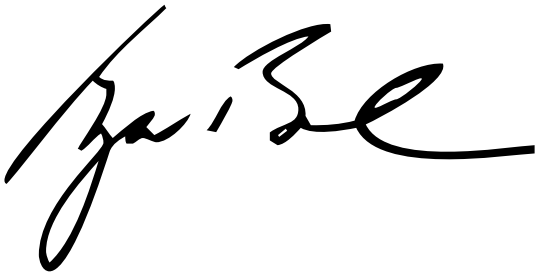
Determination Under Section 402(c)(2)(A) of the Trade Act of 1974—Republic of Belarus

Memorandum for the Secretary of State

Pursuant to section 402(c)(2)(A) of the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978) as amended (the ''Act''), I determine that a waiver by Executive Order of the application of subsections (a) and (b) of section 402 of the Act with respect to the Republic of Belarus will substantially promote the objectives of section 402.

On my behalf, please transmit this determination to the Speaker of the House of Representatives and to the President of the Senate.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 2, 2001.

[FR Doc. 01–17964
Filed 7–16–01; 8:45 am]
Billing code 4710–10–M

Presidential Documents

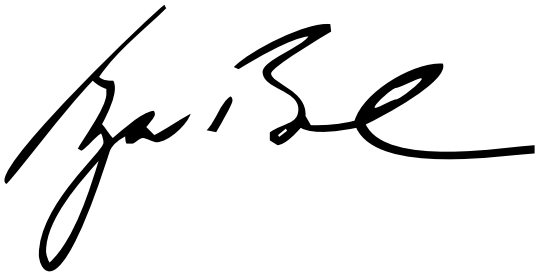
Presidential Determination No. 2001–21 of July 4, 2001

Provision of $20 Million for a U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the ''Act''), I hereby determine that it is important to the security interests of the United States to furnish up to $20 million in funds made available under the title II (Nonproliferation, Anti-Terrorism, Demining and Related Programs) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (Public Law 106–429), for assistance for KEDO without regard to any provision of law within the scope of section 614(a)(1). I hereby authorize the furnishing of this assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 4, 2001.

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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–049–1]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth regulations by adding counties in Illinois, Indiana, Michigan, Ohio, West Virginia, and Wisconsin to the list of generally infested areas. As a result of this action, the interstate movement of certain articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States. We are also making nonsubstantive revisions to the entries for Maine, Virginia, West Virginia, and Wisconsin to address inconsistencies in the county listings and to correct misspellings.

DATES: This interim rule is effective on July 17, 2001. We invite you to comment on this docket. We will consider all comments that we receive by September 17, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–049–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–049–1.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) restrict the interstate movement of certain articles from generally infested areas in the quarantined States to prevent the artificial spread of the gypsy moth.

Section 301.45–2 provides that generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if:

(1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) The designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth. Section 301.45–3 lists generally infested areas in the quarantined States.

Surveys conducted by the United States Department of Agriculture, in cooperation with the States, detected multiple life stages of the gypsy moth in 22 additional areas in 5 states (Illinois, Indiana, Ohio, West Virginia, Wisconsin). Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized as generally infested and are, therefore, subject to reinfestation.

In addition, the State of Michigan recommended that the remaining six counties in Michigan be designated as generally infested areas due to patterns of moth catches, the counties proximity to infestation, and the State's desire for uniform application of Federal regulations.

Therefore, in accordance with the regulations, we are designating Lake County, IL; DeKalb and Noble Counties, IN; Baraga, Gogebic, Houghton, Iron, Keweenaw, and Ontonagon Counties, MI; Fairfield, Huron, Knox, Morgan, Perry, Richland, and Washington Counties, OH; Braxton, Calhoun, Gilmer, Greenbriar, Nicholas, Pleasants, Ritchie, Wirt, and Wood Counties, WV; and Walworth, Waupaca, and Waushara Counties, WI, as generally infested areas, and we are adding them to the list of generally infested areas provided in § 301.45–3(a). In addition, we are adding Illinois to the notice of quarantined states provided in § 301.45(a).

Miscellaneous

We are also making nonsubstantive revisions to § 301.45–3(a) to address inconsistencies in the county listings and to correct misspellings in the entries for Maine, Virginia, West Virginia, and Wisconsin.

Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication

of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived it review process required by Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

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

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

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

2. In § 301.45, paragraph (a) is amended by adding the word ''Illinois'' in alphabetical order.

3. In § 301.45–3, paragraph (a) is amended as follows:

a. By adding an entry for Illinois.

b. Under Indiana, by adding new counties in alphabetical order.

c. Under Maine, in the entry for Aroosktook County, by removing the word ''Aroosktook'' and adding in its place the word ''Aroostook''.

d. Under Maine, in the entry for Penobscot County, by removing the word ''LaGrange'' and adding in its place the word ''Lagrange''.

e. Under Michigan, by revising the entries to include the entire State.

f. Under Ohio, by adding counties in alphabetical order.

g. Under Virginia, in the entry for Appomatox County, by removing the word ''Appomatox'' and by adding in its place the word ''Appomattox''.

h. Under West Virginia, by adding counties in alphabetical order and by revising the entry for Brook County.

i. Under Wisconsin, by adding new counties in alphabetical order and by revising the entry for Fond du Lac.

§ 301.45–3 Generally infested areas.

(a) * * *

Illinois

Lake County. The entire county.

Indiana

* * * * *

De Kalb County. The entire county.

* * * * *

Noble County. The entire county.

* * * * *

Michigan

The entire State.

* * * * *

Ohio

* * * * *

Fairfield County. The entire county.

* * * * *

Huron County. The entire county.

* * * * *

Knox County. The entire county.

* * * * *

Morgan County. The entire county.

* * * * *

Perry County. The entire county.

* * * * *

Richland County. The entire county.

* * * * *

Washington County. The entire county.

* * * * *

West Virginia

* * * * *

Braxton County. The entire county.

Brooke County. The entire county.

Calhoun County. The entire county.

* * * * *

Gilmer County. The entire county.

* * * * *

Greenbrier County. The entire county.

* * * * *

Nicholas County. The entire county.

* * * * *

Pleasants County. The entire county.

* * * * *

Ritchie County. The entire county.

* * * * *

Wirt County. The entire county.

Wood County. The entire county.

Wisconsin

* * * * *

Fond du Lac County. The entire county.

* * * * *

Walworth County. The entire county.

* * * * *

Waupaca County. The entire county.

Waushara County. The entire county.

* * * * *

Done in Washington, DC, this 10th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17695 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. 99–100–3]

Export Certification; Canadian Solid Wood Packing Materials Exported From the United States to China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the export certification regulations for the certification of softwood (coniferous) packing materials used with goods exported from the United States to China. Prior to this interim rule, the

packing materials had to be certified as having been heat treated in the United States. We are allowing certification of packing materials that were heat treated in Canada if that treatment is certified by the Canadian Food Inspection Agency to meet requirements established by the Government of the People's Republic of China. This change is necessary to facilitate the exportation to China of the large volume of United States goods that is shipped using Canadian-origin coniferous solid wood packing materials. This change will affect persons who use coniferous solid wood packing materials to export goods from the United States to the People's Republic of China.

DATES: This interim rule is effective July 11, 2001. We invite you to comment on this docket. We will consider all comments that we receive by September 17, 2001 .

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 99–100–3, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–100–3.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick Thomas, Export Specialist, PIM, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8367.

SUPPLEMENTARY INFORMATION:

Background

The export certification regulations contained in 7 CFR part 353 (referred to below as the regulations) set forth the procedures for obtaining certification for plants and plant products offered for export or reexport. Export certification is not required by the regulations; rather, it is provided by the Animal and Plant Health Inspection Service (APHIS) as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry. After assessing the condition of the plants or plant products intended for export relative to the receiving country's regulations, an inspector will issue an internationally recognized certificate, if warranted.

In a final rule that was effective and published in the **Federal Register** on August 17, 2000 (65 FR 50128–50131), we amended the regulations to create a new certificate of heat treatment and to establish procedures for issuing it to exporters who have heat treated their coniferous solid wood packing materials (SWPM) in order to ship goods to the People's Republic of China. We took this action in response to a new requirement imposed by the People's Republic of China that SWPM exported from the United States to China be certified as having been heat treated. As stated in that final rule, the information collection or recordkeeping requirements associated with the new certificate have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0147. One of the requirements of the final rule was that, to be certified, coniferous SWPM must be heat treated in the United States. That requirement was based on our belief that it would be extremely difficult for U.S. exporters to document that a heat treatment has been properly performed if it has been performed in a foreign country.

Since the final rule was published, we have received numerous requests to amend it to provide a means to certify coniferous SWPM that originated and was heat treated in Canada, but is later used to export U.S. goods to China. A great deal of the coniferous SWPM used in the United States is of Canadian origin. According to USDA's Foreign Agricultural Service (FAS), about 21 percent of coniferous SWPM used in the United States in 1999 was of Canadian origin. In that year—the last full year in which U.S. exporters could effectively use Canadian-origin coniferous SWPM in shipments to China—about 35 million pallets were imported from Canada, compared to a total U.S. inventory of about 168 million reusable pallets. The final rule's requirement that only coniferous SWPM treated in the United States may be certified causes adverse impacts on large and small U.S. exporters by denying them continued access to Canadian origin coniferous SWPM that is readily available at attractive prices for use in shipments to China.

We have examined this problem to determine whether there is a way for APHIS to certify that coniferous SWPM from Canada has been properly heat treated in accordance with the requirements of the People's Republic of China. Before issuing such certificates, APHIS must be confident that the required treatment was actually performed, and there must be sufficient documentation of the treatment. As discussed in the final rule of August 17, 2000, it is not practical for APHIS to coordinate or rely on records maintained by a multitude of foreign heat treatment facilities. However, the Canadian Food Inspection Agency (CFIA) is willing to provide U.S. exporters who use coniferous SWPM treated in Canada with a certificate documenting that the SWPM has been heat treated. CFIA has developed a heat treatment certification process for coniferous SWPM that meets the requirements of both APHIS and China. CFIA will issue a certificate only for coniferous SWPM that has been heat treated in accordance with the requirements of the People's Republic of China—*i.e.,* a treatment process that increases the minimum core wood temperature to 56 degrees Celsius for 30 minutes. This CFIA certificate would provide the U.S. exporter with the necessary ''documentation showing that heat treatment was performed on packing materials,'' as required by § 353.7(e)(4). With this documentation on file, the exporter could apply for the APHIS heat treatment certificate required by the People's Republic of China. This Canadian heat treatment certification process for coniferous SWPM would enable U.S. exporters to use Canadian-origin heat treated SWPM in shipments to China.

To accomplish this change, we are amending the definition of *certificate of heat treatment* in § 353.1 of the regulations. In the part of the definition that states that the certificate endorses ''the statement of an exporter that the coniferous packing materials associated with a shipment for export have been heat treated in the United States,'' we are adding the phrase ''or in Canada.'' We are also amending § 353.7(e)(4), which deals with the records an exporter must keep on file at his office, by adding the following: ''If the coniferous solid wood packing materials were heat treated in Canada, this documentation must include a certificate issued by the Canadian Food Inspection Agency stating that the packing materials have been heat treated through a treatment process that increased the minimum core wood

temperature to 56 degrees Celsius for 30 minutes.''

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to relieve a restriction that prevents U.S. exporters from obtaining certificates that the Government of the People's Republic of China requires to accompany shipments of U.S. goods to China that are packaged with Canadian-origin SWPM.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Effective January 1, 2000, the People's Republic of China required that SWPM exported from the United States to China be certified as having been heat treated. To be certified, coniferous SWPM must be heat treated in the United States. This rule changes that requirement to allow Canadian-origin coniferous SWPM to be heat treated in Canada.[1]

This rule affects U.S. exporters—primarily manufacturers and freight forwarders who act on their behalf—who ship goods to China using coniferous SWPM. It is estimated that there are about 125,000 such shipments per year, spread among approximately 5,000 exporters. A wide variety of products are shipped to China using coniferous SWPM, such as pharmaceuticals, auto parts, diapers, and fruits and vegetables.

This rule restores U.S. exporters' ability to use Canadian-origin coniferous SWPM in shipments to China. At the present time, their ability to use that SWPM is effectively precluded, because it is not cost effective to heat treat Canadian-origin SWPM in the United States. In addition to giving them another, perhaps less costly, source of coniferous SWPM for their shipments to China, the rule change enables affected exporters to avoid separating their U.S. and Canadian-treated coniferous SWPM so as to ensure that only the former is used in shipments to China.[2] The dollar impact of this rule on U.S. exporters is unknown, but the rule is likely to benefit exporters, though the benefits will not constitute a significant economic impact on a substantial number of exporters.

U.S. producers of coniferous SWPM could also be affected by this change, to the extent that it causes exporters to switch to Canadian producers for their supply of SWPM for shipments to China. The number of U.S. exporters who would switch to Canadian producers is unknown. However, it seems unlikely that allowing the use of Canadian SWPM to be resumed for U.S. shipments to China would create significant harm to U.S. coniferous SWPM producers. (During the period from September through December, 2000—the first 4 full months that the current exclusion on Canadian SWPM was in effect—U.S. imports of pallets from Canada declined by about 3 million, or 27 percent, from the level for same 4-month period in 1999. However, that decline appears to be due more to competitive pressures faced by Canada in the U.S. market than to the current exclusion itself, as U.S. imports of pallets from all countries other than Canada showed an increase of about 4 million pallets during the same 4-month period.[3] In effect, Canadian exports of pallets to the United States were supplanted by exports from other countries. Since non-Canadian exports to the United States are also subject to the current exclusion, the decline in Canadian exports, therefore, would seem to be largely unrelated to the rule that became effective August 17, 2000.)

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of rule changes on small entities (i.e., businesses, organizations, and governmental jurisdictions). This rule potentially affects the approximately 5,000 U.S. exporters—primarily manufacturers and freight forwarders who act on their behalf—who ship goods to China using coniferous SWPM. However, for the reasons discussed above, there is no reason to believe that the rule change will have a significant economic impact on a substantial number of entities, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 353 is amended as follows:

PART 353—EXPORT CERTIFICATION

1. The authority citation for part 353 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7718, 7751, and 7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 353.1 [Amended]

2. In § 353.1, the definition of *Certificate of heat treatment* is amended by adding the phrase ''or in Canada'' immediately after the phrase ''in the United States''.

3. In § 353.7, paragraph (e)(4) is revised to read as follows:

§ 353.7 Certificates.

* * * * *

(e) * * *

[1] The Canadian Food Inspection Agency has developed a heat treatment process that meets the requirements of the People's Republic of China and USDA.

[2] U.S. exporters can use Canadian-origin coniferous SWPM for shipments to countries other than the People's Republic of China.

[3] Foreign Agricultural Service data.

(4) The exporter or his or her representative must keep on file at his or her office a copy of each certificate issued in his or her name and documentation showing that heat treatment was performed on packing materials in the shipment referred to in the certificate. If the coniferous solid wood packing materials were heat treated in Canada, this documentation must include a certificate issued by the Canadian Food Inspection Agency stating that the packing materials have been heat treated through a treatment process that increased the minimum core wood temperature to 56 degrees Celsius for 30 minutes. The exporter must make these documents available to an inspector upon request for a period of 1 year following the date of issuance of the certificate.

(Approved by the Office of Management and Budget under control numbers 0579–0052 and 0579–0147)

Done in Washington, DC, this 11th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17840 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[FV–00–706–FR]

Blueberry Promotion, Research, and Information Order; Amendment No. 1

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the title of the U.S.A. Blueberry Council to the ''U.S.A. Cultivated Blueberry Council'' (Council). The purpose of this change is to avoid confusion in the industry and to clarify that only cultivated blueberries are covered by this program.

EFFECTIVE DATE: August 16, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel Rafael Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535-S, Washington, D.C. 20250–0244; telephone (202) 720–5951, fax (202) 205–2800, or e-mail *daniel.manzoni@usda.gov.*

SUPPLEMENTARY INFORMATION: *Legal authority.* The Blueberry Promotion, Research, and Consumer Information Order (Order) [7 CFR Part 1218] became effective on August 16, 2000 [65 FR 43961, July 17, 2000]. It was issued under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7401–7425].

Question and Answer Overview

Why Is the U.S. Department of Agriculture (USDA or the Department) Changing the Name of the Council?

The wild blueberry industry requested that USDA change the title of the Council in order to avoid confusion in the industry and to clarify that the program covers only cultivated blueberries.

Will Anything Else Change About the Program?

No. The program as published on July 17, 2000 in the **Federal Register** remains the same.

Executive Orders 12866 and 12988

This rule has been determined ''not significant'' for purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

In addition, this rule has been reviewed under E.O. 12988, Civil Justice Reform. The rule is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

Final Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

There are approximately 2,000 producers, 200 first handlers, 50 importers, and 4 exporters of blueberries subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. Most importers and first handlers would not be classified as small businesses, and, while most exporters are large, we assume that some are small. The SBA defines small agricultural handlers as those whose annual receipts are less than $5 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000 annually.

This rule will amend the Order to revise the title of the U.S.A. Blueberry Council to the ''U.S.A. Cultivated Blueberry Council'' (Council). All other provisions of the Order as published on July 17, 2000, in the **Federal Register** will remain the same. The amendment is not considered a substantial change that will impact the cultivated blueberry industry. The purpose of this change is to avoid confusion in the industry and clarify that only cultivated blueberries are covered by this program.

The amendment will not impose additional recordkeeping requirements on first handlers, producers, or importers or exporters of cultivated blueberries. Therefore, recordkeeping and reporting requirements for the promotion, research, and information program for cultivated blueberries will remain unchanged by this final rule.

There are no relevant federal rules that duplicate, overlap, or conflict with this final rule.

Background

The Order became effective on August 16, 2000. Under the Order, producers and importers pay an assessment of $12 per ton on the cultivated blueberries they produce in or import into the United States. The Secretary will appoint an industry group to administer the program under USDA supervision.

Although the Order states that the program covers only cultivated blueberries and not wild blueberries, the

wild blueberry industry has continued to object, among other things, to the fact that the name of the Council does not specifically reference cultivated blueberries. The wild blueberry industry had submitted two comments on this issue, and others, in response to the first proposed rule on the Order which was published in the **Federal Register** on July 22, 1999 [64 FR 39790]. The comments were summarized in the second proposed rule on the Order, which was published in the **Federal Register** on February 15, 2000 [65 FR 7657]. The commenters requested that, throughout the proposal and in the name of the Council, the term ''blueberry'' be changed to ''cultivated blueberry.'' The commenters stated that the generic use of the term ''blueberry'' in the Order was misleading as to the specific type of blueberry and industry segment represented by the program. These comments were denied for the reasons explained in the February 15, 2000, rule.

However, since February 2000, the wild blueberry industry continued to contact USDA officials requesting that the name changes be made. Therefore, on September 21, 2000 [65 FR 57104], USDA published a proposed rule to change the official title of the program to the ''Promotion, Research and Information Order for Cultivated Blueberries'' and the name of the industry group from the U.S.A. Blueberry Council to the ''U.S.A. Cultivated Blueberry Council.'' In addition, the proposed rule provided that all references to ''blueberries'' in the Order would be changed to ''cultivated blueberries.'' The deadline for comments was November 20, 2000.

In response to that proposed rule, USDA received four comments from the wild blueberry industry in favor of various aspects of the proposed rule, and six comments from the cultivated blueberry industry opposed to various aspects of the proposed rule. A summary of the comments and USDA's responses follow:

All four commenters from the wild blueberry industry stated that although the Order does not cover wild blueberries, the name U.S.A. Blueberry Council (Council) causes confusion regarding who the Council represents and which variety of blueberries it is promoting. The commenters believed that this potential confusion could adversely affect their various initiatives in support of wild blueberries. The commenters agreed with the proposal to change the Council's name of the ''U.S.A. Cultivated Blueberry Council'' in order to avoid any possibility of confusion.

We agree with the commenters that the Council's current name could cause confusion in the industry. Accordingly, we are adopting the proposal to change the U.S.A. Blueberry Council's name to the ''U.S.A. Cultivated Blueberry Council.''

Two of the four commenters from the wild blueberry industry also supported the proposals to change the title of the Blueberry Promotion, Research, and Information Order to the ''Promotion, Research, and Information Order for Cultivated Blueberries,'' and to change every reference to blueberries in the Order to ''cultivated blueberries.'' They believed that these changes would further distinguish the wild blueberry industry from the cultivated blueberry industry.

After further view and careful deliberation on these issues, USDA believed that these changes are not necessary. Changing the name of the Council should be sufficient to distinguish the research and promotional efforts of the wild blueberry industry from the Order's cultivated blueberry industry. The Order's definition of blueberry excludes wild blueberries, and it is not uncommon in other USDA national research and promotional programs to use a generic name for a commodity that is defined in the Order with further specificity. Accordingly, USDA is not adopting the proposals to change the name of the Blueberry Promotion, Research, and Information Order to the ''Promotion, Research, and Information Order for Cultivated Blueberries,'' and to change every reference to blueberries in the Order to ''cultivated blueberries.''

Promoting blueberries generically will be consistent with other national promotion programs, such as those for milk and potatoes. Even though the federal dairy and fluid milk boards cover only cow's milk, they promote milk generically. This is because cow's milk is the most common type of milk, and other types of milk (such as goat's milk) are identified as such to commercial buyers and consumers. Similarly, the potato board promotes potatoes generically, whereas the program covers only white potatoes. Sweet potatoes are identified as such. We view the blueberry program in the same way.

All of the comments from the cultivated blueberry industry opposed the proposals on the basis that there was no need to differentiate cultivated blueberries from wild blueberries. Our explanations above address the issues raised by the commenters.

It should also be noted that USDA is not supporting or endorsing the cultivated blueberry industry at the expense of the wild blueberry industry, as alluded to by one of the commenters. The cultivated blueberry industry voluntarily requested the Secretary to implement a national program to assess domestic and imported cultivated blueberries to increase demand for the commodity. Any agricultural commodity group, such as the wild blueberry industry, has the right to request the same type of program under the Act. In addition, the cultivated blueberry industry will finance the entire cost of the program, including the cost of this rulemaking proceeding. National research and promotion programs are considered industry self-help programs. The government's involvement is to ensure that the programs have the support of the industry affected and that the programs are carried out within the scope of their authority under the Act.

Accordingly, the proposed rule is adopted with the change discussed above.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries, Consumer Information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1218 is amended as follows:

1. The authority citation for part 1218 continues to read as follows:

Authority: 7 U.S.C. 7401–7425.

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Blueberry Promotion, Research, and Information Order

§ 1218.3 [Amended]

2. In § 1218.3 the words ''U.S.A. Blueberry Council'' are removed and the words ''U.S.A. Cultivated Blueberry Council'' are added in its place and ''USABC'' is removed and ''USACBC'' is added in its place.

§ 1218.23 [Amended]

3. In § 1218.23 ''USABC'' is removed from the heading and the text and ''USACBC'' is added in its place and ''U.S.A. Blueberry Council'' is removed and ''U.S.A. Cultivated Blueberry Council'' is added in its place.

4. The undesignated center heading preceding § 1218.40 is revised to read as follows:

U.S.A. Cultivated Blueberry Council

§ 1218.40 [Amended]

5. In § 1218.40 the words ''U.S.A. Blueberry Council'' are removed and the words ''U.S.A. Cultivated Blueberry Council'' are added in its place, and ''USABC'' is removed Wherever it appears and ''USACBC'' is added in its place.

§§ 1218.41, 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.55, 1218.56, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77 [Amended]

6. In §§ 1218.41, 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.55, 1218.56, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77, ''USABC'' is removed wherever it appears and ''USACBC'' is added in its place.

§§ 1218.52, 1218.53, 1218.54, and 1218.60 [Amended]

7. In §§ 1218.52, 1218.53, 1218.54, and 1218.60, ''USABC'' is removed wherever it appears and ''USACBC'' is added in its place.

Dated: July 11, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–17767 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 128P; AG Order No. 2467–2001]

RIN 1125–AA31

Motions To Reopen for Suspension of Deportation and Special Rule Cancellation of Removal Pursuant to Section 1505(c) of the LIFE Act Amendments

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR) by establishing a special procedure for the filing and adjudication of motions to reopen deportation and removal proceedings to apply for suspension of deportation and special rule cancellation of removal pursuant to section 1505(c) of the Legal Immigration Family Equity Act Amendments of 2000 (LIFE Act Amendments).

DATES: *Effective date:* This interim rule is effective July 17, 2001.

Comment date: Comments must be submitted on or before September 17, 2001.

Motions to reopen under this rule must be filed on or before October 16, 2001.

ADDRESSES: Please submit written comments to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041; or e-mail comments to the following e-mail address: LIFE.1505(c)@USDOJ.GOV.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: This rule revises the special reopening provisions previously established in 8 CFR 3.43. The revisions account for changes in eligibility established by sections 1506 and 1510 of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386, Div. B, tit. V, 114 Stat. 1464, 1527–29, 1531–32) (VTVPA) and section 1505(c) of the LIFE Act Amendments (Pub. L. 106–554, App. D, tit. XV, 114 Stat. 2763, 2763A–326 to 328). The rule permits aliens with reinstated final orders and aliens with newly issued final orders, where those new orders were issued based on their having reentered the United States illegally after having been removed or having departed voluntarily under an order of removal subject to reinstatement under section 241(a)(5) of the Immigration and Nationality Act (the Act), to move to reopen immigration proceedings for the sole purpose of applying for suspension of deportation or special rule cancellation of removal under section 203 of the Nicaraguan Adjustment and Central American Relief Act of 1997 (Pub. L. 105–100, 111 Stat. 2160, 2196–200) (NACARA).

Why Is the Department Issuing This Interim Rule?

Section 241(a)(5) of the Act provides for the reinstatement of a removal order against any alien who illegally reenters the United States after having been removed or having departed voluntarily under an order of removal. It also bars any alien whose removal order has been reinstated from receiving any relief under the Act, and prohibits the reopening or review of the previous order.

Section 1505(c) of the LIFE Act Amendments added a new subsection (h) to the transition provisions in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act (Pub. L. 104–208, Div. C, tit. III, subtit. A, 110 Stat. 30009, 3009–625) (IIRIRA). Section 309(h)(1) of IIRIRA, as so amended, provides that aliens who are otherwise eligible for suspension of deportation or special rule cancellation of removal under section 203 of NACARA shall not be barred from applying for such relief by operation of section 241(a)(5) of the Act.

Section 309(h)(2) of IIRIRA, as amended, provides that aliens who have become eligible for relief based on new subsection (h)(1) will have the opportunity to submit an additional motion to reopen, within a designated period, solely for the purpose of adjudicating the NACARA claim. Consistent with the provisions of section 203(c) of NACARA, an alien with a final order of deportation or removal who has become eligible for suspension of deportation or special rule cancellation of removal as a result of section 1505(c) of the LIFE Act Amendments may file one such motion to reopen removal or deportation proceedings on or before October 16, 2001.

This rule also clarifies that those persons eligible for relief under new section 309(h) (as added by section 1505(c) of the LIFE Act Amendments) include the classes added to section 309(c)(5)(C)(i) of IIRIRA by sections 1506(b)(3) and 1510(b) of the VTVPA. These additional classes of eligible aliens include certain spouses and children who have been battered or subjected to extreme cruelty by a NACARA section 203 applicant, or by a United States citizen or lawful permanent resident.

The VTVPA also contains an additional provision making certain classes of battered aliens who are not covered by this rule eligible to submit a motion to reopen. See section 1506(c) of the VTVPA. The Department anticipates promulgating regulations in the near future regarding relief for those aliens who are addressed in the VTVPA, but are not covered by this rule.

How Has the VTVPA Changed the Classes of Aliens Eligible for Suspension of Deportation or Special Rule Cancellation of Removal Pursuant to Section 309(c)(5)(C)(i) of IIRIRA?

The six classes of eligible aliens in section 309(c)(5)(C)(i) of IIRIRA, as amended by NACARA, are set forth in § 3.43(d)(1)–(6) of this rule. The VTVPA added two additional classes of eligible aliens, which are set forth in § 3.43(d)(7) and (8) of this rule.

The first new class of aliens (class 7) includes aliens (1) who were issued Orders to Show Cause or were in deportation proceedings before April 1, 1997, and (2) who applied for suspension of deportation under former section 244(a)(3) of the Act (as in effect before the date of enactment of section 309 of IIRIRA) as aliens who had been battered or subjected to extreme cruelty by a spouse or parent who is a United States citizen or lawful permanent resident.

The second new class of aliens (class 8) includes the spouses or children of aliens described in classes 1 through 4, 8 CFR 3.43(d)(1)–(4), as amended, if they were the spouse or child of such alien: (1) At the time a decision is rendered to suspend deportation or to cancel removal of that alien; (2) at the time that alien filed an application for suspension of deportation or cancellation of removal; or (3) at the time that alien registered for benefits under the settlement agreement in *American Baptist Churches, et al.* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991) (ABC), applied for Temporary Protected Status (TPS), or applied for asylum. In addition, the spouse or child must demonstrate that he or she (or the child of that spouse) has been battered or subjected to extreme cruelty by the alien parent or spouse who is within one of the four classes described at 8 CFR 3.43(d)(1)–(4), as amended. Aliens in the new classes 7 and 8 are not required to be nationals of El Salvador, Guatemala, or former Soviet bloc countries.

Who Is Eligible To Reopen Proceedings Under Section 1505(c) of the LIFE Act Amendments?

Consistent with the existing provisions of 8 CFR 3.43, an individual submitting a motion to reopen under section 1505(c) of the LIFE Act Amendments must establish certain preliminary requirements. The motion to reopen must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible, by operation of section 241(a)(5) of the Act, for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or for cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, but for enactment of section 1505(c) of the LIFE Act Amendments;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the classes of aliens described in section 309(c)(5)(C)(i) of IIRIRA, as amended by section 203 of NACARA and sections 1506 and 1510 of the VTVPA.

Section 3.43(d) of this rule describes with more particularity the eight classes of aliens covered by this special reopening procedure. Prima facie eligibility is discussed in greater detail in this rule under the section entitled ''How is prima facie eligibility defined?''

What Is the Deadline for Filing Motions To Reopen Pursuant to Section 1505(c) of the LIFE Act Amendments?

Section 1505(c) of the LIFE Act Amendments requires that the Attorney General designate a specific time period for filing motions to reopen under this section. Section 1505(c) further provides that the time period is to begin no later than 60 days after the enactment of the LIFE Act Amendments and is to extend for a period not to exceed 240 days. See section 309(h)(2) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments. Consistent with that statutory directive, this rule designates the period from February 19, 2001, through October 16, 2001, as the time period for filing motions to reopen pursuant to section 1505(c) of the LIFE Act Amendments.

This rule does not address the provision in section 1506(c) of the VTVPA providing for motions to reopen proceedings by certain other classes of battered aliens. The Department anticipates promulgating regulations in the near future that will address the motions to reopen at issue in section 1506(c) of the VTVPA.

Does This Rule Extend the September 11, 1998, Deadline for Motions To Reopen Under Section 203(c) of NACARA?

No. Only aliens who have final orders of removal and deportation that have been reinstated, or aliens who have newly issued final orders that were issued based on their having reentered the United States illegally after having been removed or having departed voluntarily under a prior order of removal that was subject to reinstatement under section 241(a)(5) of the Act, may move to reopen proceedings for the purpose of applying for suspension of deportation or special rule cancellation of removal under section 203 of NACARA. Although this rule amends the existing procedures of § 3.43, which originally dealt only with motions to reopen under section 203(c) of NACARA, this rule does not extend the September 11, 1998, filing deadline for those NACARA motions. Editorial changes within the text of former § 3.43 have been made for consistency purposes only and do not change or extend the requirements or procedures applicable to motions to reopen under section 203(c) of NACARA.

What Are the Procedures for Reopening Deportation or Removal Proceedings Pursuant to Section 1505(c) of the LIFE Act Amendments?

The Department has adapted for purposes of section 1505(c) motions to reopen the existing procedures of § 3.43, which originally dealt only with motions to reopen under section 203(c) of NACARA. An alien seeking to reopen proceedings pursuant to section 309(h) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, must file a motion to reopen and include with that motion an application for suspension of deportation or cancellation of removal and supporting documents, on or before October 16, 2001. An eligible alien may file only one motion to reopen pursuant to section 309(h) of IIRIRA. The alien must establish in such motion that he or she satisfies each of the requirements for reopening in § 3.43(c). The front page of the motion to reopen and any envelope containing such motion should include the notation ''Special LIFE 1505(c) Motion.'' A copy of both the motion to reopen and the application for suspension of deportation or cancellation of removal, with all other supporting documents, must be served on the Immigration and Naturalization Service (Service). Persons filing a motion to reopen under section 309(h) should follow standard motion practice, as set forth in the regulations at 8 CFR 3.2(c) and 3.23(b)(3), with the exception that the fee (required under 8 CFR 3.8 and 3.24) for motions to reopen submitted pursuant to this rule will be waived.

If an alien has previously filed an application for suspension of deportation or cancellation of removal with the Immigration Judge or the Board of Immigration Appeals (Board), he or she must file a copy of that application or a new application with the motion to reopen. If the motion to reopen is granted, and the alien has previously filed an application, the alien will not be required to pay a new filing fee for the suspension/cancellation application.

If an alien has not previously filed an application for suspension of deportation or cancellation of removal,

the alien must submit a suspension/cancellation application with the motion to reopen. Nothing in this notice changes the requirements and procedures in 8 CFR 3.31(b), 103.7(b)(1), and 240.11(f) for paying the application fee for suspension/cancellation after a motion to reopen is granted if such an application was not previously filed.

If an eligible alien fails to file the required motion, and the applicable application and supporting documents, by October 16, 2001, the alien will have lost his or her one opportunity to move under section 309(h)(2) to reopen proceedings to seek suspension of deportation or special rule cancellation of removal relief. However, an individual may still be eligible to reopen proceedings under other statutory and regulatory provisions.

How Is Prima Facie Eligibility Defined?

An alien filing a motion to reopen pursuant to section 309(h) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, must establish prima facie eligibility for suspension of deportation under former section 244(a) of the Act, as in effect prior to April 1, 1997, or special rule cancellation of removal under section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA. In general, the alien must have been physically present in the United States for a continuous period of at least 7 years immediately preceding the date of such application or at least 3 years in the case of certain battered aliens; must be a person of good moral character during such period; and must establish that deportation or removal would result in extreme hardship to the alien or to the alien's spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence. Different standards apply to aliens who are deportable because of a criminal conviction or certain other grounds. See section 244(a)(2) of the Act, as in effect prior to April 1, 1997, and special rule cancellation of removal under section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA. The period of continuous physical presence must be established as of no later than October 16, 2001.

Further, to be prima facie eligible to apply for suspension of deportation or special rule cancellation of removal, the alien must not be subject to any of the statutory bars to seeking such relief which are discussed below.

What Are the Statutory Bars to Suspension of Deportation and Special Rule Cancellation of Removal?

Section 309(h)(1) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, waives only the statutory bar created by the reinstatement provision in section 241(a)(5) of the Act; all other bars remain. Section 240A(c) of the Act and former section 244(f) of the Act (as it existed prior to April 1, 1997) provide that certain categories of aliens are ineligible for suspension of deportation or cancellation of removal. Moreover, an alien who was previously granted voluntary departure and received oral and written notice of the consequences of failing to depart, but did not depart the United States voluntarily within the time specified, is barred for a specific period of time from various forms of discretionary relief. See section 240B(d) of the Act and section 242B(e)(2), as in effect prior to April 1, 1997. These include suspension of deportation and cancellation of removal, pursuant to section 240B(d) of the Act and former section 242B(e)(2) of the Act (as it existed prior to April 1, 1997). Former section 242B(e)(1), (3) and (4) of the Act (as it existed prior to April 1, 1997) also bars eligibility for such relief for certain aliens who, after receiving the required oral and written notices, failed to appear at their removal or deportation hearings, failed to appear as ordered for deportation, or failed to appear at an asylum hearing. These and any other statutory bars to eligibility for suspension of deportation or cancellation of removal are not waived by section 1505(c) of the LIFE Act Amendments.

Which Application Form Must Be Filed With the Motion To Reopen?

When filing a motion to reopen, aliens in the classes described in paragraphs (d)(1)–(d)(6) and (d)(8) must attach to the motion a copy of the Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to section 203 of Pub. L. 105–100). The Form I–881 is currently being revised to include specifically aliens described in paragraph (d)(8); aliens should attach the most current Form I–881 available to the motion to reopen. Aliens described in paragraph (d)(7) must attach to the motion a copy of the Form EOIR–40, Application for Suspension of Deportation. Aliens should follow the instructions for submitting the appropriate application to the Immigration Court or the Board of Immigration Appeals (Board), but should not submit evidence of payment of the filing fee, unless and until the motion to reopen is granted.

Where Should a Motion To Reopen Under Section 1505(c) of the LIFE Act Amendments Be Filed?

Any motion to reopen and all supporting documentation to apply for suspension of deportation or special rule cancellation of removal under section 309(h) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, shall be filed with the Immigration Court or the Board, whichever last held jurisdiction over the case. If the Immigration Court has jurisdiction and grants only the motion to reopen proceedings to apply for suspension of deportation and cancellation of removal, the scope of the reopened proceeding shall be limited to a determination of the alien's eligibility for suspension of deportation or special rule cancellation of removal.

If the Board has jurisdiction and grants only the motion to reopen to apply for suspension of deportation or special rule cancellation of removal, it shall remand the case to the Immigration Court solely for adjudication of the application for suspension of deportation or special rule cancellation of removal.

Must All Aliens Eligible for Relief Under Section 309(h)(1) of IIRIRA Submit a Motion To Reopen Under Section 309(h)(2) in Order To Obtain Such Relief?

Not all aliens are required to file a motion to reopen in order to obtain relief under section 309(h)(1) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments. Section 309(h)(1) removes the bar to applying for suspension of deportation or special rule cancellation of removal that would otherwise be imposed by section 241(a)(5) of the Act where the alien has reentered the United States illegally after being removed or having departed voluntarily under a final order of removal. Section 309(h)(1) removes that bar regardless of whether the prior order of deportation or removal has been reinstated by the Service. In those cases in which the prior order has not been reinstated, there is no final order to seek to reopen, and, consequently, the motion to reopen provision in section 309(h)(2) is inapplicable. Instead, aliens who are not in deportation or removal proceedings and whose prior orders have not been reinstated may apply for relief before the Service pursuant to the jurisdictional requirements for applications set forth in 8 CFR 240.62(a). Aliens who are currently in deportation or removal proceedings and

whose prior orders have not been reinstated may apply for relief before the Immigration Court pursuant to the jurisdictional requirements for applications set forth in 8 CFR 240.62(b).

What Happens if a Motion To Reopen Under Section 1505(c) of the LIFE Act Amendments Is Denied?

In those cases where a motion to reopen is denied by final order, the Service will evaluate the facts of the case to determine whether reinstatement of the prior order is required.

Good Cause Exception

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the exception for rules of agency organization, procedures, or practice in 5 U.S.C. 553(b)(3)(A) and upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). Section 1505(c) of LIFE Act Amendments became effective immediately on December 21, 2000. Publication of this rule as an interim rule will expedite implementation of that section and allow certain eligible aliens to submit motions to reopen their removal or deportation proceedings during the limited time period permitted by the LIFE Act Amendments for filing such motions to reopen. That period began on February 19, 2001, and terminates on October 16, 2001. It would be impracticable and contrary to the public interest to delay the effective date of this rule, as such a delay would have the effect of limiting the ability of eligible aliens to move to reopen their proceedings in order to seek the benefits of the LIFE Act Amendments.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule allows certain individual aliens to apply for suspension of deportation or special rule cancellation of removal; it will have no significant effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Attorney General has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f) and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

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

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470.

Paperwork Reduction Act

This interim rule permits certain aliens to file motions to reopen proceedings to apply for suspension of deportation and special rule cancellation of removal pursuant to section 1505(c) of the LIFE Act Amendments. Motions to reopen under this rule must be filed on or before October 16, 2001, and must be accompanied by either a Form I–881 or a Form EOIR–40.

The information collection requirement of Form I–881 contained in this rule was previously approved for use by the Office of Management and Budget (OMB). The OMB control number for this collection is 1115–0227.

The Form EOIR–40 is also considered an information collection. The OMB control number on the Form EOIR–40 has expired. Accordingly, the Department of Justice, Executive Office for Immigration Review (EOIR), has submitted an information collection request to the Office of Management and Budget (OMB). Since a delay in issuing this interim rule would harm the public and disrupt EOIR's ability to receive and process motions to reopen proceedings under section 1505(c) of the LIFE Act Amendments within the limited time period permitted for the filing of such motions, EOIR has sought emergency review and clearance as provided for in the Paperwork Reduction Act of 1995. 44 U.S.C. 3507(j). Emergency review and approval has been granted by OMB. That emergency approval is only valid for 180 days.

A regular review of the information collection requirement of the Form EOIR–40 is also being undertaken. All comments and suggestions, or questions regarding additional information, including obtaining a copy of the proposed information collection instrument with instructions, should be directed to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041; telephone: (703) 305–0470. We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Any comments on the information collection must be submitted on or before September 17, 2001. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the 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: Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) Title of Form/Collection: Application for Suspension of Deportation.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–40, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Individuals or households. An alien who is deportable from the United States may request that the Attorney General suspend his or her deportation pursuant to 8 U.S.C. 1254 (as in effect prior to April 1, 1997, and as made applicable by section 1505(c) of the LIFE Act Amendments) and 8 CFR 240.56. To be granted such relief, the alien must prove that he or she meets all of the statutory requirements for suspension of deportation and that he or she is entitled to a favorable exercise of discretion. The proposed Form EOIR–40 would be completed by the applicant for suspension of deportation and would contain information necessary for the Attorney General to decide whether or not to suspend the alien's deportation from the United States.

(5) An estimate of the total number of respondents and the amount of time for an average respondent to respond: 1,518 responses per year at 5 hours and 45 minutes per response.

(6) An estimate of the total of public burden (in hours) associated with the collection: Approximately 8,728 annual burden hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW., Washington, DC 20530.

List of Subjects of 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

Accordingly, part 3 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; sec. 203 of Pub. L. 105–100, 111 Stat. 2196–200; sec. 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; sec. 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Revise § 3.43 to read as follows:

§ 3.43 Motions to reopen for suspension of deportation and cancellation of removal pursuant to section 203(c) of NACARA and section 1505(c) of the LIFE Act Amendments.

(a) *Standard for Adjudication.* Except as provided in this section, a motion to reopen proceedings under section 309(g) or (h) of the Illegal Immigration Reform and Immigrant Responsibility Act (Pub. L. 104–208) (IIRIRA), as amended by section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105–100) (NACARA) and by section 1505(c) of the Legal Immigration Family Equity Act Amendments (Pub. L. 106–554) (LIFE Act Amendments), respectively, will be adjudicated under applicable statutes and regulations governing motions to reopen.

(b) *Aliens eligible to reopen proceedings under section 203 of NACARA.* A motion to reopen proceedings to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or the special rule for cancellation of removal pursuant to section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible:

(i) For suspension of deportation by operation of section 309(c)(5) of IIRIRA (as in effect prior to November 19, 1997); or

(ii) For cancellation of removal pursuant to section 240A of the Act, but for operation of section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the six classes of aliens described in paragraphs (d)(1) through (d)(6) of this section.

(c) *Aliens eligible to reopen proceedings under section 1505(c) of the LIFE Act Amendments.* A motion to reopen proceedings to apply for suspension of deportation or cancellation of removal under the special rules of section 309(h) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible, by operation of section 241(a)(5) of the Act, for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA, but for enactment of section 1505(c) of the LIFE Act Amendments;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the eight classes of aliens described in paragraph (d) of this section.

(d) *Classes of Eligible Aliens.*

(1) *Class 1.* A national of El Salvador who:

(i) First entered the United States on or before September 19, 1990;

(ii) Registered for benefits pursuant to the settlement agreement in *American Baptist Churches, et al.* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991) (ABC) on or before October 31, 1991, or applied for Temporary Protected Status (TPS) on or before October 31, 1991; and

(iii) Was not apprehended after December 19, 1990, at time of entry.

(2) *Class 2.* A national of Guatemala who:

(i) First entered the United States on or before October 1, 1990;

(ii) Registered for ABC benefits on or before December 31, 1991; and

(iii) Was not apprehended after December 19, 1990, at time of entry.

(3) *Class 3.* A national of Guatemala or El Salvador who applied for asylum with the Service on or before April 1, 1990.

(4) *Class 4.* An alien who:

(i) Entered the United States on or before December 31, 1990;

(ii) Applied for asylum on or before December 31, 1991; and

(iii) At the time of filing such application for asylum was a national of

the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

(5) *Class 5.* The spouse or child of a person who is described in paragraphs (d)(1) through (d)(4) of this section and such person is prima facie eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA.

(6) *Class 6.* An unmarried son or daughter of a person who is described in paragraphs (d)(1) through (d)(4) of this section and such person is prima facie eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA. If the son or daughter is 21 years of age or older, the son or daughter must have entered the United States on or before October 1, 1990.

(7) *Class 7.* An alien who was issued an Order to Show Cause or was in deportation proceedings before April 1, 1997, and who applied for suspension of deportation as a battered alien under former section 244(a)(3) of the Act (as in effect before September 30, 1996).

(8) *Class 8.* An alien:

(i) Who is or was the spouse or child of a person described in paragraphs (d)(1) through (d)(4) of this section:

(A) At the time a decision is rendered to suspend deportation or cancel removal of that person;

(B) At the time that person filed an application for suspension of deportation or cancellation of removal; or

(C) At the time that person registered for ABC benefits, applied for TPS, or applied for asylum; and

(ii) Who has been battered or subjected to extreme cruelty (or the spouse described in paragraph (d)(8)(i) of this section has a child who has been battered or subjected to extreme cruelty) by the person described in paragraphs (d)(1) through (d)(4) of this section.

(e) *Motion to reopen under section 203 of NACARA.*

(1) An alien filing a motion to reopen proceedings pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, may initially file a motion to reopen without an application for suspension of deportation or cancellation of removal and supporting documents, but the motion must be filed no later than September 11, 1998. An alien may file only one motion to reopen pursuant to section 309(g) of IIRIRA. In such motion to reopen, the alien must address each of the four requirements for eligibility described in paragraph (b) of this section and establish that the alien satisfies each requirement.

(2) A motion to reopen filed pursuant to paragraph (b) of this section shall be considered complete at the time of submission of an application for suspension of deportation or special rule cancellation of removal and accompanying documents. Such application must be submitted no later than November 18, 1999. Aliens described in paragraphs (d)(5) or (d)(6) of this section must include, as part of their submission, proof that their parent or spouse is prima facie eligible and has applied for relief under section 203 of NACARA.

(3) The Service shall have 45 days from the date the alien serves the Immigration Court with either the Form EOIR–40 or the Form I–881 application for suspension of deportation or special rule cancellation of removal to respond to that completed motion. If the alien fails to submit the required application on or before November 18, 1999, the motion will be denied as abandoned.

(f) *Motion to reopen under section 1505(c) of the LIFE Act Amendments.* (1) An alien filing a motion to reopen proceedings pursuant to section 309(h) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, must file a motion to reopen with an application for suspension of deportation or cancellation of removal and supporting documents, on or before October 16, 2001. An alien may file only one motion to reopen proceedings pursuant to section 309(h) of IIRIRA. In such motion to reopen, the alien must address each of the four requirements for eligibility described in paragraph (c) of this section and establish that the alien satisfies each requirement.

(2) A motion to reopen and the accompanying application and supporting documents filed pursuant to paragraph (c) of this section must be submitted on or before October 16, 2001. Aliens described in paragraphs (d)(5) and (d)(6) of this section must include, as part of their submission, proof that their parent or spouse is prima facie eligible and has applied for relief under section 203 of NACARA.

(3) The Service shall have 45 days from the date the alien serves the Immigration Court to respond to that motion to reopen.

(g) *Fee for motion to reopen waived.* No filing fee is required for a motion to reopen to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) or (h) of IIRIRA, as amended by section 203(c) of NACARA and by section 1505(c) of the LIFE Act Amendments, respectively.

(h) *Jurisdiction over motions to reopen under section 203 of NACARA and remand of appeals.* (1) Notwithstanding any other provisions, any motion to reopen filed pursuant to the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, shall be filed with the Immigration Court, even if the Board of Immigration Appeals (Board) issued an order in the case. The Immigration Court that last had jurisdiction over the proceedings will adjudicate the motion.

(2) The Board will remand to the Immigration Court any presently pending appeal in which the alien appears eligible to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203 of NACARA, and appears prima facie eligible for that relief. The alien will then have the opportunity to apply for suspension or cancellation under the special rules of NACARA before the Immigration Court.

(i) *Jurisdiction over motions to reopen under section 1505(c) of the LIFE Act Amendments and remand of appeals.* (1) Notwithstanding any other provisions, any motion to reopen filed pursuant to paragraph (f) of this section to apply for suspension of deportation or cancellation of removal under section 1505(c) of the LIFE Act Amendments shall be filed with the Immigration Court or the Board, whichever last held jurisdiction over the case. Only an alien with a reinstated final order, or an alien with a newly issued final order that was issued based on the alien having reentered the United States illegally after having been removed or having departed voluntarily under a prior order of removal that was subject to reinstatement under section 241(a)(5) of the Act, may file a motion to reopen with the Immigration Court or the Board pursuant to this section. An alien whose final order has not been reinstated and as to whom a newly issued final order, as described in this section, has not been issued may apply for suspension of deportation or special rule cancellation of removal before the Service pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, according to the jurisdictional provisions for applications before the Service set forth in 8 CFR 240.62(a) or before the Immigration Court as set forth in 8 CFR 240.62(b).

(2) If the Immigration Court has jurisdiction and grants only the motion to reopen filed pursuant to paragraph (f)

of this section, the scope of the reopened proceeding shall be limited to a determination of the alien's eligibility for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(3) If the Board has jurisdiction and grants only the motion to reopen filed pursuant to paragraph (f) of this section, it shall remand the case to the Immigration Court solely for adjudication of the application for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(4) Nothing in this section shall be interpreted to preclude or restrict the applicability of any other exceptions regarding motions to reopen that are provided for in 8 CFR 3.2(c)(3) and 3.23(b).

Dated: June 28, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–16767 Filed 7–16–01; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 74

[Docket No. 00–016–3]

Importation and Interstate Movement of Certain Land Tortoises

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, two interim rules concerning the importation and interstate movement of certain land tortoises. The first interim rule established regulations to prohibit the importation and interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. The second interim rule amended the regulations by allowing the interstate movement of these land tortoises if they were accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises have been examined by that veterinarian and found free of ticks. This document amends the second interim rule by allowing that certificate to be either a health certificate or a certificate of veterinary inspection and by providing that only an accredited veterinarian may sign the certificate. This action is necessary to enable the export, interstate commerce, health care, and adoption of these types of tortoises while providing protection against the spread of exotic ticks known to be vectors of heartwater disease. This action will also relieve an unnecessary burden on Federal veterinarians.

EFFECTIVE DATE: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. D. D. Wilson, Senior Staff Entomologist, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2000, we published in the **Federal Register** (65 FR 15216–15218, Docket No. 00–016–1) an interim rule that prohibits, until further notice, the importation of the following tortoises into the United States: All species and subspecies of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*). The interim rule also prohibits the interstate movement of all species and subspecies of these land tortoises. These prohibitions were established in order to prevent the spread of exotic ticks known to be vectors of heartwater disease, an acute infectious disease of ruminants.

We solicited comments on our interim rule for 60 days, ending May 22, 2000. We received 53 comments by that date. They were from tortoise breeders and owners, representatives of the reptile industry, animal advocacy groups, and other interested individuals. Many commenters supported the prohibition on importation of these tortoises, but most expressed concerns about the effect of prohibiting the interstate movement of these tortoises. Because of the prohibition on interstate movement, these tortoises could not be moved interstate for sale, health care, or adoption. In addition, many domestic tortoise breeders who must move their tortoises interstate prior to exporting them could no longer export these tortoises.

Based on these comments, on July 21, 2000, we published in the **Federal Register** (65 FR 45275–45277, Docket No. 00–016–2) an interim rule that allowed the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise if they were accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises had been examined by that veterinarian and found free of ticks. This action was necessary to enable the export, interstate commerce, health care, and adoption of these types of tortoises while providing protection against the spread of exotic ticks known to be vectors of heartwater disease.

We solicited comments on our second interim rule for 60 days, ending September 19, 2000. We received two comments by that date. They were from a State department of agriculture and an association. We discuss the comments we received on the second interim rule, as well as comments we received on the first interim rule that were not addressed by the action we took in the second interim rule, below.

Public Comments on Interim Rules

Comment: You should allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks. This would allow the importation of these tortoises while protecting against the introduction of exotic ticks and could help decrease the potential for smuggled tortoises.

Response: Allowing the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks would require long-term preparation both for exporting regions and for the United States. Currently, most regions, including the United States, do not have a national export certification program for reptiles. Establishing such a program would require time, resources, and review by trading partners of the proposed components of the program. We are in the process of determining whether regions that export reptiles to the United States have any interest in establishing export certification programs.

In addition, if we were to allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks, we would have to hire additional port personnel and train our inspectors to examine documents, as well as tortoises, at U.S. ports of entry. We would also have to ensure that adequate facilities for tortoise inspection are available at U.S. ports. At this time, we do not have the resources necessary to implement such a program, but we are working to establish effective treatment and biosecurity controls for tortoises and other reptiles. Until those treatment and biosecurity controls are in place, we believe that it is necessary to continue to prohibit the importation

into the United States of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise.

Therefore, we are making no changes to the interim rules in response to this comment.

Comment: You should prohibit the importation and interstate movement of only wild-caught leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises. If a tortoise can be documented or certified as captive-bred, it should be allowed to be imported and to move interstate without restrictions.

Response: We are considering a certification program for captive-bred tortoises. Before instituting such a program, however, we would need to develop standards for establishments that breed tortoises in captivity and to inspect and certify those establishments as free of ticks. If we decide to pursue a certification program, we will publish a proposed rule for public comment in the **Federal Register**.

However, at this time, because it is impossible to certify that a tortoise has been captive-bred based on a visual inspection of the tortoise, we are making no changes to the interim rules in response to this comment.

Comment: You should limit the prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises to only those tortoises imported from Africa.

Response: International trade in leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises is very active. We fear that limiting our prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises to only those tortoises imported from Africa would encourage transshipment of these animals from Africa through other countries to the United States. Our wider prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises from all foreign regions ensures that these tortoises will not be transshipped and, therefore, provides protection against the introduction of exotic ticks into the United States. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: Florida, the location of the primary U.S. port of entry for importations of leopard tortoise and African spurred tortoise, developed a comprehensive set of protocols for imported tortoises. The set of protocols includes mandatory inspection of all shipments of tortoises and treatment and quarantine of all shipments found to possess ticks. The set of protocols has proven effective in ensuring that imported tortoises do not introduce exotic ticks into the United States. You should allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise under a similar set of protocols.

Response: If we were to allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise under a set of protocols like the one Florida developed, we would have to hire additional port personnel and train our inspectors to examine tortoises at U.S. ports of entry. We would also have to ensure that adequate facilities for tortoise inspection and quarantine are available at U.S. ports throughout the country. At this time, we do not have the resources necessary to implement this kind of national program, but we are working to establish practical, effective treatment and biosecurity controls for tortoises and other reptiles. Florida's protocols will offer us important data as we build our national program. However, until our treatment and biosecurity controls are in place, we believe that it is necessary to continue to prohibit the importation into the United States of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: Exotic ticks known to be vectors of heartwater disease cannot survive in all climates. Therefore, you should allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise to States where the climate ensures that the ticks will not survive.

Response: Leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises need a specific temperature and humidity range for survival, and that range adequately supports the survival of ticks. Therefore, although it is true that owners of these tortoises may live in areas with climates that seasonally do not support exotic ticks known to be vectors of heartwater disease (such as the northernmost United States during the winter months), these owners must house their tortoises indoors, where ticks can easily survive on their host during harsh, inclement, or otherwise unsuitable weather. Because of this, it is possible that when the season changes and an indoor tortoise is placed outside, that tortoise may still carry ticks that could act as vectors of heartwater disease to local wildlife or livestock. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: You should also prohibit the importation of Savannah monitor lizards, plated lizards, ball pythons, and other reptiles and amphibians that may carry exotic ticks known to be vectors of heartwater disease. Alternately, you could prohibit the importation of all reptiles and amphibians from regions known to have heartwater disease and allow the importation of reptiles and amphibians from regions that do not have heartwater disease with veterinary inspection and certification that the reptiles or amphibians have been found free of ectoparasites.

Response: We are gathering information on whether other reptiles and amphibians present a risk of introducing exotic ticks known to be vectors of heartwater disease into the United States. At this time, however, we are prohibiting the importation of only leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise because interception records from 1995-1999 report that 90 percent of the tropical bont ticks, African tortoise ticks, and ticks of the species *Amblyomma sparsum* found on reptiles entering the United States occurred on these three species of land tortoise. Further, tortoises generally live outdoors, unlike most other reptiles and amphibians, and, therefore, obviously present a greater risk of coming into contact with and spreading ticks to other potential hosts.

Regarding the commenter's alternate suggestion, we fear that limiting our prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises to only those tortoises imported from countries known to have heartwater disease would encourage transshipment of these animals from those countries through countries known to be free of heartwater disease to the United States. Our wider prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises from all foreign regions ensures that these tortoises will not be transshipped and, therefore, provides protection against the introduction of exotic ticks into the United States.

Therefore, we are making no changes to the interim rules in response to this comment.

Comment: U.S. exporters, in an effort to profit from the huge demand for turtle meat in many Asian countries, may decimate our native tortoise populations. Therefore, you should also ban the exportation of tortoises from the United States.

Response: This comment requests an action outside of our authority. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: Ensuring that tortoises are free of ticks before importation or interstate movement may not be enough to protect against the introduction or spread of heartwater disease via tortoises. Research points out that an African tortoise was infected with heartwater rickettsia and remained a latent carrier, infective to ticks, for at least 3 months. In addition, at least three ticks native to the United States have been shown experimentally to be vectors of the rickettsia.

Therefore, a tick-free tortoise infected with the rickettsia could infect native ticks, which could in turn transmit the disease to domestic livestock or wildlife. Any changes made to the prohibition on importation and interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise should include either a test for infection in tortoises, a minimum period of quarantine for tortoises, or a course of antibiotics.

Response: According to Dr. Michael Burridge, very recent research (unpublished data) conducted in Zimbabwe in conjunction with the University of Florida indicates that leopard tortoise is not a carrier of heartwater disease. Further, we have no evidence that either African spurred tortoise or Bell's hingeback tortoise is a carrier of the disease. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: Instead of issuing health certificates for each shipment of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises moving interstate, you should inspect each tortoise breeder's facility, certify those facilities that are free of ticks, and then allow tortoises to be moved interstate from certified facilities without further restrictions. This would significantly reduce expenses for breeders who move their tortoises interstate.

Response: If we were to allow interstate movement of these tortoises based on inspection of each tortoise breeder's facility and certification that facilities are free of ticks, then APHIS personnel would have to inspect each facility and all of its tortoises. We would likely not approve other individuals to conduct these inspections. Therefore, it would take us months, if not years, to complete these initial inspections. This would mean that while many breeders wait for an undetermined amount of time to move their tortoises interstate, which would increase expenses for these breeders, a few breeders would be free to move their tortoises interstate and reap the profits that may be associated with a smaller supply of these types of tortoises. This would also mean that, at the outset of such a program, we would have to spend time establishing the criteria we would use to determine the order of such inspections. In addition, the inspections would have to be conducted on a regular basis, such as annually or every other year, to ensure that facilities remain free of ticks. Instead, we elected through our second interim rule to allow the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise if they were accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises had been examined by that veterinarian and found free of ticks. We believe that this system ensured that every breeder's tortoises could move interstate as quickly as possible following the effective date of the second interim rule and, therefore, provided a method to allow interstate movement of these tortoises that is fair to all affected breeders. Therefore, we are making no changes to the interim rules in response to this comment.

Comment: In addition to Federal and accredited veterinarians, you should allow also State veterinarians to examine leopard tortoises, African spurred tortoises, or Bell's hingeback tortoises and sign the health certificate required for their interstate movement.

Response: We believe that State veterinarians should not sign health certificates for the interstate movement of leopard tortoise, African spurred tortoise, or Bell's hingeback tortoise for three reasons. First, several States have indicated to APHIS that they believe that the time spent performing the thorough inspection that would be required prior to the issuance of a health certificate would take time away from the State veterinarian's primary mission activities. Second, if State veterinarians were allowed to sign these health certificates, many accredited veterinarians, who are generally private practitioners, would lose business, and its accompanying revenue, to State veterinarians. Third, and perhaps most important, we believe that accredited veterinarians who have experience dealing with tortoises and other reptiles can perform a more knowledgeable and thorough examination of leopard tortoises, African spurred tortoises, or Bell's hingeback tortoises than could many State and Federal veterinarians, who are less likely to have experience with tortoises and other reptiles. Upon further consideration, we also believe that these same reasons provide a sound basis for withdrawing Federal veterinarians from those eligible to sign the health certificate for the interstate movement of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises. Therefore, we are amending the second interim rule by allowing only an accredited veterinarian to sign the health certificate for the interstate movement of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises. Further, in order to ensure that those tortoises are accompanied by a health certificate that can be reasonably expected to reflect their status at the time they are moved interstate, we are also amending the second interim rule to state that the certificate must be signed within the 30 days prior to the interstate movement.

Comment: You should change the name of the certificate required for the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. Instead of ''health certificate,'' you should call it a ''certificate of veterinary inspection.''

Response: ''Health certificate'' is the term we use most often in our regulations and is consistent with our approved forms. However, we agree that a certificate of veterinary inspection, which is used by many States, would also provide the necessary certification that tortoises have been examined by an accredited veterinarian and found free of ticks. Therefore, we are amending the regulations to allow the accredited veterinarian to sign either a health certificate or a certificate of veterinary inspection for the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise.

Therefore, for the reasons given in the interim rules and in this document, we are adopting the interim rules as a final rule, with the changes discussed in this document.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rules adopted as final by this rule were effective on March 22, 2000, and July 17, 2000. This rule revises the second interim rule by allowing the certificate for interstate movement to be either a health certificate or a certificate of veterinary inspection and by providing that only an accredited veterinarian may sign the certificate. Immediate action is necessary to relieve an unnecessary burden on Federal veterinarians, who cannot be compensated through user fees for the time they spend inspecting and certifying tortoises for interstate movement. Therefore, the Administrator of the Animal and Plant Health

Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The United States accounts for about 80 percent of the world's live reptile trade. In 1998, a total of 1,921,272 reptiles were imported, valued at approximately $6.37 million. Of these, turtles, including tortoises, accounted for about 26.5 percent of imports. Three states, California (48 percent), Florida (33.2 percent), and Louisiana (11.7 percent), accounted for nearly 93 percent of turtle imports. Almost all turtles imported into the United States are wild caught.

The United States exports about 9 million live reptiles annually. Red-eared slider turtles make up about 85 percent of these exports every year. South Korea, Japan, and European countries are the major importers of U.S. turtles. However, Canada appears to be the major importer of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. In 1995, the United States exported to Canada 32 leopard tortoises, 527 African spurred tortoises, and 2,332 Bell's hingeback tortoises. During the same year, U.S. imports of these species were 2,683, 1,223, and 952, respectively.

In 1996, between 1.5 million and 2.5 million households in the United States owned various reptiles as pets. Of these, about 534,000 households, or about 35 percent, owned a total of 950,000 turtles, including tortoises. Overall, turtles represented about 27 percent of the total reptile pet population. The prices paid for turtles ranged between $25 and $750, depending on species, size, and age. Between 1993 and 1996, the average price in the United States for a leopard tortoise was $190, for an African spurred tortoise $578, and for a Bell's hingeback tortoise $35.

This rule will require persons wishing to move these tortoises interstate to acquire a health certificate or a certificate of veterinary inspection from an accredited veterinarian. We estimate that a certificate will cost about $25 to $50 for the first tortoise, plus $2 to $5 for each additional tortoise in the shipment. These costs are small when compared to the potential losses in revenue and animals that could result from a reinstitution of the prohibition on the interstate movement of these species of tortoises. The health certificate will also help ensure the acceptability of these animals in international markets and prevent the spread of exotic ticks known to be vectors of heartwater disease, an acute infectious disease of ruminants, including cattle, sheep, goats, white-tailed deer, and antelope.

Heartwater disease has a 60 percent or greater mortality rate in livestock and a 90 percent or greater mortality rate in white-tailed deer. The direct contribution of the U.S. livestock industry to the gross domestic product is close to $60 billion; with indirect and induced impacts taken into account, that figure could reach about $150 billion. Considering the virulence and high mortality rate of heartwater disease, its introduction and spread in the United States could have severe economic consequences, even when a less than worst-case scenario is considered. Thus, the costs associated with this rule are far outweighed by the benefits of maintaining the United States' freedom from heartwater disease.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule also affirms the information contained in the interim rules concerning Executive Orders 12372 and 12988.

Paperwork Reduction Act

The information collection and recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under control number 0579–0156.

List of Subjects in 9 CFR Part 74

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rules amending 9 CFR part 74 which were published at 65 FR 15216–15218 on March 22, 2000, and 65 FR 45275–45277 on July 21, 2000, are adopted as a final rule with the following changes:

PART 74—PROHIBITION OF INTERSTATE MOVEMENT OF LAND TORTOISES

1. The authority citation for part 74 is revised to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 115, 117, 120, 122–126, 134b, 134f; 7 CFR 2.22, 2.80, and 371.4.

2. Section 74.1 is revised to read as follows:

§ 74.1 General prohibition.

The interstate movement of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*) is prohibited except when tortoises are accompanied by either a health certificate or a certificate of veterinary inspection. The health certificate or certificate of veterinary inspection must be signed by an accredited veterinarian within 30 days prior to the interstate movement and must state that the tortoises have been examined by that veterinarian and found free of ticks.

Done in Washington, DC, this 11th day of July 2001.

(Approved by the Office of Management and Budget under control number 0579–0156)

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17841 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE168, Special Condition 23–108–SC]

Special Conditions; Raytheon C90A; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Raytheon Aircraft Services, Inc., 1115 Paul Wilkens Road, San Antonio, Texas, 78216, for a Supplemental Type Certificate for the Raytheon C90A airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays manufactured by Collins for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to

establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is May 25, 2001. Comments must be received on or before August 16, 2001.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE168, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE168. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

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

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE168.'' The postcard will be date stamped and returned to the commenter.

Background

On January 17, 2001, Raytheon Aircraft Services, Inc., 1115 Paul Wilkens Road, San Antonio, Texas, 78216, made an application to the FAA for a new Supplemental Type Certificate for the Raytheon C90A airplane. The C90A is currently approved under TC No. 3A20. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of a copilot's EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Raytheon Aircraft Services, Inc. (San Antonio) must show that the C90A aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to Raytheon C90A: Under the provisions of 14 CFR part 21, 21.101, Raytheon Aircraft Services (San Antonio) must show that the C90A aircraft meets the following provisions, or the applicable regulations as specified in Type Certificate Data Sheet 3A20, Revision 58 dated March 15, 1999 and the special conditions adopted by this rule making action.

Discussion

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

Special conditions are normally issued in accordance with § 11.19, as required by §§ 11.38, and become a part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

Raytheon Aircraft Services, Inc. (San Antonio) plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include a copilot's EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

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

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

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

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

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

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

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

or,

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

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

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

Applicability

As discussed above, these special conditions are applicable Raytheon C90A airplane. Should Raytheon Aircraft Services (San Antonio) apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

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

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, §§ 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon C90A airplane modified by Raytheon Aircraft Services (San Antonio) to add a copilot's EFIS.

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

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

Issued in Kansas City, Missouri on May 25, 2001.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17860 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–357–AD; Amendment 39–12327; AD 2001–14–16]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–V Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Gulfstream Model G–V series airplanes, that requires repetitively replacing the existing nose wheel steering actuator with a new or reworked actuator having the same part number. The actions specified by this AD are intended to prevent loss of nose wheel steering control without a corresponding alert message annunciation due to the effects of moisture intrusion into the rotary variable displacement transducer (RVDT) inside the steering actuator, and consequently, an over steering condition. If an over steering condition were to occur during landing, the airplane could depart the runway. This action is intended to address the identified unsafe condition.

DATES: Effective August 21, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Frank Mokry, Systems Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6066; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Gulfstream Model G–V series airplanes was published in the **Federal Register** on February 15, 2001 (66 FR 10378). That action proposed to require repetitively replacing the existing nose wheel steering actuator with a new or reworked actuator having the same part number.

Public Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Since the Issuance of the Proposed Rule

In the preamble of the proposed rule, the FAA indicated that the actions proposed were considered to be interim action, and that further rulemaking was being considered. Since the issuance of the proposed rule, the manufacturer has developed a new improved nose wheel steering actuator, and the FAA has approved replacement of the actuator with the new improved actuator as terminating action for the repetitive inspection requirements specified in the final rule.

Optional Terminating Action

Since the public has not been given opportunity to comment on the replacement of the steering actuator with the new improved actuator, the FAA has included that replacement action as an optional terminating action in new paragraph (b) of the final rule.

Interim Action

The FAA is considering further rulemaking to require the replacement of the nose wheel steering actuator with the new improved actuator.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change, specifying an optional terminating action, will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 94 Model G–V series airplanes of the affected design in the worldwide fleet. The FAA estimates that 89 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $15,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,367,040, or $15,360 per airplane, per replacement.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

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 the following new airworthiness directive:

2001–14–16 Gulfstream Aerospace Corporation: Amendment 39–12327. Docket 2000–NM–357–AD.

Applicability: Model G–V series airplanes, serial numbers 501 and subsequent, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of nose wheel steering control, without a corresponding alert message annunciation, due to the effects of moisture intrusion into the rotary variable displacement transducer (RVDT) inside the steering actuator, which could result in the airplane departing the runway if an over steering condition were to occur during landing, accomplish the following:

Repetitive Replacement

(a) Replace the nose wheel steering actuator, part number (P/N) 1159SCL500–41 Rev. D, with a new or restored actuator

having the same part number, per Gulfstream V Maintenance Manual Chapter 05–10–00, dated September 15, 2000; at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Repeat this replacement thereafter every 450 flight hours or 12 months, whichever occurs first.

(1) Within 450 flight hours or 12 months after replacing the nose wheel steering actuator, P/N 1159SCL500–41 Rev. D, with a new or restored actuator having the same part number, whichever occurs first.

(2) Within 30 days after the effective date of this AD.

Optional Terminating Action

(b) Replacement of all nose wheel steering actuators with new improved actuators having P/N 1159SCL500–51, per Gulfstream V Maintenance Manual Chapter 05–10–00, dated April 30, 2001, constitutes terminating action for the repetitive replacement requirements specified in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on August 21, 2001.

Issued in Renton, Washington, on July 10, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17758 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30258; Amdt. No. 2060]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Federal Procedure Standards Branch (AMCAFS–420), Flight Technologies and Program Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes, Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulation (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change consideration, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice of Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the

close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on July 6, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23, VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	Subject
06/08/01	FL	Hollywood	North Perry	1/5584	GPS Rwy 9R, Orig.
06/11/01	CA	Fresno	Fresno Yosemite Intl	1/5712	GPS Rwy 11L, Orig. This corrects NOTAM 1/5712 in TL01–15.
06/19/01	NM	Albuquerque	Albuquerque Intl Sunport	1/5989	ILS Rwy 8, Amdt 5A.
06/19/01	NM	Albuquerque	Albuquerque Intl Sunport	1/5990	VOR or TACAN or GPS Rwy 8, Admt 19A.
06/19/01	TX	Stephenville	Stephenville/Clark Field Muni	1/5996	VOR/DME–A, Orig.
06/20/01	VT	Barre-Montpelier	Edwards F. Knapp State	1/6029	VOR Rwy 35, Admt 3A.
06/20/01	TX	Andrews	Andrews County	1/6033	NDB Rwy 15, Admt 2.
06/20/01	TX	Andrews	Andrews County	1/6034	GPS Rwy 15, Orig–A.
06/20/01	CA	Watsonville	Watsonville Muni	1/6040	VOR/DME or GPS–A, Orig–C.
06/20/01	CA	Salinas	Salinas Muni	1/6041	LOC/DME Rwy 31, Admt 4B.
06/20/01	CA	Salinas	Salinas Muni	1/6042	VOR Rwy 13, Admt 11B.
06/20/01	CA	Monterey	Monterey Peninsula	1/6043	LOC/DME Rwy 28L, Admt 3C.
06/20/01	CA	Santa Ana	John Wayne Airport-Orange County	1/6048	ILS Rwy 19R, Admt 11.
06/21/01	TX	Del Rio	Del Rio Intl	1/6083	LOC Rwy 13, Orig.
06/22/01	NC	Jacksonville	Albert J. Ellis	1/6132	NDB or GPS Rwy 5, Admt 7A.
06/22/01	NC	Jacksonville	Albert J. Ellis	1/6133	ILS Rwy 5, Admt 7B.
06/22/01	TN	Bristol-Johnson-Kingsport	Bristol/Tri Cities Regional	1/6135	NDB or GPS Rwy 23, Admt 18.
06/22/01	TN	Bristol-Johnson-Kingsport	Bristol/Tri Cities Regional	1/6136	ILS (CATS I, II) Rwy 23, Admt 24C.
06/26/01	FL	Miami	Miami Intl	1/6268	ILS Rwy 27R, Admt 14A.
06/26/01	NE	Ainsworth	Ainsworth Muni	1/6279	GPS Rwy 35, Orig.
06/26/01	IL	Chicago	Merrill C. Meigs	1/6280	GPS Rwy 36, Admt 1.
06/27/01	FL	Miami	Miami Intl	1/6320	ILS Rwy 9L, Admt 29.
06/28/01	FL	Ocala	Ocala Regional/Jim Taylor Field	1/6399	RNAV (GPS) Rwy 18, Orig–A
06/28/01	RI	North Kingstown	Quonset State	1/6406	GPS Rwy 34, Admt 1.
06/29/01	IL	Mattoon-Charleston	Coles County Memorial	1/6429	VOR or GPS Rwy 24, Admt 10B.
07/02/01	SC	Pickens	Pickens County	1/6497	NDB or GPS Rwy 5, Orig.
07/02/01	SC	Pickens	Pickens County	1/6498	VOR/DME or GPS–A, Orig–A.

FDC Date	State	City	Airport	FDC No.	Subject
07/02/01	NJ	Teterboro	Teterboro	1/6512	Copter ILS Rwy 6, Admt 1A.
07/03/01	OR	Eugene	Mahlon Sweet Field	1/6546	GPS Rwy 3, Orig–A.
07/03/01	OR	Eugene	Mahlon Sweet Field	1/6547	GPS Rwy 16, Orig-A.
07/03/01	OR	Eugene	Mahlon Sweet Field	1/6549	VOR/DME or TACAN Rwy 35, Admt 4B.
07/03/01	OR	Eugene	Mahlon Sweet Field	1/6550	VOR/DME or TACAN Rwy 3, Admt 3A.
07/03/01	OR	Eugene	Mahlon Sweet Field	1/6551	VOR or GPS-A, Admt 6A.

[FR Doc. 01–17862 Filed 7–16–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30257; Amdt. No. 2059]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing and anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 6, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23, VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97,25 LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective August 9, 2001*

Waco, TX, Mc Gregor Executive, VOR RWY 17, Amdt 10

** * * Effective September 6, 2001*

Harrison, AR, Boone County, NDB–B, Amdt 2B
Brinkley, AR, Frank Federer Memorial, NDB–A, Amdt 2
Brinkley, AR, Frank Federer Memorial, RNAV (GPS) RWY 20, Orig
Brinkley, AR, Frank Federer Memorial, GPS RWY 20, Orig-A (Cancelled)
Eagle, CO, Eagle County Regional, RNAV (GPS) D. Orig
Eagle, CO, Eagle County Regional, GPS–D, Orig (Cancelled)
Orlando, FL, Orlando Sanford, RNAV RWY 9L, Amdt 1
Olathe, KS, Johnson County Executive, VOR RWY 36, Amdt 11
Olathe, KS, Johnson County Executive, NDB–B, Amdt 3
Olathe, KS, Johnson County Executive, NDB RWY 36, Amdt 1
Olathe, KS, Johnson County Executive, NDB RWY 18, Amdt 4
Olathe, KS, Johnson County Executive, LOC RWY 36, Amdt 1
Olathe, KS, Johnson County Executive, LOC RWY 18, Amdt 7
Olathe, KS, Johnson County Executive, GPS RWY 36, Orig-B (Cancelled)
Olathe, KS, Johnson County Executive, RNAV (GPS) RWY 36, Orig
Olathe, KS, Johnson County Executive, RNAV (GPS) RWY 18, Orig
Alexandria, LA, Alexandria Intl, RNAV (GPS) RWY 18, Orig
Alexandria, LA, Alexandria Intl, RNAV (GPS) RWY 32, Orig
Alexandria, LA, Alexandria Intl, GPS RWY 18, Orig-C (Cancelled)
Brainerd, MN, Brainerd-Crow Wing Co Regional, RNAV (GPS) RWY 5, Orig
Brainerd, MN, Brainerd-Crow Wing Co Regional, GPS RWY 5, Orig (Cancelled)
Minneapolis, MN, Flying Cloud, VOR RWY 9R, Amdt 8
Minneapolis, MN, Flying Cloud, ILS RWY 9R, Amdt 2
Minneapolis, MN, Flying Cloud, RNAV (GPS) RWY 36, Amdt 1
Bay St. Louis, MS, Stennis Intl, VOR OR GPS–A, Amdt 6
Miles, MT, Frank Wiley Field, RNAV (GPS) RWY 4, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) RWY 1L, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) RWY 1R, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) Y RWY 9, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) Z RWY 9, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) RWY 19L, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) RWY 19R, Orig
Kansas City, MO, Kansas City Intl, RNAV (GPS) RWY 27, Orig
Kansas City, MO, Kansas City Intl, GPS RWY 1R, Orig (Cancelled)
Kansas City, MO, Kansas City Intl, GPS RWY 9, Orig (Cancelled)
Kansas City, MO, Kansas City Intl, GPS RWY 19R, Orig (Cancelled)
Kansas City, MO, Kansas City Intl, GPS RWY 27, Orig (Cancelled)
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 5, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 18L, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 18R, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 23, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 36L, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 36R, Orig
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 5, Orig (Cancelled)
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 23, Orig (Cancelled)
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 36L, Orig (Cancelled)
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 36R, Orig (Cancelled)
Kinston, NC, Kinston Regional Jetport at Stallings Fld, RNAV (GPS) RWY 5, Amdt 1
Kinston, NC, Kinston Regional Jetport at Stallings Fld, RNAV (GPS) RWY 23, Orig
Lincoln, NE, Lincoln Muni, GPS RWY 14, Orig-A (Cancelled)
Durant, OK, Eaker Field, GPS RWY 35, Orig-A
Enid, OK, Enid Woodring Muni, NDB RWY 35, Amdt 6B
Miami, OK, Miami Muni, GPS RWY 17, Orig-A
Muskogee, OK, Davis Field, GPS RWY 4, Orig-B
Muskogee, OK, Davis Field, NDB RWY 31, Amdt 9A
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 13, Orig
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 17L, Orig
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 17R, Orig
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 35L, Orig
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 35R, Orig
Oklahoma City, OK, Will Rogers World, GPS RWY 17L, Orig (Cancelled)
Oklahoma City, OK, Will Rogers World, GPS RWY 17R, Orig (Cancelled)
Oklahoma City, OK, Will Rogers World, GPS RWY 35L, Orig (Cancelled)
Oklahoma City, OK, Will Rogers World, GPS RWY 35R, Orig (Cancelled)
Pittsburgh, PA, Allegheny County, RNAV (GPS) RWY 5, Amdt 1
Pittsburgh, PA, Allegheny County, RNAV (GPS) RWY 10, Amdt 1
Pittsburgh, PA, Allegheny County, RNAV (GPS) RWY 28, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 10C, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 10L, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 10R, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 14, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Y RWY 28C, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Z RWY 28C, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Y RWY 28L, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Z RWY 28L, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 28R, Amdt 1
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Y RWY 32, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Z RWY 38, Amdt 1
Abilene, TX, Abilene Regional, RNAV (GPS) RWY 17L, Orig
Abilene, TX, Abilene Regional, RNAV (GPS) RWY 35R, Orig
Abilene, TX, Abilene Regional, GPS RWY 17L, Orig (Cancelled)
Abilene, TX, Abilene Regional, GPS RWY 35R, Orig (Cancelled)
Bay City, TX, Bay City Muni, GPS RWY 31, Orig-A
Beaumont, TX, Beaumont Muni, RNAV (GPS) RWY 13, Orig

Beaumont, TX, Beaumont Muni, RNAV (GPS) RWY 31, Orig
Beaumont, TX, Beaumont Muni, VOR/DME RWY 13, Amdt 3
Beaumont, TX, Beaumont Muni, VOR/DME RWY 31, Amdt 4
Beaumont, TX, Beaumont Muni, GPS RWY 13, Orig (Cancelled)
Fort Worth, TX, Fort Worth Meacham, GPS RWY 34R, Orig-A
Lubbock, TX, Lubbock Intl, LOC BC RWY 35L, Amdt 18A
Lufkin, TX, Angelina County, GPS RWY 7, Orig-A
Lufkin, TX, Angelina County, NDB RWY 7, Amdt 2A
Lufkin, TX, Angelina County, VOR/DME RNAV RWY 7, Amdt 3A
Lufkin, TX, Angelina County, VOR/DME RNAV RWY 15, Amdt 4A
Tyler, TX, Tyler Pounds Field, RNAV (GPS) RWY 4, Orig
Tyler, TX, Tyler Pounds Field , RNAV (GPS) RWY 13, Orig
Tyler, TX, Tyler Pounds Field, RNAV (GPS) RWY 22, Orig
Tyler, TX, Tyler Pounds Field, RNAV (GPS) RWY 31, Orig
Tyler, TX, Tyler Pounds Field, GPS RWY 31, Orig (Cancelled)
Tyler, TX, Tyler Pounds Field, NDB RWY 13, Amdt 17E
Tyler, TX, Tyler Pounds Field, VOR/DME RWY 22, Amdt 3D
Tyler, TX, Tyler Pounds Field, VOR/DME RWY 4, Admt 3D
Suffolk, VA, Suffolk Muni, RNAV (GPS) RWY 4, Orig
Suffolk, VA, Suffolk Muni, GPS RWY 4, Orig-B (Cancelled)

[FR Doc. 01–17861 Filed 7–16–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending the rule that governs reparole decisions for District of Columbia prisoners whose paroles have been revoked. The amendment clarifies the Commission's intent that, in the case of a prisoner whose parole was revoked by the District of Columbia Board of Parole prior to August 5, 2000, the Commission may make findings of fact concerning issues that were not resolved by the Board at the prisoner's revocation hearing, without having to conduct a new revocation hearing. The amendment is intended to correct an interpretation according to which the Commission could not, at a parole reconsideration hearing, inquire into such matters as prior criminal conduct that was not adjudicated by the Board. Because a prisoner whose parole has been revoked upon charges sufficient to warrant his return to prison stands on the same legal footing as any other prisoner who makes an application for parole, the procedures for determining that prisoner's suitability for a grant of reparole are the procedures for initial parole hearings. In such hearings, the public safety requires the Commission to inform itself to the fullest possible extent concerning the prisoner's prior criminal conduct.

EFFECTIVE DATE: August 16, 2001.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd, Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: Under the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33 (at D.C. Code Section 24–1231), the U.S. Parole Commission assumed jurisdiction to make parole, reparole, and parole revocation decisions for all eligible District of Columbia felony offenders, effective August 5, 2000. Prior to that effective date, and for a two-year period commencing August 5, 1998, the Commission had jurisdiction only to grant paroles and reparoles to eligible District of Columbia prisoners, while the D.C. Board of Parole retained jurisdiction to supervise District of Columbia parolees and to revoke their paroles. Under the procedures of the D.C. Board of Parole, when a decision was made to revoke parole on charges sufficiently serious to return the parolee to prison, the Board would continue the revoked parolee to a reconsideration hearing at a later date. Only at such a reconsideration hearing would the Board consider the offender for a new grant of parole, or ''reparole,'' pursuant to D.C. Code Section 24–206(a). Under that statute a prisoner whose parole has been revoked ''* * * unless subsequently reparoled, shall serve the remainder of the sentence originally imposed less any commutation for good conduct which may be earned by him after his return from custody.'' Accordingly, reconsideration hearings for such offenders, whether conducted by the D.C. Board of Parole prior to August 5, 1998, or by the U.S. Parole Commission after August 5, 1998, have been conducted under the procedures applicable to initial parole hearings.

When the Commission adopted a rule of procedure to govern reparole decisions pursuant to D.C. Code Section 24–206(a), it required that reparole hearings would be conducted according to the procedures set forth at 28 CFR 2.72 for initial parole hearings, and specified that ''* * * the Commission's decision to grant or deny reparole on the parole violation term shall be made by reference to the reparole guidelines at § 2.21.'' See 28 CFR 2.81(a) and (d), originally published at 63 FR 39183 (July 21, 1998), as 28 CFR 2.87, recodified at as 28 CFR 2.81 at 65 FR 45894 (July 26, 2000). These guidelines require the Commission to assess the seriousness of the prisoner's past misconduct while on parole.

At the time the Commission adopted its rule governing reparole decisions, it did not anticipate that it would be faced with a significant number of reparole applicants whose paroles had been revoked by the D.C. Board of Parole on charges sufficient to warrant revocation and return to prison, but without resolving all of the charges concerning the offender's conduct while on parole. For example, the Board would revoke parole on non-criminal charges, and make ''no finding'' on criminal charges if such charges were pending trial or had been dismissed. In order to determine the offender's suitability for a grant of reparole, and to apply the guidelines at 28 CFR 2.21, the Commission is obliged to consider all relevant information concerning the offender's conduct during his previous periods of parole, notwithstanding the Board's decision not to resolve all such matters at the revocation hearing. The Commission's duty to protect the public safety requires it to be fully apprised of each prisoner's real potential for further criminal conduct before it can responsibly grant a reparole.

The interpretation has been urged upon the Commission that, because 28 CFR 2.81 incorporates by reference the ''reparole guidelines'' at 28 CFR 2.21, it also incorporates the provision at § 2.21 that new criminal conduct ''. . . may be determined either by a new federal, state, or local conviction or by an independent finding by the Commission at [a] revocation hearing.'' *See* 28 CFR 2.21(a)(2) (2000). Proponents of this view believe that the Commission cannot consider any allegations of criminal conduct that were not adjudicated by the Board of Parole at the revocation hearing. This interpretation is incorrect because § 2.21(a)(2) is not a

''guideline'' for decision making, and was intended by the Commission to apply solely in the context of a reparole decision made by the Commission during a Commission-conducted revocation proceeding. Under the rules of the Commission for federal offenders (which are now applied to District of Columbia offenders whose revocation hearings are conducted by the Commission after August 5, 2000), the Commission will attempt to address and resolve, at the revocation hearing, all allegations of criminal and non-criminal conduct bearing upon the period of parole in question. The reparole guidelines at § 2.21 will be assessed based upon the Commission's findings of fact, and a reparole decision will be issued by the Commission at the same time as the revocation decision itself. Because this was not the practice of the D.C. Board of Parole, the Commission did not intend that the fact-finding provisions of § 2.21(a)(2) would be applicable in the context of a reconsideration hearing conducted for a D.C. offender whose parole was previously revoked by the D.C. Board of Parole. When issues of fact relevant to the question of reparole have been left unresolved by the Board, the Commission must be able to address them at the reparole stage.

When the Commission adopted 28 CFR 2.81, the Commission intended that such unresolved issues of fact be determined at a reconsideration hearing under the procedures of 28 CFR 2.72, just as in the case of any other parole applicant with unadjudicated allegations bearing upon the prisoner's suitability for release to the community. At an initial parole hearing, there may be unadjudicated allegations of criminal conduct, including dismissed criminal charges and other allegations of unlawful behavior described in the presentence investigation report or other documents, which the Commission must resolve in order to determine whether the prisoner is safe to release on parole. Under Rule 32(c)(1) of the Federal Rules of Criminal Procedure, federal sentencing judges have the option, when allegations in a presentence investigation report are challenged at the sentencing hearing, of determining that ''no finding is necessary.'' In such cases, the Commission is permitted to make an independent determination of fact notwithstanding the court's decision to make ''no finding.'' *See, e.g., Ochoa* v. *United States,* 819 F.2d 366 (2d. Cir. 1987) and *Lewis* v. *Beeler,* 949 F.2d 325(10th Cir. 1991). The same principle applies to a reparole applicant whose parole was revoked by the D.C. Board of Parole. *Sparks* v. *Gaines,* 2001 WL 568004 (D.D.C. May 17, 2001).

Moreover, the due process that governs the decision to revoke parole and to return a parolee to prison under *Morrissey* v. *Brewer,* 408 U.S. 471 (1972), no longer applies once the revocation proceeding is concluded, and the parolee has been returned to prison. Under D.C. Code Section 24–206(a), the offender is legally presumed to have been returned to prison to serve the remainder of his sentence ''unless subsequently reparoled,'' so the Commission's fact-finding procedures may constitutionally be the same for parole as well as reparole applicants.

The Commission is therefore amending 28 CFR 2.81(d) to clarify its intent that it will apply the guidelines of § 2.21, to call reparole decisions, but will follow the fact-finding procedures that apply to initial hearings under § 2.72. *See* 28 CFR 2.19(c), incorporated for D.C. offenders at 28 CFR 2.89 (2000).

Implementation

This amendment to 28 CFR 2.81 shall be fully retroactive to all reparole decisions of the Commission from August 5, 1998, forward, and shall apply to all reparole decisions made by the Commission in the future with respect to offenders whose paroles were revoked by the D.C. Board of Parole. Moreover, the amended rule shall also apply to any reparole consideration by the Commission where new information has arisen since the time of the offender's revocation hearing, and that information is relevant to the offender's suitability for reparole. This interpretative rule conforms to Commission's original intent, and does not constitute in any respect a change in the Commission's decision-making policy or practice.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866. The final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(30(c) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Final Rule

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.81 is amended to add the following two sentences to the end of paragraph (d):

§ 2.81 Reparole decisions.

* * * * *

(d) * * * If the prisoner is serving a period of imprisonment imposed upon revocation of his parole by the D.C. Board of Parole, the Commission shall consider all available and relevant information concerning the prisoner's conduct while on parole, including any allegations of criminal or administrative violations left unresolved by the Board, pursuant to the procedures applicable to initial hearings under § 2.72 and § 2.19(c). The same procedures shall apply in the case of any new information concerning criminal or administrative violations of parole presented to the Commission for the first time following the conclusion of a revocation proceeding that resulted in the revocation of parole and the return of the offender to prison.

Dated: July 6, 2001.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 01–17793 Filed 7–16–01; 8:45 am]

BILLING CODE 4410–31–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

RIN 1218–AA65

Safety Standards for Steel Erection

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule; delay of effective date.

SUMMARY: By this document the Occupational Safety and Health

Administration (OSHA) revises the effective date of the new final rule for steel erection, Subpart R of 29 CFR Part 1926, which was published on January 18, 2001. The original effective date was to be July 18, 2001. Since publication of the standard, however, employers have contacted OSHA with a wide range of questions regarding whether, and how, the standard will be applied to projects that are in various stages of completion as of July 18, 2001. Specifically, employers have expressed concerns about their ability to comply with the new standard by that date, particularly with regard to provisions that address construction safety design aspects of structural components. To address these problems, and to allow additional time for the Agency to explain the new standard to the affected industry, the effective date of the standard is changed to January 18, 2002.

DATES: The effective date of the amendments to 29 CFR part 1926 published on January 18, 2001 at 66 FR 5196 is delayed from July 18, 2001 until January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Public Affairs, Room N–3647, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210; telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION:

I. Background

On January 18, 2001 (66 FR 5196) OSHA published a final safety standard for steel erection, with an effective date of July 18, 2001. A number of provisions in the final rule address the safety of certain structural components. These provisions (''component requirements'') contain requirements for these components to help ensure that the structure can be erected safely. For example, there are provisions that prohibit shear connectors on members before they are erected (§ 1926.754(c)(1)(i)); require all columns to be anchored by a minimum of 4 anchor bolts, which must meet specified strength requirements (§ 1926.755(a)) (there is a comparable requirement for systems-engineered metal buildings, § 1926.758(b)); set requirements for double connections (§ 1926.756(c)(1)) (there is a comparable requirement for systems-engineered metal buildings § 1926.758(e)); require column splices to be at a specified height and meet a strength requirement (§ 1926.756(d)); require perimeter columns to have holes or other devices for perimeter safety cables (§ 1926.756(e)); in some instances require a vertical stabilizer plate to stabilize steel joists (§ 1926.757(a)(1)(i)); require certain joists to be strong enough to allow one employee to release the hoisting cable without the need for erection bridging (§ 1926.757(a)(3)), and require certain joists to be fabricated to allow for field bolting during erection (§ 1926.757(a)(8)(i)).

On January 20, 2001, Andrew H. Card, Jr., the Assistant to the President and Chief of Staff, issued a memorandum entitled ''Regulatory Review Plan'' (66 FR 7702). The memorandum directed that, with respect to regulations published in the **Federal Register** that had not yet taken effect, agencies were to temporarily postpone the effective date of the regulations for 60 days, subject to certain exceptions.

Since publication of the standard, a number of employers in the steel erection industry have asked whether the final rule will be applied to projects in various stages of completion as of the effective date. For example, they have asked if and how the standard will apply to a steel erection project when: (1) The project was designed before July 18, 2001; (2) the structural components were fabricated before that date and do not meet the requirements in the final rule, and (3) the steel erection work for the project began before that date and construction is continuing afterwards.

II. New Effective Date

These questions have highlighted a need to give the industry additional time to comply with the final rule. As explained below, we believe that changing the effective date to January 18, 2002 will give the industry sufficient time to adjust to the new requirements.

Based on information available to the Agency, we understand that, while the design of structural components can be changed, some time is necessary to make changes needed to conform to the final rule's requirements. Components are typically fabricated 2 or 3 months prior to being erected. Not only would it be very costly to have to re-fabricate components that were already-made, such re-fabrication would cause serious delays to the project, affecting all the trades involved. The new effective date will give an additional 6 months to facilitate these changes. The additional 6 months should ensure that re-fabrication of already made components will be unnecessary. In addition, there will be additional time for the Agency to conduct outreach activities on the new standard, in order to inform employers and employees of the requirements of the standard.

III. How The New Effective Date Will Be Applied to Component Requirements

There are two situations that could cause significant confusion under the new standard: (1) Components used in steel erection projects that were designed before the final rule was *published* (January 18, 2001), and for which a building permit was obtained prior to that date; and (2) components used in steel erection projects in which the steel erection work has begun before the final rule becomes effective (originally July 18, 2001, now to be January 18, 2002). We will apply the component requirements of the final rule to these situations as follows:

Building Permits Obtained Before January 18, 2001

It is easier to alter a structural design before the building permit has been obtained, since changes prior to that point do not need as many reviews and approvals as are needed afterwards. Therefore, where a building permit was obtained before the final rule was published (January 18, 2001), the component requirements referred to above will not apply to the project.

Steel Erection Work Begins Before January 18, 2002

It would be difficult, costly and confusing to begin to comply with the new component requirements to a project in which steel erection work has started under the previous steel erection standard. (For example, the column splice height on a lower floor affects the column splice height on successive floors. The new standard makes significant changes in this area.) Since the final rule was published on January 18, 2001, employers have been on notice that the new standard's stated effective date was July 18, 2001, and they have been expected to make plans to meet the new requirements. However, on May 14, 2001, the Department published its Semi-Annual Regulatory Agenda (66 FR 25679), in which the effective date of the final rule was listed as September 16, 2001. Since that publication, affected employers have expressed confusion as to when the final rule would actually go into effect.

As of January 18, 2002, some steel erection projects will be partly completed. Since some employers may have been expecting the rule to go into effect on September 16, 2001 (rather than July 18, 2001), we will use that date to determine whether projects partially completed on January 18, 2002 will be subject to the component provisions in the final rule. In sum, the

component requirements of the final rule will not be applied to those projects if the steel erection had begun on or before September 16, 2001.

IV. Further Guidance on Section 1926.757(a)(3)

The Steel Joist Institute (SJI) has asked the Agency to delay implementation of § 1926.757(a)(3) for two years. That provision requires that, ''where steel joists at or near columns span 60 feet (18.3m) or less, the joist shall be designed with sufficient strength to allow one employee to release the hoisting cable without the need for erection bridging.'' SJI has informed OSHA that they have encountered unanticipated problems in developing some of the longer joists that will meet this requirement. OSHA intends to address this issue separately.

Paperwork Reduction Act

The information requirements of the steel erection standard have been approved under OMB Control Number 1218–0237. The present regulatory action delays the effective date of that standard and imposes no additional paperwork burdens.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Acting Assistant Secretary certifies that the delay in the effective date of the steel erection standard will not have a significant adverse impact on a substantial number of small entities.

Executive Order 12866

The delay in the effective date of the steel erection standard is not a significant regulatory action for the purposes of Executive Order 12866.

Exemption from Notice and Comment

To the extent that 5 U.S.C. 553 applies to this action, the Secretary finds that good cause exists to exempt this action from notice and comment, and to make it effective immediately upon publication today in the **Federal Register**. 5 U.S.C. 553(b)(B), 553 (d)(3).

As discussed above, prior official statements may have left the regulated community uncertain about when it would need to comply with the steel erection rule. In the last several weeks, OSHA has received a significant number of inquiries manifesting this uncertainty. The rule is currently scheduled to take effect on July 18, and the regulated community has an immediate need to know its obligations under the standard. In addition, the additional time needed for notice and comment would add further uncertainty about compliance obligations during that period. Accordingly, the Agency has determined that there is good cause to dispense with notice and comment and to make this delay effective immediately.

In summary, given the imminence of the effective date of the steel erection standard, seeking prior public comment on this delay is unnecessary and impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

Authority

This document was prepared under the direction of R. Davis Layne, Acting Assistant Secretary for Occupational Safety and Health. It is issued under Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), Sections 6 and 8 of the Occupational Safety and Health Act (29 U.S.C. 655, 657), and 5 U.S.C. 553.

Issued at Washington, DC, this 13th day of July, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–17944 Filed 7–16–01; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–089]

RIN 2115–AE47

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills and Their Tributaries, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; extension of effective date period.

SUMMARY: The Coast Guard is extending a temporary final rule published March 23, 2001, governing the operation of the Pulaski Bridge, at mile 0.6, across the Newtown Creek between Brooklyn and Queens, New York. This extension will continue to allow the bridge owner to open only one bascule span for the passage of vessel traffic through September 30, 2001. This action is necessary to facilitate the completion of scheduled maintenance at the bridge.

DATES: Section 117.801 (a)(3) and (h) added at 66 FR 16129 effective April 23, 2001 through August 31, 2001 are extended in effect through September 30, 2001.

ADDRESSES: The public docket and all documents referred to in this notice are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM.

This temporary final rule will extend the effective period previously published in the **Federal Register** on March 23, 2001 (66 FR 16128), as Drawbridge Operation Regulations Newtown Creek, Dutch Kills, English Kills, and their tributaries, New York. That temporary rule allowed a single span operation at the bridge from April 23, 2001 through August 31, 2001, to facilitate cleaning and painting the bridge.

The bridge owner subsequently advised the Coast Guard that the cleaning and painting operations would not be completed by August 31, 2001, due to lost work time as a result of inclement weather conditions. The bridge owner requested a second temporary final rule to extend the single span operation at the bridge an additional month from September 1, 2001 through September 30, 2001, to complete the maintenance at the bridge.

Accordingly, an NPRM was deemed unnecessary because no known waterway users have objected to the single span operation of the bridge and none have objected to extending it an additional 30 days. The additional 30 days of single span operation will further the public interest by permitting the uninterrupted completion of the necessary maintenance at the bridge.

Background

The Pulaski Bridge, at mile 0.6, across Newtown Creek between Brooklyn and Queens has a vertical clearance of 39 feet at mean high water and 43 feet at mean low water. The existing regulations require the draw to open on signal at all times.

The bridge owner, New York City Department of Transportation, requested a single bascule span operation in order to facilitate sandblasting and painting at the bridge.

The Coast Guard contacted all known users advising of the extension of the

single span operation until September 30, 2001. No objections were received.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridge will continue to open at all times for navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''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 less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the bridge will continue to open on signal at all times for navigation.

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this rule.

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 substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Dated: June 25, 2001.

G.N. Naccara,

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

[FR Doc. 01–17392 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–098]

Drawbridge Operation Regulations: Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Carlton Bridge, mile 14.0, across the Kennebec River between Bath and Woolwich, Maine in order to facilitate major rehabilitation construction at the bridge. This deviation from the regulations, effective from July 5, 2001 through August 31, 2001, allows the bridge to remain closed for periods up to 48 consecutive hours as often as once a week. At all other times, the bridge will open at three scheduled times each weekday and will remain in the open position weeknights and weekends. Inbound commercial fishing vessels will be passed as soon as possible, except during the 48-hour closure periods.

DATES: This deviation is effective from July 5, 2001 through August 31, 2001.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Carlton Bridge, at mile 14.0, across the Kennebec River has a vertical clearance in the closed position of 10 feet at mean high water and 16 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.525.

The bridge owner, Maine Department of Transportation (MDOT), requested a temporary deviation from the drawbridge operating regulations to facilitate the rehabilitation construction at the bridge. Scheduled bridge openings will allow the contractor to accomplish more work on a daily basis by eliminating work stoppage to provide bridge openings. Additionally, sufficient time is necessary to safely remove all construction workers and equipment from the bridge in order to provide timely bridge openings.

The bridge owner also requested that the bridge be allowed to remain in the closed position at various times to facilitate several phases of the rehabilitation construction. MDOT anticipates that the closures will not occur more than once a week and should not exceed 48 hours in duration. MDOT will provide three days notice prior to each closure to the Bath Harbor master, the local newspapers, and the Coast Guard in order to notify the public and assist marine interests.

This deviation to the operating regulations, effective from July 5, 2001 through August 31, 2001, allows the Carlton Bridge to need not open for vessel traffic between 6:30 a.m. and 4:30 p.m., Monday through Friday; except that, from 9 a.m. to 9:15 a.m., 12 p.m. to 12:30 p.m., and 2 p.m. to 2:15 p.m., the draw shall remain open for vessel traffic. The bridge will remain in the open position from 4:30 p.m. to 6:30 a.m., Monday through Friday, and all day on weekends. The bridge will also be allowed to remain closed to vessel traffic for periods up to 48 hours once a week during this deviation to facilitate bridge repairs. Inbound commercial fishing vessels will be passed as soon as possible, except during the 48 hour closure periods.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for this deviation; however, this deviation was approved because the repairs are necessary in order to keep the bridge operating and prevent an unscheduled closure due to component failure.

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

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

Dated: July 5, 2001.

Gerald M. Davis,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 01–17797 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–067]

RIN 2115–AA97

Safety Zone; Lake Michigan, Grand Haven, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Loeks-Star Theatres Fireworks in Grand Haven, Michigan. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over Lake Michigan. The safety zone is intended to restrict vessels from a portion of Lake Michigan off Grand Haven, Michigan.

DATES: This rule is effective from 9 p.m. until 10:30 p.m. (local), August 1, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–067] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60521, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Mike Hogan, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, IL 60521. The telephone number is (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments with regard to this event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Chicago has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risks.

Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Chicago or his designated on-scene representative. The designated on-scene representative may be contacted on VHF/FM Marine Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan off Grand Haven from 9 p.m. to 10:30 p.m., August 1, 2001. This regulation would not have a significant economic impact for the following reasons. The regulation is only in effect for only 1 and 1/2 hours on one day. The designated area is being established to allow for maximum use of the waterway for commercial vessels to

enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

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, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–957 is added to read as follows:

§ 165.T09–957 Safety Zone; Lake Michigan, Grand Haven, MI.

(a) *Location.* The following area is a safety zone: all waters of Lake Michigan within the arc of a circle with a 140-foot radius from the fireworks launch site with its center in approximate position 43° 00′ 00″ N, 086° 13′ 7″ W (off #50 Wilderness Drive) (NAD 1983).

(b) *Effective time and date.* This regulation is effective from 9 p.m. until 10:30 p.m. (local), on August 1, 2001.

(c) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Chicago, or the designated Patrol Commander.

Dated: June 25, 2001.

R.E. Seebald,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 01–17798 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–15–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 95–7C]

Registration of Claims to Copyright, Group Registration of Photographs

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations to establish a new procedure for group registration of published photographs. The new regulations permit submission of groups of published images in a variety of formats as deposit copies, together with an application and filing fee. This option applies to groups of works created by an individual photographer that are published within one calendar year. The Office is also modifying deposit requirements for groups of unpublished

photographs registered as unpublished collections.

EFFECTIVE DATE: August 16, 2001.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Patricia Sinn, Senior Attorney, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: In this document, we announce a final rule governing group registration of published photographs. The rule also liberalizes the deposit requirements for photographs included in unpublished collections of photographs registered pursuant to 37 CFR 202.3(b)(3). The new rule permits a group of photographs taken by the same photographer and published within the same calendar year to be submitted as a group for a single registration. If the claimant does not wish to or cannot identify the specific date of publication of each photograph, a range of publication dates may be stated provided that all of the photographs in the group were first published within three months before the date the application, fee and deposit are received by the Copyright Office. The deposit for the group registration of photographs, or for photographs submitted as unpublished collections pursuant to 37 CFR 202.3(b)(3), may consist of images on CD–ROMs or DVD–ROMs, unmounted prints measuring at least 3 inches by 3 inches, contact sheets, slides with single or multiple images, the photograph in a form in which it has been published (e.g., clippings from newspapers or magazines); photocopies; or a videotape clearly depicting each photograph.

I. Background

Under the 1976 Copyright Act, as amended, an applicant may seek registration of a claim in an original work of authorship with the Copyright Office by submitting a completed application, the applicable fee, and a deposit of the work to be registered. Title 17, United States Code, sets forth some of the requirements for the deposit and authorizes the Register of Copyrights to specify by regulation the nature of the copies or phonorecords to be deposited. See 17 U.S.C. 408(b), 408(c). The legislative history of the 1976 Act also reflects Congress's intent to give the Register the ability to adjust deposit requirements. See H.R. Rep. No. 94–1476, at 153, 154 (1976) (''House Report''). Generally, one complete copy or phonorecord of an unpublished work is required as a deposit, and two complete copies or phonorecords of the best edition of a published work are required if the work is first published in the United States. However, the Register of Copyrights may permit the deposit of identifying material instead of copies or phonorecords ''where copies or phonorecords are bulky, unwieldy, easily broken, or otherwise impractical to file and retain as records identifying the work registered * * *'' Id. at 154. Congress has also authorized the Register to allow a single registration for a group of related works in order to alleviate expense for authors and administrative burdens on the Copyright Office. 17 U.S.C. 408(c). See also 65 FR 26162, 26163 (May 5, 2000). A group of photographs by one photographer was cited as one example where group registration might be appropriate. House Report at 154.

During congressional hearings on the proposed Copyright Reform Act of 1993, photographers complained that they were unable to take advantage of the benefits of registration because the Copyright Office practices were too burdensome. Photographers stated that it required a tremendous amount of time and effort to submit a copy of each image that they wished to register and that registration was financially burdensome.[1]

In reaction to these concerns and following the 1993 recommendations of the Librarian of Congress's Advisory Committee on Copyright Registration and Deposit (ACCORD), see Library of Congress, Advisory Committee on Copyright Registration and Deposit, Report of the Co-Chairs, at 20 (1993), the Office initiated a proposed rulemaking in December 1995. 60 FR 61657 (Dec. 4, 1995). The Office initially proposed regulations which would have permitted group registration of mixed unpublished and published photographs, with a deposit of identifying material consisting of general descriptions of the photographs rather than a deposit of images of the photographs. Because the proposed rules elicited much controversy, the Office held a public hearing and allowed an additional comment period. See 61 FR 28829 (June 6, 1996). Sharply differing views were presented by interested parties.

Having reviewed all the comments and testimony, and having considered various approaches to facilitate copyright registration for photographers, a year ago the Office announced new proposed rules that would permit group registration of related published photographs and liberalize the deposit requirements for unpublished collections of photographs. 65 FR 26162 (May 5, 2000). Under this proposal, a group registration of up to 500 photographs created by one photographer published within the same calendar year would be permitted. Id. However, this proposal incorporated a less liberal deposit requirement than the original proposal; rather than accept general descriptions of the subject matter of the photographs in lieu of the photographs themselves, the Office proposed to require the deposit of a copy of each photograph in the group. The Office explained that it was reluctant to implement a procedure that would permit acceptance of deposits that do not meaningfully reveal the works for which copyright protection is claimed. On the other hand, the proposed rule would permit submission of images in a number of formats, in order to make it as easy and inexpensive as possible for photographers to register their works while still providing the actual images for which copyright was claimed. The proposed formats included digital images on CD–ROM or DVD–ROM, single images, contact sheets, slides with single images, slides each containing up to 36 images, multiple images on video tape, or the formats in which the images were originally published (e.g., clippings from newspapers or magazines). 65 FR 26164.

In this announcement, comment was requested on several issues, including: how many images should an applicant be permitted to include in one registration; how the date of publication should be provided for each photograph in a group; whether the Office's general continuation sheet (CON) should be used for identification purposes, or whether an optional specialized continuation sheet which would provide specific information about each photograph included in a group should be used; whether claimants should be required to number the photographs in a group consecutively, and the manner in which the numbering would be accomplished; whether the Office should accept deposits in formats other than those set forth in the proposed rule, and if so, in what formats; what file formats should be accepted for photographs submitted in electronic form; and whether the Office should consider offering the alternative of providing a range of dates for images covering a three-month period, rather than providing the specific date of

[1] See Copyright Reform Act of 1993: Hearings on H.R. 897 Before the Subcomm. On Intellectual Property and Judicial Administration of the House Comm. On the Judiciary, 103d Cong., 1st Sess. 370–72 (1993). See also, Copyright Reform Act of 1993: Hearing on S. 373 Before the Subcomm. On Patents, Copyrights and Trademarks of the Senate Comm. On the Judiciary, 103d Cong., 1st Sess. 169 (1993).

publication of each photograph in the group. 65 FR 26165–26166.

II. Comments Received in Response to the May 5, 2000 Notice of Proposed Rulemaking

The Office received eleven sets of comments in response to its proposed regulations published May 5, 2000. The comments covered not only the questions the Office presented May 5, 2000, but also other issues such as whether the Office should revisit its earlier proposal to permit the use of general descriptions of photographs in lieu of requiring deposit of the actual images; whether applicants for group registration of photographs should be required to comply with proposed ''Photo Industry Copyright Guidelines'' developed by associations representing manufacturers, photographers, photo processing firms and camera stores; and whether the proposed limit of 500 photographic images in a group should be rejected.

A. Comments in Response to Questions Posed in Notice of Proposed Rulemaking

1. How Should the Date of Publication of Each Photograph Be Indicated on (a) the Deposit Itself, and (b) a Continuation Sheet? Should a New Continuation Sheet Be Created for This Purpose, or Should the Office's Current Continuation Sheet, Form CON, Be Used?

The American Society of Media Photographers (ASMP) suggested that for digital media, the file name for a particular image could be cross referenced to the image's date of publication by entering the file name and publication date on a reference sheet. For slides containing up to 36 images, each image should be numbered and that the number and the date of publication of the image could similarly be recorded on a list. For contact sheets, that date of publication could be written on an accompanying sheet with the frame number of the image cross-referenced to the date of publication. For videotapes, a cross-referenced list could be made on which the date of publication of each image is listed in the same sequence in which the images appear on the videotape. ASMP comments at 1. ASMP noted that the date of publication of each photograph can be indicated ''by attaching * * * reference sheets * * * to the continuation sheet.'' ASMP comments at 1. By doing so, ''the date of publication is indicated.'' Id. ASMP also endorsed the idea of fashioning a special continuation sheet tailored to the requirements for group registration of photographs.

A number of commenters asserted that requiring photographers to identify dates of publication specifically for each photograph submitted would be unduly burdensome, placing a hardship on photographers outweighing any benefit to the public record. Professional Photographers of America (PPA) suggested that if such a requirement is retained, photographers should have the flexibility to identify publication dates on the deposited image itself, the application form, or on a continuation sheet, and that photographers be given latitude to choose the most efficient methods of dating the photographs based upon the nature of their own businesses. PPA comments at 10. PPA also suggested that a photographer should be free to use any labeling system as long as it meets the goal of enabling one to identify the specific date of publication of any photograph in the group. Id. at 12. The Advertising Photographers of America, National (APA) suggested that the regulations should require only that a claimant indicate in a permanent manner the publication date of each photograph on the deposit or on the registration application or continuation sheet, and suggested that claimants choosing to note the publication date on the registration application or continuation sheet should number each photograph on the deposit and indicate the publication date for each image by photograph number. APA comments at 1–2. APA commented that claimants who choose to state the publication date on the continuation sheet should number each photograph on the deposit and, on the continuation sheet, indicate the publication date for each image by photograph number. APA comments at 2. APA also suggested that photographers be permitted to choose the form (Form CON or a new, specialized continuation sheet) most appropriate in a given case. The Graphic Artists Guild (Guild) commented that the simplest standard means of identifying and numbering images would be by referencing the numbers on a continuation sheet. Guild comments at 2.

Professor Peter Jaszi (Jaszi) suggested that applicants be required to provide not only information about the date on which each photograph in a group was taken, but also a brief amount of information about what each photograph or sequence of photographs depicts. Jaszi comments at 1–2. The Magazine Publishers of America and Newspaper Association of America (MPA/NAA) also suggested that descriptive information be required. MPA/NAA comments at 3. Both comments emphasized that such a requirement would foster a more meaningful and comprehensive public record.

Professor Jaszi and MPA/NAA also suggested that use of a continuation sheet should be mandatory in order to provide information about each photograph. Jaszi comments at 1; MPA/NAA comments at 5. ASMP agreed that a special continuation sheet should be made available for group registration of photographs. ASMP comments at 2. APA asserted that photo claimants should be allowed to choose the form that is most appropriate, on a case-by-case basis, to ease burdens on photographers while still creating meaningful identification of works being registered. APA comments at 2–3. The Guild agreed that a continuation sheet should be available, but expressed no views on whether the Office's existing continuation sheet should be used or whether a special continuation sheet for group registration of photographs should be created. Guild comments at 2.

2. Should Claimants Be Required To Number the Photographs in a Group Consecutively (e.g., from 1 to 500), and To Indicate the Number of Each Photograph on or Affixed to the Individual Image of the Photograph That Is Deposited?

As noted above, ASMP suggested using the file name for each photographic image or, in the case of contact sheets, assign a number to each image on the contact sheet, and coordinate the file name or number with the date of publication on a reference sheet. ASMP comments at 1–2. PPA asserted that requiring a uniform numbering system would be unduly burdensome for most photographers. PPA comments at 12. Other commenters agreed. E.g., APA comments at 3–4, Patti McConville Photography comments at 1. No comments supported imposition of a numbering requirement.

3. Should the Office Accept Deposits in Formats Other Than CD–ROM or DVD–ROM; Single Images; Contact Sheets; Slides With Single Images; Slides Each Containing Up to 36 Images; or Multiple Images on Video Tape? If So, What Other Formats Should Be Accepted?

One commenter asserted that photocopies of images should also be accepted. ASMP comments at 1.C.3. Another commenter found the proposed regulations to be acceptable, but suggested that the Office should be prepared to accept deposits in

additional formats as they become available. Guild comments at 2. Another commenter proposed that the advanced photo system (APS) be used, with enhancements that permit copyright-related information about each photograph to be electronically encoded on the film itself. It is not clear whether this proposal envisioned that applicants be required to use this technology, but the commenter admitted that the hardware and systems needed to implement the proposal do not currently exist. Coalition for Consumers' Picture Rights comments at 7–10.

One commenter urged the Office to return to an earlier proposal that would have permitted the use of descriptive identifying material in lieu of a deposit of actual images. PPA comments at 3–6.

Some commenters believed the Office's proposed formats were too liberal. For example, one commenter questioned what function would be served by including an analog option such as ''a videotape clearly depicting each photograph'' rather than proven and cost-effective new technologies for digital image storage and retrieval. The same commenter questioned the wisdom of including ''slides containing up to 36 images'' as a deposit option. Jaszi comments at 2. Another commenter criticized the inclusion of contact sheets and slides, observing that such deposits are difficult to search. That commenter also expressed concerns about the potential shelf-life of other formats, such as videotape. MPA/NAA comments at 5–6.

4. For Photographs Submitted on CD–ROMs or in Other Electronic Formats, What File Formats (e.g., JPEG, GIF, etc.) Should Be Accepted, and Why?

One commenter asserted that claimants should be permitted to submit digital deposits in any commercially available file format provided the format is identified. APA comments at 4. Another commenter wrote that the Office should not limit the types of electronic formats acceptable for meeting the deposit requirements to a static list. It noted that JPEG and GIF are currently the most common formats by which images are stored digitally. PPA comments at 12–13. Another commenter recommended accepting JPEG, TIFF and PCD formats, which it claimed are the most popular file formats for storage used by photographers. ASMP comments at 3.

5. As an Alternative To Requiring a Claimant To Provide the Date of Publication of Each Photograph in the Group, Should the Office Consider Offering the Alternative of Providing a Range of Dates Over a Three-Month Period (e.g., January 1-March 31, 2001)? What Would Be the Advantages and Disadvantages—to Claimants and to the Public Record—of Such an Approach?

PPA and ASMP observed that requiring claimants to provide the precise date of publication of each photograph in a group would impose an unjustifiable and burdensome hardship on photographers. They endorsed the Office's alternate proposal that would not require an application to specify the date of publication of each photograph in the group, but would permit the application to provide a range of dates of publication over a period of no more than three months. See PPA comments at 8–10; ASMP comments at 3. APA suggested that the range of dates should be as minimally restrictive as possible, although a three month range would be acceptable. APA comments at 4–5. The Graphic Artists Guild (Guild) did not favor allowing a range of publication dates, asserting that this practice could compromise the requirements of 17 U.S.C. 412 that permit claims for attorneys' fees and statutory damages when a work has been registered within three months after publication. Guild comments at 3.

B. Additional Comments Submitted in Response to the May 5, 2000 Notice of Proposed Rulemaking

Commenters also addressed a number of additional issues, such as the number of photographs that may be included in a group registration, whether works made for hire should be eligible for group registration, and whether claimants using the group registration procedure should be required to abide by Photo Industry Copyright Guidelines.

1. The number of photographs that may be included in a group registration. The May 2000 notice proposed that a maximum of 500 photographs could be included in a group registration. Many commenters objected to limiting a group registration to 500 photographs. PPA observed that many professional photographers take 500 images or more in the course of one or two days' work. PPA comments at 3, 6–8. Another commenter agreed, noting that it generates thousands of images per quarter. Patti McConville Photography comments at 1.

2. Works made for hire. PPA objected that the proposed regulation could be read as being available only to single individual photographers, ignoring the realities of the photography business where many photographs are works made for hire. PPA comments at 3, 11. In contrast, the Graphic Artists Guild objected that the proposed regulation was available to works made for hire. The Guild asserted that the proposed amendments are intended to ease the burdens of registration for individual authors and noted that in other contexts, the Office has restricted certain benefits such as the Short Form VA to individual authors. Guild comments at 2.

3. Adoption of Photo Industry Copyright Guidelines. Some commenters urged the Office to incorporate proposed Photo Industry Copyright Guidelines into the group registration regulations. These Guidelines were negotiated by ASMP, PPA, the Photo Marketing Association International (PMA), the Association of Professional Color Laboratories, the Professional School Photographers Association, and the Coalition for Consumers' Picture Rights (CCPR). PMA comments (Appendix). Among the guidelines are requirements that photographers advise customers of the photographer's ownership of copyright and give information on how to obtain additional copies of photographs; that when reasonably possible, photographers identify and mark their photographs to permit others to know whom to contact to obtain permission to copy them; that they respond promptly to requests for permission to copy their photographs; and that they give written notice to photo processors when they believe their copyrights have been infringed, in an effort to prevent further infringement, determine the cause of the alleged infringement, and permit possible resolution of the matter. Id.

Representatives of photo processors, camera stores, manufacturers of photographic equipment and others, concerned about the possibility of being sued for copyright infringement by professional photographers for duplicating photographs in cases where they were not aware of a photographer's copyright, urged that the Office require photographers who take advantage of group registration of photographs to agree to follow the guidelines and consent to application of the guidelines in any infringement action. PMA comments at 6. Under their proposal, photographers who take advantage of group registration of photographs would be required to waive any claims for statutory damages or attorney's fees in cases in which the infringer acted ''innocently'' in accordance with the Photo Industry Guidelines. Eastman

Kodak Company comments at 2; PMA comments at 6 and Appendix.

PMA argues that because the Office is not required to institute a group registration of photographs proposal, it has the power to require photographers to waive their rights to statutory damages and attorney's fees in the circumstances where the guidelines would deny those remedies. PPA comments at 6–7. PPA cites two instances in which the Office has established special requirements as a condition of registration: (1) Regulations for registration of holograms that require deposit not only of the hologram itself, but also of detailed instructions for displaying and viewing the hologram and a photograph or other description of the hologram (37 CFR § 202.20(c)(2)(iii)); and (2) the Office's **Federal Register** notice accompanying the announcement of the final regulations for group registration of daily newsletters, 64 FR 29522 (1999), in which the Office stated that the group registration privilege is contingent upon the claimant meeting the conditions specified in the regulation. PMA comments at 7–8.

PPA also asserted that the Office could adopt the guidelines, but this assertion was made in the context of PPA's plea that the Office accept the earlier proposal that would have permitted group registration without requiring deposit of the actual images of the works being registered. PPA comments at 1–2 & n.2. PPA noted that in other contexts, the Office, Congress, and the courts have cited industry-endorsed guidelines with the intent that they be used by the courts in infringement litigation, referring to the Agreement of Guidelines for Classroom Copying in Not-For-Profit Educational Institutions, adopted in H.Rep. No. 94–1467, 96th Cong., 2d Sess. At 68–70 (1976). PPA comments at 2–3 n.2.

4. Other opposition to the proposal. Groups representing photo processors, camera stores, manufacturers of photographic equipment, consumers and others expressed their opposition to the group registration proposal. Although willing to accept the proposal if compliance with the Photo Industry Copyright Guidelines were required by claimants, PMA expressed concern that without such a provision, the group registration proposal would make it easy for photographers to collect statutory damages and attorney's fees for infringement, leading to a flood of litigation over minor matters. PMA comments at 5. The Coalition for Consumers' Picture Rights (CCPR), an ad hoc organization of camera store owners, minilab retailers, photo processors and photofinishers, film and paper manufacturers, camera and lens manufacturers, frame and album manufacturers, photographers, and consumers, asserted that the proposal ''could jeopardize the successful photofinishing industry.'' CCPR comments at 2. The Coalition noted the difficulty photofinishers have in determining whether a copyright in a photograph is owned by someone other than the customer who brings the photo into the shop or, in the internet environment, transmits a photo in digital form to a photofinisher. CCPR comments at 2–3. CCPR asserted that making it easier to register photographs without building in safeguards for users will lead to more copyright infringement litigation by photographers, to the detriment of photofinishers. CCPR (and MPA/NAA) urged that the Office refrain from announcing final rules on group registration of photographs until after the Office has conducted its study that will examine copyright deposit in general. CCPR comments at 6–7; MPA/NAA comments at 6.

III. The Office's Decisions

The Office has carefully considered the comments described in part II of this notice and has resolved the issues addressed in those comments as follows.

1. Date of publication and continuation sheet. As is discussed below, the Office has decided to implement its alternative proposal that would permit applicants to designate a range of dates of publication within the three-month period immediately prior to registration, rather than require identification of the specific date of publication of each photograph in a group. Nevertheless, it is anticipated that many photographers will elect to register an entire year's worth of published photographs and to identify the specific date of publication of each photograph. For those who elect the latter alternative, the Office is persuaded by the commenters who asserted that a photographer should be free to use any labeling system as long as it meets the goal of enabling one to identify the specific date of publication of any photograph in the group. Accordingly, the final regulation provides that the date of publication of each photographic work within a group must be identified either on the deposited image or on a continuation sheet, in such a manner that for each photographic work in the group, the date of publication can be identified. So long as the applicant selects a method that clearly accomplishes this purpose, the application will be acceptable. For example, an applicant might choose to number the images, or to give each image a unique name, and cross-reference the number or name of each photograph on a continuation sheet along with the date of publication. The procedure suggested by ASMP appears to meet these requirements.[2]

The Office will make available a special optional continuation sheet for group registration of photographs that applicants may use to provide information such as the date of publication of each photograph.

The proposal to require descriptive information about each photograph in a group has merit, in that such descriptions would assist in providing a more meaningful and comprehensive public record. However, the Office does not require such descriptions in other contexts. Indeed, one can currently register an individual photograph without providing any descriptive information about that photograph (apart from a title that may provide no information about the nature of the photograph), resulting in a public record that sheds no light about the nature of the photograph. One can also currently register an unpublished collection of photographs, pursuant to § 202.3(b)(3)(B), without providing any description of the subject matter of the photographs in the collection apart from a title that does not necessarily describe the works included in the collection. Indeed, apart from information on titles (which may or may not describe the subject matter of a work) and the generalized descriptions that appear in the ''nature of this work'' and ''nature of authorship'' spaces, a typical registration of any work will offer little information about the content of the work being registered. The Office concludes that the burdens that would result from requiring a description of each photograph in a group registration would outweigh the benefits of the proposed requirement.

However, applicants are encouraged to provide descriptive information for each photograph, or each group of

[2] Although applicants will now have a number of options for designating the date of publication, including the option of providing a range of dates within three months of registration and the option of indicating the date of publication on the deposited image, applicants should consider the advantages of indicating the specific date of publication of each photograph on the continuation sheet. Because the certificate of registration is prepared from the application (including the continuation sheet), a specific date of publication that is indicated on the application becomes part of the certificate of registration. The recital of the date of publication on the certificate becomes prima facie evidence that the identified photograph was published on that date. See 17 U.S.C. 410(c).

related photographs. To that end, space will be set aside on the optional continuation sheet to permit the entry of such information.

2. Numbering of photographs. In light of the decision not to require any particular labeling system to identify the date of publication for each photograph in a group, the Office agrees with the weight of comments that no numbering requirement should be imposed.

3. Acceptable formats. The Office concludes that applicants should be permitted to submit photographs in any of the formats included in the list of acceptable formats in the May 2000 notice of proposed rulemaking. Although some commenters questioned the utility of options such as slides containing up to 36 images and videotapes depicting each photograph, the Office believes that providing applicants with a variety of options will serve the purpose of facilitating the registration of photographs.

The Office also concludes that the proposal to permit submission of photocopies of images has merit. This conclusion is reinforced by the Office's recognition that the current regulation governing registration of contributions to collective works, which can and often do include photographs, permit submission of a deposit in the form of ''a photocopy of the contribution itself as it was published in the collective work'' See 37 CFR 202.20(b)(2)(iii); 202.20(c)(2)(xv). However, this proposal is accepted with some hesitation, because the quality of photocopies of photographs can vary considerably. The final rule provides that photocopies must ''clearly depic[t] the photograph,'' and photocopies that do not present clear images of the underlying photograph will be rejected as deposits. The final rule also requires that when a photograph was first published in color, a photocopy deposit of the photograph must also be in color. This requirement will assist in insuring that photocopies received as deposits are clear representations of the photographs being registered.

The permitted formats are listed in § 202.20(c)(2)(xx) in the Library of Congress's order of preference, and applicants are encouraged to select a format as close to the top of that list as possible. It should be noted, however, that compliance with the requirements of § 202.20(c)(2)(xx) is not necessarily compliance with the mandatory deposit requirement of 17 U.S.C. 407. If the Library determines that it desires the ''best edition'' of a particular photograph as published in the United States for its collections, it may demand the deposit of that photograph in its best edition as set forth in 37 CFR 202.19. This is a separate legal requirement, independent of the deposit requirements for registration of copyright.

Finally, the Office rejects the plea of at least one commenter to permit the use of descriptive identifying material in lieu of the actual images. Although the Office had previously expressed a willingness to consider such a proposal, the most recent notice of proposed rulemaking noted that ''the Office is reluctant to implement a procedure that would permit the acceptance of deposits that do not meaningfully reveal the work for which copyright protection is claimed.'' 65 FR at 26164. Deposit of the work being registered is one of the fundamental requirements of copyright registration, and it serves an important purpose. As the legislative history of the Copyright Act of 1976 recognizes, copies of registration deposits may be needed for identification of the copyrighted work in connection with litigation or for other purposes. See H.R. Rep. No. 94–1476, at 171 (1976). See also *Seiler* v. *Lucasfilm, Inc.,* 808 F.2d 1316, 1322 (9th Cir. 1986) (noting that ''possibilities for fraud would be limitless'' if reconstructions of claimant's original work could be submitted as registration deposits); *Tradescape.com* v. *Shiraram,* 77 F.Supp.2d 408, 413–14 (S.D.N.Y. 1999) (noting that when deposit of redacted version of computer program is permitted, the result in infringement litigation is uncertainty as to whether allegedly infringed code actually is the subject of an existing registration). The ability of litigants to obtain a certified copy of a registered work that was deposited with the Office prior to the existence of the controversy that led to a lawsuit serves an important evidentiary purpose in establishing the identify and content of the plaintiff's work.[3]

It is true that, as PPA observed in its comments, current registration procedures permit the deposit of identifying material in some contexts. However, as noted in the May 2000 notice of proposed rulemaking, the Office intends to issue a notice of inquiry to reexamine the purpose of section 408 copyright deposit for all classes of works, and this examination may cause the Office to reconsider whether many or all of the circumstances in which it accepts identifying material are justified when the identifying material does not reveal the copyrightable expression for which protection is claimed. Prior to the conclusion of such a study, the Office will not initiate as far-reaching an expansion of the practice of accepting identifying material as that which is proposed by PPA.[4]

4. File formats for deposits on CD–ROM. While the Office sympathizes with the comment that a deposit in digital form should be accepted in any commercially available file format, it is necessary to limit the acceptable formats to those which the computers in the Office's Examining Division are equipped to handle. The file formats specifically identified in comments were JPEG, GIF, TIFF, and PCD. The Office accepts the assertions by the proponents of these file formats that they are the formats most commonly used by photographers. Currently, a claimant who submits deposits of photographs in digital form will be required to use one of these formats, and the Office will ensure that the Examining Division is equipped to view deposits submitted in those formats. If the Office becomes aware that other file formats have come into common use, it will include them in the list of acceptable file formats and acquire the necessary equipment and/or software to view them.

5. The option of providing a range of dates. In the May 2000 notice of proposed rulemaking, the Office sought comments on whether applications for group registration of photographs should be permitted to state a range of dates of up to three months (e.g., January 1–March 31, 2001) in which all the photographs in the group were published, rather than stating specific dates of publication for each photograph. The Office noted that it would consider such an alternative only if it were persuaded that requiring specific dates of publication for each photograph would impose an unjustifiable and burdensome hardship on photographers, and that the advantages (to claimants and to the public record) of such an alternative would outweigh its disadvantages.

[3] That ability is, however, limited by the Office's policy on retention of deposits of published works. See Notice of Policy Decision; Policy Statement on Deposit Retention Schedule, 48 FR 12862 (March 28, 1983).

[4] The Office rejects PPA's assertion that its insistence that the actual copyrighted images be deposited is arbitrary, capricious, and contrary to law. The statute requires that for an unpublished work, ''one complete copy or phonorecord'' be deposited, and that for a published work, ''two complete copies or phonorecords of the best edition'' be deposited. 17 U.S.C. 408(b)(1)&(2) (emphasis added). It gives the Register discretion to permit the deposit of identifying material instead of copies or phonorecords. 17 U.S.C. 408(c)(1). The Register's reasoned refusal to exercise her discretion to depart from a statutory deposit requirement is hardly arbitrary, capricious or contrary to law.

As noted above, a large number of commenters endorsed this alternative, noting the considerable difficulty and burden of identifying specific dates of publication for each photograph in a group of photos published over a period of as much as a year. The Office recognizes the burden and believes that some relaxation of the requirement that the date of publication be specified is justified. On the other hand, a key benefit of copyright registration is the availability of statutory damages and attorney's fees for a plaintiff in a copyright infringement suits who has registered a work within three months after first publication of the work. 17 U.S.C. 412(2). Moreover, 17 U.S.C. 409(7) requires that an application for copyright registration include the date and nation of first publication.[5]

The Office believes that the requirements of section 409 and 412, and the needs of photographer claimants, can best be reconciled by offering the option to designate a range of dates of publication for all the photographs in a group, rather than requiring the specific date of publication for each photograph, so long as all of the photographs were first published within three months of the effective date of registration, i.e., the date on which an acceptable application, an acceptable deposit, and the applicable fee are received in the Copyright Office. Thus, a correctly completed application for group registration received (with the applicable fee and acceptable deposit) on March 31, 2002 could include photographs first published as early as January 1, 2002 and as late as March 31, 2002, and the date of publication could be entered in space 3 of the Form VA application as ''January 1–March 31, 2002.'' [6] Because all of the photographs would have been first published within three months of the effective date of registration, the applicant would legitimately obtain the benefit of section 412(2) without having to identify, in the application, the precise date of publication of each photograph.[7]

6. The number of photographs that may be included in a group registration. In light of the comments from photographers observing that the proposed 500-photo limit is too low, the Office has reexamined its reasons for proposing such a limit. The Office has concluded that the administrative burdens of processing a group registration of a large number of photos in excess of 500 would be acceptable. Therefore, the final rule contains no limitation on the number of photographs that may be included in a group.

7. Works made for hire. The final rule clarifies that works made for hire may be included in a group registration of published photographs, but does not permit an employer for hire to include works by a number of different photographers in the same group registration. Rather, the rule provides that ''[t]he photographer who photographed each of the photographic works submitted for registration as part of the group must be the same person.'' Thus, a photographic studio that employs a number of photographers under work-for-hire agreements may register those photographers' works in group registrations, but must submit separate registrations for the photos taken by each photographer. The Office recognizes that many photographers work as employees of photographic studios, and that their employers—many of them small businesses—experience the same difficulties that individual photographers experience in registering their photographs. However, the Office is also mindful that its power to fashion group registrations is limited to cases involving ''groups of related works.'' 17 U.S.C. 408(c)(1). Some of the commenters objecting to this group registration proposal contended that it lacks the type of nexus required by the Copyright Act. See, e.g., MPA/NAA comments at 3. The Office disagrees with that objection, but it recognizes that there must nevertheless be a relationship between all the photographs in a group. The Office believes that limiting the group to photographs (1) taken by the same individual and (2) first published within the same year, satisfies that requirement. This conclusion finds support in the statutory and regulatory requirements for group registration of contributions to periodicals, a form of group registration similar in many respects to the new group registration of photographs. The Copyright Act limits the availability of group registration of contributions to periodicals to a group of works by the same individual author, and the Office's regulations implement this statutory requirement by providing that all the works in the group must be by the same author and that the author of each work must be an individual, and not an employer or other person for whom the work was made for hire. See 17 U.S.C. 408(c)(2); 37 CFR § 202.3(b)(7); see also 17 U.S.C. 408(c)(3). The legislative history of the 1976 Copyright Act also supports such a limitation, noting that group registration may be desirable for ''a group of photographs *by one photographer.*'' House Report at 154 (emphasis added).

When a group registration consists of works made for hire, the claimant will be required to designate as the author, in space 2 of the Form VA, the name of the employer for hire as well as the name of the photographer who took the photograph (e.g., ''XYZ Corporation, employer for hire of John Doe'').

8. Photo industry guidelines. The Office does not believe that it has the authority to impose those guidelines on photographers who register their copyrights using the group registration regulation, nor does it believe the incorporation of the guidelines is advisable. Although representatives of photographers, photofinishers and users agreed upon the Photo Industry Guidelines several years ago, that agreement was in the context of a proposal that would have permitted photographers to register groups of photographs without depositing the images of the works. The Office has declined to permit such a liberal registration scheme. We do not infer from PPA's endorsement of the guidelines in the former context that photographers would accept incorporation of the guidelines into the more modest group registration proposal adopted today.

Whatever the merits might have been when the guidelines were being considered in the context of a more liberal group registration scheme, the Office does not believe that requiring photographers to surrender valuable rights enjoyed by other copyright owners is justified in the context of the more modest group registration proposal adopted in the final regulation. Photographers have long been able to register collections of their unpublished photographs under conditions similar to those adopted today for published photographs, and have not been required to waive their rights to statutory damages and attorneys fees in

[5] In recognition of the fact that an author may not always know the precise date of publication of a work, it is permissible to qualify the date stated on the application; e.g., ''approximately,'' ''on or about,'' ''circa,'' ''no later than,'' or ''no earlier than.'' Compendium of Copyright Office Practices, Compendium II, Sec. 910.02 (1984).

[6] As a practical matter, a registration using this option might have to consist of photographs first published over a period of slightly less than three months, unless the applicant is able to deliver the application, fee and deposit to the Office on the same day as the day of publication of the last of the photographs in the group.

[7] The certificate of registration would be prima facie evidence that each of the photographs included in the group was first published between January 1 and March 31, inclusive. 17 U.S.C. 410(c). Of course, that conclusion could be rebutted by evidence that a specific photograph was not first published within that time period.

order to do so. Photographers have also been able to register groups of published photographs so long as those photographs were published as contributions to periodicals, also without being required to waive those rights. The proposal adopted today is not a radical departure from those already-existing group registrations, and the Office does not believe that the case has been made for incorporating the guidelines into this particular group registration regulation.

On the merits, the arguments made in support of the Office's power to require photographers to comply with the guidelines in order to participate in the group registration program are unconvincing. The existing registration requirements cited by PMA in support of the guideline proposal related to the nature of the deposit or the application, and not to other legal obligations having nothing to do with registration. The requirement of additional identifying material to accompany applications to register holograms exists simply to assist the Office's examiners in their examination of the deposits. The Office's statement when it adopted regulations on group registration of daily newsletters that ''[t]he group registration privilege is contingent upon the claimant meeting the conditions specified in the regulation,'' 64 FR 2922 (1999), is a truism. None of the conditions in that regulation required claimants to comply with any industry guidelines or waive any rights; rather, all of the conditions related to registration and deposit. The guidelines on classroom copying cited by PPA have not been incorporated into any registration regulations; rather, Congress simply endorsed those guidelines, in legislative history, as offering guidance on fair use in the classroom.

The Office is unconvinced that it has the power to require copyright owners to waive statutory rights they have against infringers in order to take advantage of a registration option designed to facilitate the registration of their works. Even if the Office had such power, it does not appear that this would be a wise precedent to set. The purpose of the group registration regulation is to make it possible for photographers to obtain the benefits conferred by registration, not to require them to waive those benefits.

9. The threat of litigation. The Office understands the fears of photofinishers and others that by making it easier for photographers to register their works, the Office is also increasing the risk that those who process film and make copies of photographs will be sued for copyright infringement. With that risk comes the prospect of statutory damages and attorney's fee awards. But the concerns expressed by these opponents of the regulation really relate not to the group registration option being adopted today, but to longstanding provisions of copyright law that permit awards of statutory damages and attorney's fees to prevailing plaintiffs who have made timely registration of their works. A photofinisher who is truly an ''innocent'' infringer and who had no reason to believe that he was infringing probably has little to fear from this regulation. Courts are not likely to award attorney's fees to such innocent infringers, and the minimum award of statutory damages, even against a defendant who is not an innocent infringer, is very modest. Litigation can be burdensome and expensive, but those burdens and expenses are borne by plaintiffs as well as defendants. The Office has no reason to believe that photographers will wish to bear the burdens and expenses of litigation to pursue claims against photo finishers who have acted reasonably and in good faith, when the costs of such litigation are likely to outweigh any recovery. But photographers, like all other copyright owners, should be entitled to enforce their copyrights. The Office rejects any suggestion that a regulation that enables photographers to register their copyrights is unjustified because it makes it easier for them to assert their rights.

IV. Conclusion

The final regulation announced today liberalizes requirements for registration of photographs by permitting photographers to register their published photographs in groups, with a variety of deposit options (all of which require deposit of the actual images of the works being registered). In practice, it represents an incremental expansion of current options available to photographers (such as group registration of contributions to collective works and registration of unpublished collections). It also expands the list of options for deposit for photographs registered under the existing regulation for registration of unpublished collections. The Copyright Office believes that this regulation will make it easier for photographers to register their works, thereby populating the public record with many more works in a field where registration has been difficult. The Office has attempted to strike the appropriate balance between those who urge adoption of a group registration scheme that would leave the public record bereft of any reliable indication of what works are actually included in a registration, and those who urge that liberalizing registration procedures for photographers will open the floodgates of litigation against those who unwittingly infringe copyrights in photographs.

Regulatory Flexibility Act

Although the Copyright Office, located in the Library of Congress and part of the legislative branch, is not an ''agency'' subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of a proposed amendment on small businesses. The purpose of this regulation is to facilitate the ability of photographers, who usually constitute small businesses, to register the copyrights in their works, by simplifying the requirements for registration.

List of Subjects in 37 CFR Part 202

Claims, Copyright.

Final Regulation

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 202 as follows:

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 is revised to read as follows:

Authority: 17 U.S.C. 408, 702.

2. In § 202.3, paragraph (b)(9) is redesignated as paragraph (b)(10), and a new paragraph (b)(9) is added to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(9) *Group registration of published photographs.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights will accept a single application (on Form VA), deposit and filing fee for registration of a group of photographs if the following conditions are met:

(i) The copyright claimant in all of the photographs must be the same.

(ii) The photographer who photographed each of the photographs submitted for registration as part of the group must be the same person.

(iii) The photographs in the group must have been published within the same calendar year.

(iv) If the photographs in a group were all published on the same date, the date of publication must be identified in space 3b of the application. If the photographs in a group were not all published on the same date, the range

of dates of publication (e.g., January 1–December 31, 2001) must be provided in space 3b of the application, and the date of publication of each photograph within the group must be identified either on the deposited image or on a continuation sheet, in such a manner that for each photograph in the group, the date of publication can be identified. A special continuation sheet for registration of a group of photographs shall be made available by the Copyright Office.

(v) If each photograph within the group was first published within three months before the date on which an acceptable application, an acceptable deposit, and the applicable fee are received in the Copyright Office, the applicant may, in lieu of the procedure set forth in paragraph (b)(9)(iv) of this section, simply state the range of dates of publication (e.g., February 15–May 15, 2001) in space 3b of the application, without specifically identifying the date of publication of each photograph in the group either on the deposited image or on a continuation sheet.

(vi) The deposit(s) and application must be accompanied by the fee set forth in § 201.3(c) of this chapter for a basic registration.

(vii) The applicant must state ''Group Registration/Photos'' and state the approximate number of photographs included in the group in space 1 of the application Form VA under the heading ''Previous or Alternative Titles'' (e.g., ''Group Registration/Photos; app. 450 photographs'').

(viii) If the photographs in the group are works made for hire, the applicant must note, as part of the applicant's entry in space 2 of the application Form VA for ''Name of Author,'' both the name of the employer for hire and the name of the photographer who photographed the works in the group (e.g., ''XYZ Corporation, employer for hire of John Doe'').

(ix) As an alternative to the best edition of the work, one copy of each photograph shall be submitted in one of the formats set forth in § 202.20(c)(2)(xx).

* * * * *

3. Section 202.20 is amended by adding a new paragraph (c)(2)(xx) to read as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(c) * * *

(2) * * *

(xx) *Photographs: group registration.* For groups of photographs registered with one application under §§ 202.3(b)(3)(i)(B) (unpublished collections) or 202.3(b)(9) (group registration of published photographs), photographs must be deposited in one of the following formats (listed in the Library's order of preference):

(A) Digital form on one or more CD-ROMs (including CD-RW's) or DVD-ROMs, in one of the following formats: JPEG, GIF, TIFF, or PCD;

(B) Unmounted prints measuring at least 3 inches by 3 inches (not to exceed 20 inches by 24 inches);

(C) Contact sheets;

(D) Slides, each with a single image;

(E) A format in which the photograph has been published (e.g., clippings from newspapers or magazines);

(F) A photocopy of each of the photographs included in the group, clearly depicting the photograph, provided that if registration is made pursuant to § 202.3(b)(9) for group registration of photographs, the photocopy must be either a photocopy of an unmounted print measuring at least 3 inches by 3 inches (not to exceed 20 inches by 24 inches) or a photocopy of the photograph in a format in which it has been published, and if the photograph was published as a color photograph, the photocopy must be a color photocopy;

(G) Slides, each containing up to 36 images; or

(H) A videotape clearly depicting each photograph.

* * * * *

Dated: July 9, 2001.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 01–17864 Filed 7–16–01; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AJ75

Board of Veterans' Appeals: Rules of Practice—Notification of Representatives in Connection With Motions for Revision of Decisions on Grounds of Clear and Unmistakable Error

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule the provisions of an interim final rule that amended the Rules of Practice of the Board of Veterans' Appeals (Board) relating to challenges to Board decisions on the grounds of ''clear and unmistakable error'' (CUE). The amendment provides for notification of the party's representative and an opportunity for a response when the Board receives a request for CUE review.

DATES: Effective Date: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller (01C), Acting Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board is an administrative body that decides appeals from denials of claims for veterans' benefits. There are currently 57 Board members, who decide 35,000 to 40,000 such appeals per year.

This amendment was previously published in the **Federal Register** as an interim final rule on February 12, 1999 at 64 FR 7090, with a request for comments by March 15, 1999. We received no comments. Based on the rationale set forth in the interim final rule, we are adopting its provisions as a final rule with minor technical changes.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would affect only the processing of claims by VA and would not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: July 9, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR Part 20 is amended as set forth below:

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.

2. In subpart O, § 20.1405(a) is revised to read as follows:

§ 20.1405 Rule 1405. Disposition.

(a) *Docketing and assignment; notification of representative*—(1) *General.* Motions under this subpart will be docketed in the order received and will be assigned in accordance with § 19.3 of this title (relating to assignment of proceedings). Where an appeal is pending on the same underlying issue at the time the motion is received, the motion and the appeal may be consolidated under the same docket number and disposed of as part of the same proceeding. A motion may not be assigned to any Member who participated in the decision that is the subject of the motion. If a motion is assigned to a panel, the decision will be by a majority vote of the panel Members.

(2) *Notification of representative.* When the Board receives a motion under this subpart from an individual whose claims file indicates that he or she is represented, the Board shall provide a copy of the motion to the representative before assigning the motion to a Member or panel. Within 30 days after the date on which the Board provides a copy of the motion to the representative, the representative may file a relevant response, including a request to review the claims file prior to filing a further response. Upon request made within the time allowed under this paragraph (a)(2), the Board shall arrange for the representative to have the opportunity to review the claims file, and shall permit the representative a reasonable time after making the file available to file a further response.

* * * * *

[FR Doc. 01–17853 Filed 7–16–01; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Postage Meters and Meter Stamps

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is changing the Domestic Mail Manual P030 to extend the use of postage meters to include postage-evidencing systems that print information-based indicia.

DATES: This rule is effective on July 17, 2001.

FOR FURTHER INFORMATION CONTACT: James Luff, 703–292–3693.

SUPPLEMENTARY INFORMATION: The Postal Service published a proposed rule on May 1, 2001 to amend DMM P030.1.4 to allow mailers to use information-based indicia (IBI) to show evidence of postage, as they would letterpress and digital meter stamps. Comments on the proposed rule were due on or before May 31, 2001. We did not receive any comments. Therefore, the rule is adopted as final without any changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Postal Service amends 39 CFR part 111 as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise section P030.1.4 of the Domestic Mail Manual as follows:

P Postage and Payment Methods

P000 Basic Information

* * * * *

P030 Postage Meters and Meter Stamps

* * * * *

1.0 BASIC INFORMATION

* * * * *

1.4 Classes of Mail

Postage may be paid by printing postage meter stamps (including letterpress, digital meter stamps, and information-based indicia) on any class of mail except Periodicals. Information-based indicia (IBI) include human-readable information and a USPS-approved two-dimensional barcode with a digital signature and other required data fields. Metered mail (including mail bearing IBI) is entitled to all privileges and subject to all conditions applying to the various classes of mail.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–17848 Filed 7–16–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA032–0241a; FRL–7001–2]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District, Monterey Bay Unified Air Pollution District, Modoc County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Kern County Air Pollution Control District (KCAPCD), Modoc County Air Pollution Control District (MCAPCD), and Monterey Bay Unified Air Pollution District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern visible emissions (VE) from many different sources of air pollution. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 17, 2001 without further notice, unless EPA receives adverse comments by August 16, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule

Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814;
Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301;
Modoc County Air Pollution Control, 202 West 4th Street, Alturas, CA 96101; and,
Monterey Bay Unified Air Pollution District, 24580 Silver Cloud Court, Monterey, CA 93940–6536.

FOR FURTHER INFORMATION CONTACT:
Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
KCAPCD	401	Visible Emissions	11/29/93	3/29/94
MCAPCD	4.1	Visible Emissions	1/15/89	12/31/90
MBUAPCD	400	Visible Emissions	3/22/00	5/26/00

On the following dates, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V: June 3, 1994, KCAPCD Rule 401; October 6, 2000, MBUAPCD Rule 400; and, February 28, 1991, MCAPCD Rule 4.1. These criteria must be met before formal EPA review may begin.

B. Are There Other Versions of These Rules?

There are versions of all of these rule within the SIP. In all cases, the submitted rule consolidates several SIP rules into a single rule format. The TSD for each rule provides a detailed discussion of each consolidation. Only MBUAPCD adopted and submitted prior versions of Rule 400. While we can act on only the most recently submitted version of Rule 400, we have reviewed materials provided with previous submittals.

C. What Is the Purpose of the Submitted Rule Revisions?

Each of these rules limit the emissions of visible air contaminants of any type; usually, but not always particulate matter from combustion sources and industrial sites. Specifically, these rules prohibit emissions beyond a defined opacity standard. The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must meet Reasonably Available Control Measure (RACM) requirements for nonattainment areas (see section 189), and must not relax existing requirements (see sections 110(l) and 193). The KCAPCD regulates an PM nonattainment area (see 40 CFR part 81), so Rule 401 must fulfill RACM. MBUAPCD and MCAPCD meet the PM standard and are not required to meet RACM requirements.

We used the following guidance and policy documents to define our specific enforceability and RACT requirements:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACM, and SIP relaxations. KCAPCD and MBUAPCD rules contain agricultural exemptions that are narrowly construed by each district. Consequently, these exempted sources are a neglible source of emissions in each district. The TSDs have more information on our respective evaluations.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules. In particular, MCAPCD has retained a 40% opacity standard. While MCAPCD need not meet the RACM 20% opacity standard given its PM attainment status, almost all air districts in California have adopted 20% opacity standard. This suggests that the standard is readily achievable and should be considered by MCAPCD.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. 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 submitted rules. If we receive adverse comments by August 16, 2001, 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 September 17, 2001. This will incorporate these rules into the federally enforceable SIP.

III. Background Information

Why Were These Rules Submitted?

Visible emission rules with their opacity standards are basic components of an air quality regulation program and a general RACM requirement for PM–10 regulations. Section 110(a) of the CAA requires states to submit regulations that control VE emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VE rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
December 10, 1993.	Section 189(a)(1)(C) requires that PM–10 nonattainment areas implement all reasonably available control measures (RACM) by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 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 September 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 8, 2001.

Keith Takata,

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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(182)(i)(F)(*4*), (196)(i)(F)(*4*), and (279)(i)(B)(*3*), to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(182) * * *

(i) * * *

(F) * * *

(*4*) Rule 4.1, adopted on January 15, 1989.

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(196) * * *

(i) * * *

(F) * * *

(*4*) Rule 401, adopted on April 18, 1972 and amended on November 29, 1993.

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(279) * * *

(i) * * *

(B) * * *

(*3*) Rule 400, adopted July 1, 1969 and amended on March 22, 2000.

[FR Doc. 01–17702 Filed 7–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241–0239a; FRL–7005–1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District, El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and El Dorado County Air Pollution Control District (EDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from polyester resin operations and the manufacture of foam products composed of polystyrene, polyethylene or polypropylene. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 17, 2001 without further notice, unless EPA receives adverse comments by August 16, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

El Dorado County Air Pollution Control District, 2830 Fairlane Ct., Bldg. C, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1197.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
BAAQMD	8–52	Polystyrene, Polypropylene, and Polyethylene Foam Product Manufacturing Operations.	07/07/99	03/28/00
EDCAPCD	240	Polyester Resin Operations	02/15/00	07/26/00

On May 19, 2000 and October 4, 2000, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

These rules are new with no previous versions in the SIP.

C. What Is the Purpose of the Submitted Rules?

BAAQMD Rule 8–52 contains the following requirements:

- Emission limits per 100 lbs of raw materials processed
- 98% control device efficiency
- Monitoring and recordkeeping requirements
- Test methods necessary to determine compliance

EDCAPCD Rule 240 contains the following requirements:

- Monomer content for polyester resins
- Requirements for cleaning materials and closed containers
- Recordkeeping requirements
- Test methods for determining compliance

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The BAAQMD and EDCAPCD regulate ozone nonattainment areas (see 40 CFR part 81), so both rules must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. CARB's RACT/BARCT Guidance Document, ''Polyester Resin Operations,'' January 1991.

4. Control Technique Guidelines (CTG) entitled, ''Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins'' (EPA–450/3–83–008).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance

regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. 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 submitted rules. If we receive adverse comments by August 16, 2001, 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 September 17, 2001. This will incorporate these rules into the federally enforceable SIP.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549,104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 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 September 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 6, 2001.

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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(277)(i)(C)(*5*) and (c)(280)(i)(B)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(C) * * *

(277) * * *

(i) * * *

(C) * * *

(*5*) Bay Area Air Quality Management District Rule 8–52, adopted on July 7, 1999.

* * * * *

(280) * * *

(i) * * *

(B) El Dorado County Air Pollution Control District

(*1*) Rule 240, adopted on February 15, 2000.

[FR Doc. 01–17700 Filed 7–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7011–2]

RIN 2060–Ai98

Regulation of Fuel and Fuel Additives: Reformulated Gasoline Adjustment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With today's action, EPA is adjusting the volatile organic compound (VOC) performance standard under Phase II of the reformulated gasoline (RFG) program for ethanol RFG blends containing 3.5 weight percent oxygen (10 volume percent ethanol) sold in the Chicago and Milwaukee RFG areas. As discussed in the Notice of Proposed Rulemaking for this adjustment, the EPA is exercising its discretion under Section 211(k)(1) of the Clean Air Act which directs EPA, in promulgating emission reduction standards for RFG, to consider the cost of achieving such emission reductions as well as any nonair-quality and other air-quality related health and environmental impacts.

This adjustment reduces by 2.0 percentage points (equivalent to an increase in Reid Vapor Pressure (RVP) of approximately 0.3 pounds per square inch (psi)) the summertime VOC performance standard applicable to RFG blends containing 10 volume percent ethanol.

DATES: This rule is effective on July 17, 2001. For additional information on the effective date, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact Barry Garelick, Environmental Protection Specialist, Office of Transportation and Air Quality, Transportation and Regional Programs Division, at (202) 564–9028.

SUPPLEMENTARY INFORMATION: EPA believes that it is appropriate to make today's final rule effective immediately upon today's publication in the **Federal Register**. Because of the limited geographic scope of this rule, and because this rule generally provides for additional flexibility, it should not be problematic for regulated parties to immediately utilize and/or comply with the provision of this rule. Although this final rule includes some new requirements, these requirements are reasonable and necessary to provide the increased flexibility also included in this rule. EPA notes that the general requirement in 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), concerning publication or service of a substantive rule not less than 30 days prior to its effective date, does not apply here. CAA section 307(d)(1) provides that section 553 of the APA does not apply to promulgation or revision of any regulation pertaining to fuels or fuel additives under section 211 of the CAA. Even if section 553(d) of the APA were to apply, there is good cause under section 553(d)(3) to provide less than 30 days notice, for the reasons noted above.

The purpose of the RFG program is to improve air quality in specified areas of the country by requiring reductions in emissions of ozone-forming volatile organic compounds (VOCs) and oxides of nitrogen (NO_X), and in emissions of toxic air pollutants, through the reformulation of gasoline, pursuant to 211(k) of the Clean Air Act (CAA or the Act), as amended. In the Act, Congress specified that RFG contain at least 2.0 weight percent oxygen. MTBE and ethanol are the two forms of chemical oxygen (or oxygenates) that gasoline producers most commonly use to add oxygen to gasoline. MTBE and ethanol have also been used in conventional gasoline, as octane enhancers, since the 1970s.

In September 1996, EPA awarded a contract to the National Research Council (NRC) to determine whether the reactivity (i.e., ozone-forming capacity) of VOCs can be taken into account in the RFG program without adversely impacting RFG's air quality benefits. In a report released in May 1999, the NRC found significant air quality benefits from RFG and recommended that ''the contribution of carbon monoxide (CO) to ozone formation should be recognized in assessments of the effects of RFG.'' Ozone-Forming Potential of Reformulated Gasoline, National Academy Press, at p. 6 (1999). Mobile sources are a major source of CO emissions, contributing approximately 90 percent of the total CO for Chicago and Milwaukee.

In December 1998, EPA established the Blue Ribbon Panel on Oxygenates in Gasoline, a panel of independent experts, to examine MTBE's performance in gasoline, its presence in water, and alternatives to its use. (While EPA established the panel for reasons that were independent of ethanol issues and the NRC study on RFG, its relevance to this rulemaking is discussed further below.) Panel recommendations made to EPA in July 1999 include:

- Ensure no loss of current air quality benefits from RFG.
- Reduce the use of MTBE, and seek Congressional action to remove the RFG oxygen requirement in the Act.
- Strengthen the nation's water protection programs, including the Underground Storage Tank (UST), Safe Drinking Water, and private well protection programs.

On July 12, 2000, EPA proposed to adjust the VOC performance standard for RFG with 3.5 weight percent oxygen (equivalent to 10 volume percent ethanol) by 1.0 percentage point. As proposed, this adjustment to the VOC performance standard would apply to RFG marketed in all areas of the nation using RFG. As discussed in the Notice of Proposed Rulemaking for this

adjustment (65 FR 42922; July 12, 2000), EPA proposed to exercise its discretion under Section 211(k)(1) of the Clean Air Act which directs EPA, in promulgating emission reduction standards for RFG, to consider the cost of achieving such emission reductions as well as any nonair-quality and other air-quality related health and environmental impacts. The intent of the proposed rule was to increase the flexibility available to refiners to formulate RFG with ethanol while continuing to achieve ozone benefits similar to those of the current Phase II RFG program. Finally, the proposed rule was also intended to implement the NRC recommendation that EPA take into consideration the contribution of CO to ozone formation.[1]

In the proposal for the 1.0 percentage point adjustment (equivalent to an increase in RVP of approximately 0.2 psi), we also solicited comment on a recommendation by the Illinois Environmental Protection Agency (IEPA) for a VOC adjustment of 3.7 percentage points (equivalent to an increase in RVP of 0.5 psi). IEPA's recommendation was based in part on a photochemical modeling study conducted for the lower Lake Michigan region.

We received approximately 30 comments on the proposed rule, from states and state associations, refiners and their trade associations, automobile manufacturing associations, oxygenate producer associations, and 200 post cards from citizens of Illinois advocating adoption of the larger adjustment recommended by IEPA. Comments from refiners generally expressed concern that the adjustment as proposed would not provide sufficient flexibility to switch from MTBE to ethanol because the size of the adjustment would not result in a significant cost reduction. Ethanol industry representatives commented that the adjustment should be larger than proposed, specifically endorsing IEPA's recommendation of an adjustment equivalent to a 0.5 psi increase in RVP. States were divided on the proposal which was not restricted to Chicago and Milwaukee; some maintained that the adjustment would have an adverse effect on air quality, while others supported an adjustment.

Refiners and representatives of the ethanol industry opposed the proposed prohibition of oxygen credit generation for batches of RFG that comply with the adjusted VOC standard and argued that the prohibition might increase the use of MTBE among refiners that would otherwise rely upon such credits. Refiners also opposed the Product Transfer Document requirements, claiming that they would result in higher costs because refiners would need to build more tankage to ensure segregation of VOC adjusted RFG from other RFG.

After evaluating all of the comments, EPA has decided to finalize the VOC adjustment rule, with certain modifications and clarifications. We are limiting application of the adjusted VOC standard to the Chicago and Milwaukee RFG areas where ethanol RFG currently makes up 100 percent of the market. With 100 percent ethanol penetration, there is no mixing of ethanol and non-ethanol RFG in vehicle gas tanks. When gasoline with ethanol is mixed with non-ethanol gasoline in a car's fuel tank (often referred to as ''commingling''), the evaporation rate of the mixture is increased, resulting in an increase in emissions of smog-causing pollutants and which is not currently accounted for in the RFG program. In areas like St. Louis, where less than 100 percent of the RFG contains ethanol, the rule as proposed had the potential to cause more ethanol RFG to be made in these mixed RFG areas. If more ethanol RFG is used, the amount of commingling will tend to increase, resulting in an increase in emissions of VOC in addition to those associated with the adjustment to the VOC performance standard itself. To avoid the possibility of any significant VOC increases associated with commingling (which EPA has not fully analyzed or evaluated), the rule as finalized will be restricted to Chicago and Milwaukee. Analysis and quantification of the VOC increases—as well as the existing unaccounted for VOC emissions—associated with commingling would need to be factored into any consideration of a potential adjustment of the RFG performance standard in areas outside of Chicago and Milwaukee. Finally, the adjusted standard is based on photochemical modeling conducted by IEPA that is unique to the Chicago/Milwaukee area (discussed in further detail in Section I.G. below). We do not believe that the results of this modeling can be extended to areas outside this region and we currently lack photochemical modeling similar to IEPA's for other regions that would allow us to make conclusions about the appropriateness of adjustments to the VOC standard in other RFG areas.

While we are not adopting IEPA's recommended adjustment of 3.7 percentage points, we are increasing the 1.0 percentage point adjustment to 2.0 percentage points (equivalent to an increase in RVP of approximately 0.3 psi). We have concluded that IEPA's approach does not provide sufficient confidence that adverse ozone effects would not occur in the Chicago nonattainment area with the larger adjustment of 3.7 percentage points. We found several deficiencies in the emission calculations which IEPA used in its justification of a 0.5 psi adjustment. These are discussed in detail in Section I.G. below.

Finally, we are not taking or proposing action at this time regarding elimination or adjustment of the 1.5 weight percent oxygen minimum. We are continuing to review the comments received, however, and may consider action in the future.

The contents of today's preamble are listed in the following outline.

I. Adjusted VOC Standard Under Phase II of the RFG Program
A. Regulated Entities
B. Regional Applicability
C. Commingling Effects
D. Oxygen Credit Generation for VOC Adjusted RFG
E. Segregation
F. Effect of Rule on NO_X and Toxics
G. Consideration of Recommendation of Illinois EPA
H. Impact of Adjusted Standard on SIPs
II. Administrative Requirements
A. Submission to Congress and the Comptroller General
B. Executive Order 12866
C. Executive Order 13132 (Federalism)
D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
E. Regulatory Flexibility
F. Paperwork Reduction Act
G. Unfunded Mandates Reform Act
H. Executive Order 13045: Children's Health Protection
I. National Technology Transfer and Advancement Act of 1995 (NTTAA)
J. Statutory Authority
K. Executive Order 13211 (Energy Effects)

I. Adjusted VOC Standard Under Phase II of the RFG Program

A. Regulated Entities

Regulated categories and entities potentially affected by this action include:

[1] Additionally, the NPRM discussed reduction and avoidance of increased MTBE as a potential benefit. We recognize, however, that EPA's evaluation of the potential water quality impacts of using MTBE and the strategies available to minimize any such impacts is incomplete. Therefore, we believe that today's rule is appropriate regardless of any effects on MTBE use. We do not specifically rely on MTBE-related benefits as a justification for this adjustment of the VOC performance standard.

Category	Examples of regulated entities
NAICS 32411	Refiners, importers, oxygenate producers, and oxygenate blenders of reformulated gasoline.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR Part 80, particularly § 80.41 dealing specifically with the RFG standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Regional Applicability

EPA has determined that a 2.0 percentage point adjustment to the VOC performance standard for 10 percent ethanol RFG (equivalent to an increase in RVP of approximately 0.3 psi) is appropriate in the Chicago and Milwaukee RFG areas. As expressed in our notice of proposed rulemaking (65 FR 42920, 42924, July 12, 2000), EPA's intent is to offset partially the incremental cost associated with the production of ethanol-blended RFG in order to provide additional flexibility to refiners.[2] EPA is also taking a reasonable approach to ensure that RFG will continue to provide a similar level of overall benefits.

By limiting application of the VOC adjustment to the Chicago and Milwaukee RFG areas, we will provide additional flexibility for fuel providers that currently produce RFG for ethanol blending in the two metropolitan areas that use ethanol exclusively in RFG. This flexibility will help to ensure that the refiners that make ethanol RFG are able to continue to do so at reduced cost. Moreover, we are confident based on modeling that Illinois Environmental Protection Agency (IEPA) has conducted (discussed in more detail in Section I.G.) that a 2.0 percentage point adjustment to the VOC standard (equivalent to an RVP increase of approximately 0.3 psi) for these areas will still realize ozone benefits similar to those of the current Phase II program.

Based on our evaluation of the relevant data, however, we have concluded that there is sufficient uncertainty regarding the potential for adverse environmental consequences from a VOC adjustment in RFG areas outside of Chicago and Milwaukee to allow such an adjustment at this time. Specifically, several commenters[3] pointed out that in areas where both MTBE-blended and ethanol-blended RFG are used, increased VOC emissions could occur due to the additional commingling of MTBE and ethanol RFG in automobile gasoline tanks. (See the discussion of commingling in section I.C. for further details.) Therefore, commenters suggested that if EPA established a VOC adjustment for RFG areas where ethanol is not the predominant oxygenate (i.e., areas other than Chicago and Milwaukee), EPA would need to consider the emissions impact of commingling. Additionally, several comments suggested that any increase in ethanol use might be accompanied by an increase in evaporative VOC emissions due to increased permeation of ethanol through vehicle fuel system components such as hoses and seals. We agree that any evaluation of the appropriateness of a VOC adjustment should include consideration of commingling and permeation as well as other emission-related impacts. Based on uncertainty regarding the potential emissions impact of mixed ethanol/MTBE pools in RFG areas outside of Chicago and Milwaukee, we are unable to conclude at this time that a VOC adjustment is appropriate for such areas.

In addition, the size of the adjusted VOC standard itself is derived from data specific to the Chicago/Milwaukee region. As discussed in detail in Section I.G below, the 2.0 percentage point adjustment (equivalent to an RVP increase of 0.3 psi) was based on photochemical modeling that Illinois Environmental Protection Agency (IEPA) conducted. The modeling represents the specific lower Lake Michigan region to which the standard will apply. As such, because the modeling results are dependent on the pollutant mix and geographic and meteorological features specific to that region, the photochemical modeling results cannot be extended to other areas.

Overall, we believe that a 2.0 percentage point adjustment to the VOC performance standard (equivalent to an RVP increase of approximately 0.3 psi) is appropriate for RFG with 10 volume percent ethanol sold in the Chicago and Milwaukee RFG area. Because ethanol RFG constitutes virtually 100 percent of the RFG market in the Chicago and Milwaukee area, they are significantly different from other RFG areas. Today's rule is unlikely to change this market share. For this reason, and because EPA is relying on modeling data specific to these areas, we believe it is appropriate to limit the rule to Chicago and Milwaukee. (See Section I.C. for a more detailed discussion of commingling.)

Several questions remain regarding the impact that such a VOC performance standard adjustment might have on overall emissions from RFG in the future. Specifically, newer car technology and low sulfur gasoline will tend to lower CO emissions generally, and therefore decrease the amount of CO reduction resulting from the higher oxygen levels associated with RFG containing 10 volume percent ethanol. Also, while it is our expectation that the market share of ethanol-blended RFG in the Chicago and Milwaukee areas will remain at 100 percent, some question exists regarding the future market share of ethanol blends in these areas based in part on future demand for ethanol in other areas of the U.S. and how that might affect supply, prices, and penetration level in the Midwest. Therefore, EPA will continue to evaluate the effect of Tier 2 technology and Tier 2 low sulfur gasoline on CO emissions as well as market conditions with respect to ethanol and MTBE use.

C. Commingling Effects

Several parties commented that, in areas that currently use RFG with MTBE, increases in the use of ethanol-blended RFG associated with the proposed rule would result in an increase of commingling of MTBE and ethanol RFG blends in automobile gasoline tanks. Since the presence of ethanol causes an increase in the volatility of gasoline (as measured by Reid Vapor Pressure or RVP), such additional commingling would

[2] The ethanol industry originally feared that the increased stringency of the Phase II VOC standard would result in ethanol being ''locked out'' of the RFG market. Last summer's RFG market proved otherwise, however. This suggests that with economic conditions similar to last summer's the current Phase II standard should not prevent refiners from making RFG with ethanol. More importantly, however, it suggests that an adjustment will offer increased flexibility to refiners. Thus even if market conditions change, we believe an adjustment will provide an incentive to make more RFG with ethanol than without such adjustment. Finally, one refiner commented that the 1 percentage point adjustment would result in that refiner making approximately 5 percent more RFG with ethanol than without the adjustment. We believe, therefore that the 2 percentage point adjustment will allow even greater flexibility to refiners, and will help to prevent increased use of MTBE in these areas.

[3] Commenters were Alliance of Automobile Manufacturers, Oxygenated Fuels Association, American Lung Association, California Air Resources Board, and NESCAUM.

contribute to an increase in VOC emissions beyond that associated with the adjustment itself. Some comments raised this issue, and pointed out that our estimates of VOC emission increases resulting from the VOC adjustment should have taken commingling effects into account.

In Chicago and Milwaukee, however, virtually 100 percent of the RFG has been oxygenated with ethanol since 1995, and EPA generally does not expect that pattern to change significantly in the foreseeable future; in fact, one of the outcomes of this rule is to help ensure that this pattern continues, by making ethanol use more cost-effective. EPA believes that this rule will not result in any additional VOC emissions due to commingling in the Chicago and Milwaukee RFG areas.

Given that there may be unaccounted commingling emissions in other areas (unlike in Chicago and Milwaukee), and that EPA has not fully evaluated such areas, we are finalizing the VOC adjustment only for the Chicago and Milwaukee areas.

D. Oxygen Credit Generation for VOC Adjusted RFG

Today's final rule allows refiners to trade oxygen credits that are generated by production of VOC adjusted RFG. EPA proposed to prohibit refiners from generating oxygen credits for adjusted VOC RFG because we believed that trading such credits might result in less overall ozone reduction from the oxygen content requirement than the statute implicitly anticipates. Many comments opposed EPA's proposed prohibition on oxygen credit generation for adjusted VOC RFG, arguing that the prohibition would limit refiner flexibility and could result in increased use of MTBE by refiners that would otherwise rely on oxygen credits. Comments further argued that the emission benefits in the region where RFG containing 3.5 weight percent oxygen is used are not diminished even if the oxygen credits are traded, because such credits are traded to other areas that use predominantly MTBE.

Currently, some RFG contains oxygen in excess of 2.0 weight percent (e.g., most ethanol blends contain 3.5 weight percent oxygen). Such blends provide greater CO reductions than RFG blends with 2.0 percent or lower oxygen. Oxygen trading allows refiners to bank and trade credits for the oxygen content of their RFG above 2.0 by weight (or above 2.1 percent if the refiner complies on average). The refiner may then sell these credits to other refiners that produce RFG with less than 2.0 weight percent oxygen, allowing them to meet the oxygen content limit. However, no gallon of RFG may contain less than 1.5 weight percent oxygen (subject to EPA raising—or ratcheting—the per gallon minimum if an RFG area fails an annual oxygen content survey). See 40 CFR 80.67. The oxygen credit trading program may result in different CO benefits for different areas of the country; i.e., where oxygen is used at higher rates, RFG provides a greater CO benefit, and where oxygen is used at lower rates, RFG provides less CO benefit. The minimum oxygen requirement, however, limits the potential for differing effects and assures some degree of CO benefit everywhere RFG is used.

The RFG program has not generally accounted for the impact that its various requirements may have on CO emissions. Today's rule is the first rule under the RFG program that attempts to take CO emissions into account. Nonetheless, this rule is not intended to establish a comprehensive mechanism for recognizing the CO benefits of the RFG program.

Conceptually, a limit on the trading of oxygen credits for VOC adjusted RFG might help to ensure that the greater CO benefits from ethanol RFG areas are not used to both offset a VOC increase in the ethanol RFG areas and result in less CO benefits in non-ethanol RFG areas through credit trading. However, this would be, at best, an indirect approach to addressing the issue of a comprehensive accounting for CO. Additionally, such a restriction would not, in fact, have provided any assurance that greater CO reductions would have actually been achieved by non-ethanol blends. That is, refiners wishing to market gasoline with less than 2.0 percent oxygen by weight might simply turn to other sources of oxygen credits.

Moreover, because the actual gasoline oxygen content in a non-ethanol RFG area is not likely to be below 2.0 weight percent for all the gasoline in the area (and if it is, there is already a mechanism in the regulations to address the situation), and because the level cannot fall below 1.5 percent for any gallon of RFG (subject to ratcheting), the reduction in CO benefits for non-ethanol areas (if any) will be small relative to the increase in benefits associated with ethanol RFG. In any event, implementation of today's VOC adjustment, without any restriction on credit generation or trading, will not result in any increase or change in emissions in non-ethanol areas above current levels.

Finally, because oxygen credits are generally used by refiners producing non-ethanol gasoline sold in Northeast RFG areas, any shortage of credits resulting from a trading restriction is likely to result in an increase in MTBE use in the Northeast, which would run directly contrary to one of the reasons for today's action.

Based on the above considerations, EPA has determined that it is not appropriate at this time to prohibit the generation and trading of oxygen credits for batches of RFG that are subject to the adjusted VOC standard.

E. Segregation

In the proposed rule, we introduced a requirement that refiners identify RFG blendstock for oxygenate blending (RBOB) destined to be used in making adjusted VOC RFG. We also proposed that the Product Transfer Document specify the use of the RBOB. Several comments pointed out that EPA's establishment of VOC adjusted RFG would create additional slates of RFG requiring segregation. Additional tankage for segregation would increase refiner costs and the complexity of gasoline storage and distribution.

Since EPA is not requiring refiners to choose between taking advantage of the adjusted VOC standard and generating oxygen credits, as we proposed, segregation is of minimal importance. EPA expects that refiners providing RFG for the Chicago and Milwaukee markets will produce adjusted VOC RFG. Enforcement of the downstream per-gallon VOC standard in the Chicago and Milwaukee RFG areas will be to the level of the adjusted VOC standard. Mixtures of adjusted VOC RFG with non-adjusted VOC 10 volume percent ethanol RFG will not result in VOC noncompliance, since the non-adjusted standard is stricter. As a result, EPA does not believe that mixing VOC adjusted and non-VOC adjusted RFG together will result in any harmful environmental consequences. For RFG sold in areas outside the Chicago and Milwaukee RFG areas, the downstream per-gallon VOC standard will be enforced to the ordinarily applicable Phase II limit.

For the reasons above, therefore, EPA is not requiring segregation of VOC adjusted RFG from non-VOC adjusted RFG in those areas where the VOC adjustment applies. In the final rule, segregation is not required downstream of the refinery. Refiners must still keep track of the volume of adjusted VOC RFG or RBOB that they produce, but the Product Transfer Document will not track whether RBOB is destined to be used for adjusted VOC gasoline beyond the refinery gate. Instead, we will require refiners to specify on the

Reformulated Gasoline and Anti-Dumping Batch Report that RFG with 10 volume percent ethanol complies with either the current (i.e., non-adjusted) VOC performance standard, or the adjusted standard as ''adjusted VOC gasoline'' per the fuel certification procedures in 40 CFR 80.40.

F. Effect of Rule on NO_X and Toxics

Some comments stated that the VOC adjustment rule could adversely impact NO_X and toxics overcompliance in the RFG program because RFG areas that switch from MTBE to ethanol may experience increased toxics, mostly attributable to increased acetaldehyde emissions, and increased NO_X, from increased oxygen. EPA does not believe any loss of overcompliance is likely. In December 2000, EPA promulgated a gasoline toxics emission performance standard that will maintain the current level of toxics overcompliance in the RFG program. Additionally, changes in NO_X performance are a function of many fuel properties, particularly sulfur content and olefins. The overall impact of the VOC adjustment on NO_X emissions is highly uncertain given the variety of other fuel parameters such as aromatics, olefins, and other gasoline components that can affect NO_X emissions. Specifically, there is no adequate basis to conclude what the effect on NO_X would be absent information about what impact this rule (or oxygen levels) will have on how refineries reformulate their gasoline for all of the fuel parameters relevant to NO_X. In any event, today's action will not result in an increase in ethanol use in the Chicago and Milwaukee RFG areas above current levels.

G. Consideration of Recommendation of Illinois EPA

As discussed in the Notice of Proposed Rulemaking for this adjustment (65 FR 42922; July 12, 2000), the VOC adjustment is motivated primarily by Section 211(k)(1) of the Clean Air Act which directs EPA, in promulgating emission reduction standards for RFG, to consider the cost of achieving such emission reductions as well as any nonair-quality and other air-quality related health and environmental impacts. We then proposed an adjustment to the VOC performance standard specific to that provision in the Clean Air Act in order to limit cost, but based the adjustment ultimately on a level that we felt achieved ozone air quality benefits similar to those for the Phase II RFG program.

Prior to publication of the Notice of Proposed Rulemaking (NPRM), the Illinois Environmental Protection Agency (IEPA) submitted to EPA a proposal and supporting analysis which suggested that EPA should allow a VOC adjustment of 3.7 percentage points, approximately equal to an increase in RVP of 0.5 psi, for RFG using 10 percent volume ethanol. (See Documents II–D–4, 5 and 6 in Docket A–99–32.)

Briefly, IEPA's analysis compared the VOC and CO emissions associated with a complying fuel with an RVP of 6.8 psi, and an oxygen content of 2.0 weight percent, to the emissions associated with a fuel having an RVP of 7.3, representing an increase in RVP of 0.5 psi, and an oxygen content of 3.5 weight percent. IEPA concluded that the ozone impact of these two fuels would be identical, and that EPA should therefore provide an adjustment that corresponds to an RVP increase of 0.5 psi.

The IEPA analysis used a combination of urban airshed modeling (see Document II–D–4 in Docket A–99–32), and VOC and CO emission calculations (see Document II–D–6 in Docket A–99–32) to establish the relationship between VOC and CO and its effect on ozone formation. We evaluated IEPA's analysis (see Document II–D–13 in Docket A–99–32) and believe that the photochemical modeling portion of the analysis is generally useful for evaluating the conditions studied in the Chicago area. While the modeling covered only a portion of the Lake Michigan airshed and a single 4-day ozone episode, this portion of the airshed contained projections of significant ozone violation. Also, the episode was fairly typical of ozone episodes in the lower Lake Michigan region inclusive of Milwaukee, based on geographic proximity and the lake-influenced meteorology.

In contrast, we found several deficiencies with IEPA's emission calculations [4] which were used in their justification of a 0.5 psi adjustment. Specifically, the motor vehicle VOC emission rates were taken from the EPA Complex Model and represent emissions from solely 1990 model year vehicles rather than those of the in-use fleet post-2000. IEPA then obtained the emission factor for CO by multiplying the Complex Model-derived VOC emission factor by a ratio of nationwide CO to VOC emissions for onroad vehicles, taken from the 1997 EPA Emissions Trends report rather than using values contained in the emission inventory for this region. This method is highly inaccurate, in that it represents a blend of emissions in areas with conventional and reformulated gasoline, summer and winter conditions and a wide range of local emission control programs, such as I/M, rather than the specific conditions existing in Chicago during the ozone episodes. Finally, IEPA's estimate of a 10 percent reduction in CO due to 10 volume percent ethanol in RFG relative to the required 2.1 weight percent oxygen is overstated; using draft MOBILE6 methodology, [5] we estimate a reduction of approximately 7 percent. We therefore found that their approach did not provide adequate technical support for an adjustment to the VOC standard of 3.7 percentage points (0.5 psi). Also, IEPA relied upon the use of relative reactivity factors for exhaust and evaporative VOC emissions. EPA does not support the use of relative reactivity factors, for reasons stated in the preamble of the NPRM. See 65 FR 42924.

While we do not accept IEPA's recommendation for an adjustment equivalent to 0.5 psi, we find that the photochemical modeling that IEPA conducted does reasonably support a larger adjustment to the VOC standard than we originally proposed when more recent information on emissions of CO and VOC from onroad vehicles is used. The photochemical modeling consisted of a four day ozone episode from 1991. IEPA modeled reductions in VOC and CO emissions independently, determining the impact of each on peak ozone during each day. A comparison of the impact of differing levels of VOC and CO emissions on peak ozone during each day showed that, on a mass basis,

[4] IEPA compared the emissions (expressed in mg/mi) of a ''complying fuel'' (assumed to have an RVP of 6.8 psi and 2.0 weight percent oxygen; other parameters are described in Document II–D–6 in Docket A–99–32) with an alternative fuel consisting of a 7.3 psi RVP and 3.5 weight percent oxygen, with the other parameters defined for the complying fuel held constant). IEPA calculated the ozone impact from the ''complying fuel'' versus the 7.3 psi fuel using a relationship of ozone forming potential between CO and VOC derived from photochemical modeling. Using this technique, IEPA calculated that the ozone capacity of complying fuel is 4,289 mg ozone/mi and the ozone capacity of the 7.3 psi fuel with accompanying CO reductions due to the 3.5 weight percent oxygen would be 4,291 mg ozone/mi-a comparable amount.

[5] MOBILE is an integrated set of FORTRAN routines for use in the analysis of the air pollution impact of gasoline-fueled and diesel-powered highway mobile sources. MOBILE is used in the preparation of all projection year emission inventories required by the Clean Air Act Amendments of 1990 for non-California areas. MOBILE calculates emission factors for gasoline-fueled light-duty vehicles (LDGVs), light-duty trucks (LDGTs), heavy-duty vehicles (HDGVs), and motorcycles. MOBILE also contains provisions for modeling the impact on emission factors of oxygenated fuels (i.e., gasoline/alcohol and gasoline/ether blends) and of participation in the reformulated gasoline (RFG) program under the 1990 Clean Air Act Amendments.

CO was 4.3 to 8.6 percent as effective in producing ozone as VOC.

At the lower end of this range, the results indicate that for each ton of VOC increase, approximately 23 tons of CO decrease are necessary to maintain ozone levels. At the high end of the range, a 12 ton reduction in CO emissions would be required to compensate for a one ton increase in VOC emissions. As discussed in the Response to Comment Document for this rulemaking (see Document II–B–3 in Docket A–99–32), at the VOC adjustment level of 1.0 percentage point (i.e., an equivalent RVP increase of approximately 0.2 psi), CO emissions would be reduced by 45 tons for each one ton increase in VOC emissions.[6] We believe that in light of IEPA's photochemical model results, the proposed level of 1.0 percentage point (0.2 psi equivalent increase in RVP) is overly conservative.

The mean value of the CO to VOC ozone forming capacities obtained from IEPA's analysis is 6.8 percent, at which level the minimum ratio of CO reductions to VOC increase needed to maintain ozone levels is 14.7:1. As shown in the above referenced Response to Comment Document for this rulemaking, we determined that the use of RFG with ethanol at 10 volume percent (3.5 weight percent oxygen) in these areas can generally be expected to reduce emissions of CO (compared to RFG with 2.0 weight percent oxygen) by approximately 15 tons for every 1 ton increase in VOC emissions associated with a VOC adjustment of 2.0 percentage points (i.e., the equivalent RVP increase of 0.3 psi).

Significantly, the modeled day producing the ratio of 15:1 yielded the highest ozone concentration of the four days modeled. Because the highest ozone concentration is associated with the 15:1 ratio, adjustments based on lower ratios (i.e., 12:1 and 13:1) should not be used. We believe, therefore, that IEPA's analysis provides reasonable assurance that the 0.3 psi adjustment level is appropriate and would tend to preserve the ozone air quality benefits of the Phase II RFG program.

Finally, we note that the photochemical analysis for Chicago can be said to be generally representative of the Milwaukee area due to the similarity in fuel formulations (100 percent ethanol blended RFG), their geographical proximity (less than 100 miles apart), and the fact that lake effects on local meteorology would be expected to be similarly important in the formation of ozone in these two areas.

Consequently, we are promulgating an adjustment of 2.0 percentage points to the VOC performance standard for 10 percent ethanol RFG sold in the Chicago and Milwaukee RFG areas (RVP equivalent increase of approximately 0.3 psi). We believe that IEPA's photochemical modeling reasonably supports a finding that the level of CO decrease likely to occur in the Chicago and Milwaukee areas will offset the potential ozone air-quality impacts of a 2.0 percentage point adjustment to the VOC performance standard (0.3 psi equivalent RVP increase). As such, we believe the adjustment will result in ozone air quality benefits similar to those generally achieved under Phase II of the RFG program.

H. Impact of Adjusted Standard on SIPs

In the proposal, EPA explained that it believed states should not be required to account in their ROP plans, in the near term, for any potential increase in mass VOC emissions associated with the VOC adjustment, based on uncertainty related to market conditions and the predictability of such emission. We proposed to amend the ''Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration'' to indicate that, for several years, states are not required to evaluate whether their ROP plans would be affected by will be an increase in mass VOC emissions as a result of adjusted VOC gasoline. We also proposed to assess the impact of any mass VOC increases on state attainment of the 3.0 percent rate of progress goal at a later date, when more data on oxygenate use and distribution and the effect of the VOC adjustment are available. No comments were received on the appropriateness of this approach, and we will assess the impact of any VOC increases on state attainment of the 3.0 percent rate of progress goal as a component of our continued evaluation of this adjustment.

II. Administrative Requirements

A. Submission to Congress and the Comptroller General

Under 5 U.S.C. 801 (a)(1) (A), 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 report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C 804 (2).

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order.

The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that this regulation results in none of the adverse economic effects set forth in Section 1 of the Order because it generally relaxes the requirements of the RFG program by providing regulated parties with more

[6] We calculated the ratio of CO decrease to VOC increase for varying adjustments of RVP using the following procedure: Using the MOBILE 5.b model, we calculated VOC emissions for RVP varying from 6.7 to 7.7 psi in increments of 0.1 psi. We multiplied the resulting VOC emission rates (expressed in g/mi) by the respective Vehicle Miles travelled (VMT) estimates for Chicago and Milwaukee to obtain the tons per day VOC emissions for each RVP level in each area. (VMT was obtained from the 1996 inventories of the Illinois Environmental Protection Agency (IEPA) and Wisconsin Department of Natural Resources (DNR), respectively.) Taking 6.7 psi RVP as the baseline, the increase in VOC for each 0.1 psi incremental increase above 6.7 was computed for the two areas. To calculate the CO decrease EPA obtained the baseline CO emission rates at 2.0 weight percent oxygen from the Chicago and Milwaukee inventories (from IEPA and Wisconsin DNR) inventories. We then computed the emission rates for gasoline at 3.5 weight percent oxygen using an equation derived from those in MOBILE 6 and which have undergone peer review. This equation is discussed in further detail in the Response to Comment document for this rulemaking (EPA 420–R–01–017). We then calculated the ratio of CO decrease to VOC increase for the varying RVP values. Since CO is a function of oxygen content, the CO reduction is constant, while the VOC emissions, which are a function of RVP, vary. The emission increases for the Mobile 5b runs as well as the respective ratios of CO decrease to VOC increase are summarized in Table 1 of the Response to Comment document.

flexibility with respect to compliance with the RFG requirements. Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order because it raises novel legal or policy issues. EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with state and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule provides regulatory relief, by adjusting the VOC performance standard, for refiners that choose to make RFG with 10 volume percent ethanol. As discussed in the preamble, we believe that the increased VOC associated with the adjusted VOC standard should not affect states' ROP plans in the near term, and does not impose any substantial direct effects on the states. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this final rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's rule does not create a mandate for any tribal governments. This rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas. Today's action generally relaxes certain RFG requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

E. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. sections 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's rule provides regulatory relief by making the VOC standard for RFG that contains 10 volume percent ethanol used in Chicago and Milwaukee slightly less stringent. This action will provide more flexibility for refiners to

reduce MTBE use by decreasing the cost of ethanol-blended RFG. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

F. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1591.11) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The action will result in revision of the Reformulated Gasoline and Anti-Dumping Batch Report form (EPA Form 3520–20C) that refiners must complete. The form would be revised to include under Item 4.0 a new product type called ''Adjusted VOC gasoline.'' This revision does not represent significant new reporting requirements, nor a substantial increase in the amount of time spent filling out the form.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. The rule imposes no enforceable duty on any state, local or tribal governments or the private sector. This rule applies to gasoline refiners, blenders and importers that supply RFG areas. Today's action provides regulated parties with more flexibility with respect to compliance with RFG requirements.

H. Executive Order 13045: Children's Health Protection

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. For reasons stated in the preamble, we believe that the adjusted VOC standard for RFG with 10 volume percent ethanol will continue to provide a similar level of ozone benefits to those anticipated from the current standard, and will assure that the Phase II RFG program will continue to achieve the significant environmental benefits that it was designed to provide.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards, and does not specify the use of technical methods. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Statutory Authority

Sections 114, 211, and 301(a) the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

K. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning

Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.''

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reformulated gasoline, Reporting and recordkeeping requirements.

Dated: July 5, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40, of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.40 is amended by adding paragraph (c) to read as follows:

§ 80.40 Fuel certification procedures.

* * * * *

(c)(1) ''Adjusted VOC gasoline'' for purposes of the general requirements in § 80.65(d)(2)(ii), and the certification procedures in this section is gasoline that contains 10 volume percent ethanol, or RBOB intended for blending with 10 volume percent ethanol, that is intended for use in the areas described at § 80.70(f) and (i), and is designated by the refiner as adjusted VOC gasoline subject to the less stringent VOC standards in § 80.41(e) and (f). In order for ''adjusted VOC gasoline'' to qualify for the regulatory treatment specified in § 80.41(e) and (f), reformulated gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. The ethanol content of the gasoline shall be determined by use of one of the testing methodologies specified in appendix F to this part.

(2) Refiners may choose not to designate as adjusted VOC gasoline or RBOB that otherwise meets the requirements of paragraph (c)(1) of this section, in which case the more stringent VOC standards in § 80.41 apply.

(3) For purposes of § 80.78(a)(1)(v), the ''Adjusted VOC gasoline'' standards under § 80.41 are the applicable VOC emissions performance standards only for adjusted VOC gasoline that is intended for use in or sold for use by an ultimate consumer in the covered areas described at § 80.70(f) and (i). For purposes of § 80.78(a)(1)(v), gasoline designated as adjusted VOC gasoline that is intended for use or that is sold for use by an ultimate consumer in any covered area in VOC-Control Region 2 other than those described at § 80.70(f) and (i), is subject to the VOC performance standards in § 80.41 applicable to all other gasoline designated for VOC-Control Region 2.

3. Section 80.41 is amended by revising paragraphs (e) and (f) to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(e) *Phase II complex model per-gallon standards.* The Phase II ''complex model'' standards for compliance when achieved on a per-gallon basis are as follows:

PHASE II—COMPLEX MODEL PER-GALLON STANDARDS

VOC emissions performance reduction (percent):	
Gasoline designated for VOC-Control Region 1	≥27.5
Adjusted VOC gasoline designated for VOC-Control Region 2	≥23.9
All other gasoline designated for VOC-Control Region 2	≥25.9
Toxic air pollutants emissions performance reduction (percent)	≥20.0
NO_X emissions performance reduction (percent):	
Gasoline designated as VOC-controlled	≥5.5
Gasoline not designated as VOC-controlled	≥0.0
Oxygen content (percent, by weight)	≥2.0
Benzene (percent, by volume)	≤1.00

(f) *Phase II complex model averaged standards.* The Phase II ''complex model'' standards for compliance when achieved on average are as follows:

PHASE II COMPLEX MODEL AVERAGED STANDARDS

VOC emissions performance reduction (percent):	
Gasoline designated for VOC-Control Region 1	
Standard	≥29.0
Per-Gallon Minimum	≥25.0
Adjusted VOC gasoline designated for VOC-Control Region 2	
Standard	≥25.4
Per-Gallon Minimum	≥21.4
All other gasoline designated for VOC-Control Region 2	
Standard	≥27.4
Per-Gallon Minimum	≥23.4
Toxic air pollutants emissions performance reduction (percent)	≥21.5
NO_X emissions performance reduction (percent):	
Gasoline designated as VOC-controlled	≥6.8
Gasoline not designated as VOC-controlled	≥1.5
Oxygen content (percent, by weight):	
Standard	≥2.1
Per-Gallon Minimum	≥1.5
Benzene (percent, by volume):	
Standard	≤0.95
Per-Gallon Maximum	≤1.30

* * * * *

4. Section 80.65 is amended by revising paragraph (d)(2)(ii) and by removing ''[Reserved]'' in paragraph (d)(2)(iii), to read as follows:

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

* * * * *

(d) * * *

(2) * * *

(ii) In the case of gasoline or RBOB designated as VOC-controlled:

(A) Either intended for use in VOC-Control Region 1 or VOC-Control Region 2 (as defined in § 80.71); or

(B) Designated as ''adjusted VOC gasoline'' (as defined in § 80.40(c)(1));

* * * * *

4. Section 80.67 is amended by revising paragraph (g)(1) to read as follows:

§ 80.67 Compliance on average.

* * * * *

(g) * * *

(1)(i)(A)The compliance total using the following formula:

$$\text{COMPLIANCE TOTAL} = \left(\sum_{i=1}^{n} V_i\right) \times \text{std}$$

Where:

V_i=the volume in gallons of gasoline batch i.

std=the standard for the parameter being evaluated.

n=the number of batches of gasoline produced or imported during the averaging period.

(B) For computation of the VOC performance standard compliance total, Std for each VOC control region is determined by the following formula:

$$\text{Std} = \frac{\text{Std}_u \times \sum_{i=1}^{n_u} VU_i + \text{Std}_a \times \sum_{i=1}^{n_a} VA_i}{\sum_{i=1}^{n_u} VU_i + \sum_{i=1}^{n_a} VA_i}$$

Where, for gasoline and RBOB designated for that VOC control region:

Std=the value to be used in the compliance total formula.

Std_u=the averaged VOC emissions performance reduction standard applicable to reformulated gasoline and RBOB not designated for compliance with the adjusted VOC gasoline standard.

Std_a=the averaged VOC emissions performance reduction standard applicable to reformulated gasoline and RBOB designated for compliance with the adjusted VOC gasoline standard.

VU_i=the volume of batch i not designated for compliance with the adjusted VOC gasoline standard.

VA_i=the volume of batch i designated for compliance with the adjusted VOC gasoline standard.

n_u=the number of batches produced or imported and not designated for compliance with the adjusted VOC gasoline standard.

n_a=the number of batches produced or imported and designated for compliance with the adjusted VOC gasoline standard.

(C) The actual total using the following formula:

$$\text{ACTUAL TOTAL} = \sum_{i=1}^{n} \left(V_i \times \text{parm}_i\right)$$

Where:

V_i=the volume in gallons of gasoline batch i.

parm_i=the parameter value of gasoline batch i.

n=the number of batches of gasoline produced or imported during the averaging period.

(ii) [Reserved]

* * * * *

5. Section 80.68 is amended by removing the period at the end of paragraph (c)(8)(ii)(B) and adding in its place a semicolon and by adding paragraph (c)(8)(ii)(C) to read as follows:

§ 80.68 Compliance surveys.

* * * * *

(c) * * *

(8) * * *

(ii) * * *

(C) For adjusted VOC gasoline sold in the covered areas described at § 80.70(f) and (i), the covered area shall have failed the complex model VOC survey if the VOC emissions reduction percentage average of all survey samples is less than the weighted average of the applicable per-gallon standards for VOC emissions reduction calculated according to the following formula:

$$\text{WSTD} = \frac{\text{VOCU} \times n_u + \text{VOCA} \times n_a}{n}$$

Where:

WSTD=Weighted average of the applicable per-gallon VOC standards.

VOCU=Per gallon VOC standard applicable in the covered area to RFG containing less than 10 percent ethanol by volume.

VOCA=Per gallon VOC standard applicable in the covered area to RFG containing 10 percent ethanol by volume.

n_u=Number of samples in the VOC survey with oxygen content less than 3.5 percent by weight.

n_a=Number of samples in the VOC survey with oxygen content equal to or greater than 3.5 percent by weight.

n=Total number of samples in the VOC survey.

* * * * *

6. Section 80.69 is amended by revising the introductory text to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

The requirements of this section apply to all reformulated gasoline blendstock for oxygenate blending, or RBOB, to which oxygenate is added at any oxygenate blending facility, except that paragraph (a)(7) of this section does not apply to adjusted VOC gasoline as defined in § 80.40(c).

* * * * *

[FR Doc. 01–17563 Filed 7–16–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001121328–1041–02; I.D. 071101C]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 3 Period

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

ACTION: Closure; Quarter 3 commercial black sea bass fishery.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the quarter 3 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in these states north of 35°15.3′ N. lat. for the remainder of the 2001 quarter 3 quota period (through September 30, 2001). Regulations governing the black sea bass fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3′ N. lat.

DATES: Effective 0001 hrs local time, July 17, 2001, through 2400 hrs local time, September 30, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist, at (978) 281–9226.

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass

fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods based upon percentages of the annual quota. The quarter 3 (July through September) commercial quota is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota is described in § 648.140.

The initial total commercial quota for black sea bass for the 2001 calendar year was 3,024,742 lb (1,372,000 kg) (66 FR 12902, March 1, 2001). The quarter 3 period quota, which is equal to 12.33 percent of the annual commercial quota, was 372,951 lb (169,168 kg). The quota allocation was adjusted downward to compensate for 2000 quarter 3 landings in excess of the 2000 quarter 3 quota, consistent with the procedures in § 648.140. The final adjusted quarter 3 quota was 276,875 lb (125,588 kg).

The Regional Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial black sea bass quota for each quota period on the basis of dealer reports, state data, and other available information to determine when the commercial quota has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the quarter 3 period, north of 35°15.3′ N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota for the 2001 quarter 3 period has been harvested.

The regulations at § 648.4 (b) provide that Federal black sea bass moratorium permit holders agree as a condition of the permit not to land black sea bass in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the black sea bass is available. The Regional Administrator has determined that the quarter 3 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, July 17, 2001, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.3' N. lat., by vessels holding commercial Federal fisheries permits are prohibited through September 30, 2001. The 2001 quarter 4 period for commercial black sea bass harvest will open on October 1, 2001. Effective July 17, 2001, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders who land in coastal states from Maine through North Carolina, north of 35°15.3′ N. lat., for the remainder of the quarter 3 period (through September 30, 2001).

The regulations at § 648.4 (b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′ N. lat., any vessel owners who hold valid commercial permits for both the black sea bass and the NMFS Southeast Region snapper-grouper fisheries may surrender their black sea bass moratorium permit by certified mail addressed to the Regional Administrator (see Table 1 at § 600.502) and fish pursuant to their snapper-grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: July 12, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–17837 Filed 7–12–01; 3:08 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013-01; I.D. 071201A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). This is action is necessary to prevent exceeding the 2001 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 12, 2001, through 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–2778.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery 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 2001 TAC of Pacific ocean perch for the Central Regulatory Area was established as 9,610 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 TAC for Pacific ocean perch in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,610 mt, and is setting aside the remaining 1,000 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 Pacific ocean perch in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2001 TAC of Pacific ocean perch for the Central Regulatory Area of the GOA constitutes 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)(3)(B) and 50 CFR

679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the 2001 TAC of Pacific ocean perch for the Central Regulatory Area of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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: July 12, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–17836 Filed 7–12–01; 3:08 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1168–06; I.D. 011101B]

RIN 0648–A082

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures and 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska

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

ACTION: Emergency interim rule; extension and request for comments.

SUMMARY: NMFS amends and corrects the emergency interim rule that implements the 2001 Steller sea lion protection measures and the 2001 harvest specifications and extends its effectiveness through December 31, 2001. These amendments include adjustments to open and closed areas and seasons for important prey species, exemptions for various gear sectors for socio-economic and safety purposes, the establishment of a pollock research area in the Chiniak Gully, and various amendments to the harvest specifications to implement the North Pacific Fishery Management Council's (Council) recommendations. This action is necessary to implement Steller sea lion protection measures for the remainder of 2001 as recommended by the Council and is intended to manage the groundfish fishery in a manner that is consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to provide adequate protection to Steller sea lions and their critical habitat, as required by the Endangered Species Act and section 209 of the Consolidated Appropriations Act of 2001.

DATES: In the final rule published January 22, 2001 at 66 FR 7276 (corrected March 20, 2001 (66 FR 15656) and July 2, 2001 (66 FR 34852)), and amended March 29, 2001 (66 FR 17083 and 17087) and June 13, 2001 (66 FR 31845), certain amendments were made effective January 18, 2001 through July 17, 2001, and others were made effective June 10, 2001, through July 17, 2001. This rule extends the effective date for those amendments through December 31, 2001, except for: 50 CFR 679.20(a)(5)(i)(B)(*2*) and (c)(7); § 679.22(a)(11), (a)(12)(i), (a)(12)(ii), (a)(12)(iii)(A), (a)(12)(iv), (a)(12)(v), (a)(13), (b)(3) and (b)(5); § 679.23(d)(4); and Table 21 of 50 CFR part 679, which expire July 17, 2001. The amendments to 50 CFR 679.20, 679.22, 679.23, 679.31, and to Tables 21 through 24 to part 679, in this final rule are effective July 18, 2001 through December 31, 2001. Comments must be received by August 15, 2001.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the November 30, 2000, Biological Opinion and Incidental Take Statement on Authorization of the Bering Sea and Aleutian Islands (BSAI) groundfish fisheries based on the Fishery Management Plan for the Groundfish Fishery of the BSAI and Authorization of the Gulf of Alaska (GOA) groundfish fisheries based on the Fishery Management Plan for Groundfish of the Gulf of Alaska (Comprehensive Biological Opinion), including the Reasonable and Prudent Alternative (RPA), may be obtained from the same address. The Comprehensive Biological Opinion is also available on the NMFS Alaska Region home page at *http://www.fakr.noaa.gov.*

Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for the Extension and Revision of the Emergency Interim Rule for 2001 Harvest Specifications for the Alaska Groundfish Fisheries and for Steller Sea Lion Protective Fisheries Management Measures may be obtained from the same address. The EA/RIR is also available on the NMFS Alaska Region home page at *http://www.fakr.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Melanie Brown, NMFS, 907–586–7228 or e-mail at *melanie.brown@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The Council prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679. NMFS also has management responsibility for certain threatened and endangered species, including Steller sea lions, under the Endangered Species Act (ESA), 16 U.S.C. 1531, *et seq.*, and the authority to promulgate regulations to enforce provisions of the ESA to protect such species.

Introduction

This preamble consists of two parts. Part I explains the process followed for developing and the basis for the amendments to the Steller sea lion protection measures. Part II contains amendments to several harvest specifications for groundfish harvest for the second half of 2001.

Part I. Steller Sea Lion Protection Measures

Background

On January 22, 2001, NMFS published an emergency interim rule, effective January 18, 2001, that established 2001 harvest specifications for the BSAI and GOA groundfish fisheries and implemented 2001 Steller sea lion protection measures for these fisheries (66 FR 7276). These protection measures initiated a 1-year phase-in of the RPA developed in the Comprehensive Biological Opinion (See **ADDRESSES**) as directed under section 209 of Public Law 106–554. NMFS determined that the 2001 protection measures provided a sufficient degree of protection to endangered Steller sea lions for 2001 and were consistent with the RPA, the ESA, and with section 209 of Public Law 106–554. Public Law 106–554, which was signed by the President on December 21, 2000,

provides for independent scientific review and additional public and Council assessment of the Comprehensive Biological Opinion and the RPA prior to full implementation of the RPA in 2002.

The January 18, 2001, emergency interim rule extended the Steller sea lion protection measures that were in place during 2000 for the BSAI and GOA pollock fisheries, with several changes. These changes included two fishing seasons for GOA Pacific cod and for non-Community Development Quota (CDQ) Pacific cod in the BSAI. A complete description and justification of the 2001 Steller sea lion protection measures can be found in the preamble to the January 18, 2001, emergency interim rule (66 FR 7276). A 30-day public comment period on the emergency interim rule ended February 21, 2001. One letter of comment was received during this period and is summarized and responded to under Response to Comments, below.

On March 20, 2001, NMFS issued a correction to the January 18, 2001, emergency interim rule that addressed various technical and editorial errors (66 FR 15656). Effective March 23, 2001, NMFS amended the emergency interim rule to change fishing restrictions on vessels fishing for groundfish off Alaska with jig gear and on vessels less than 60 ft (18.3 m) length overall (LOA) fishing for BSAI Pacific cod with hook-and-line or pot gear (66 FR 17083, March 29, 2001). A 30-day public comment period on the amendment ended April 23, 2001. One letter of comment was received and also is summarized and responded to under Response to Comments. Also effective March 23, 2001, NMFS also amended the emergency interim rule to adjust the seasonal apportionment of Pacific halibut bycatch limits for the trawl and hook-and-line groundfish fisheries of the GOA (66 FR 17087, March 29, 2001). Effective June 10, 2001, NMFS amended the rule to prohibit directed fishing for Pacific cod in the Western and Central GOA and by vessels equal to or greater than 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI (66 FR 31845, June 13, 2001). A 30-day public comment period on this amendment ended July 9, 2001. No written comments were received during the comment period. To reserve halibut PSC bycatch amounts to support the delayed Pacific cod season in the GOA, NMFS amended the emergency interim rule to prohibit shallow water trawl fisheries effective on June 27, 2001 (66 FR 34852, July 2, 2001).

The RPA measures were independently reviewed by a committee (RPA Committee) established by the Council. This RPA Committee developed recommendations for Steller sea lion protection measures for the second half of the 2001 groundfish fisheries. These recommendations were approved by the Council in April 2001 and forwarded to NMFS. By this action today, NMFS implements those recommendations.

Specific Elements of the Steller Sea Lion Protection Measures Revisions

Amendments to the emergency interim rule include: (1) Adjustments to the open and closed pollock, Atka mackerel, and Pacific cod directed fishing areas in Steller sea lion critical habitat; (2) adjustments to specific Pacific cod fishing seasons; (3) exemptions for various Pacific cod non-trawl gear vessels from several fishing closure areas; (4) establishment of the Chiniak Gully pollock research program; and (5) elimination of the pollock harvest limit in the Steller sea lion conservation area in the Bering Sea.

Adjustments to Atka Mackerel, Pollock, and Pacific Cod Directed Fishing Area Closures

The RPA Committee recommended directed fishing closures that are consistent with the criteria established under the Comprehensive Biological Opinion for minimum levels of protection. The criteria for protection in the Comprehensive Biological Opinion require protection of more than 50 percent of critical habitat, more than 50 percent of the areas used by non-pups and more than 75 percent of the area where pups are born. The recommended closures by the RPA Committee protect 57 percent of critical habitat and 80 percent of the areas for pups birthing and non-pups use. The RPA Committee recommended closures to directed fishing of 10 nautical miles (nm) in the trawl fisheries for pollock, Pacific cod, and Atka mackerel. This was different than the level of protection provided by the RPA in the Comprehensive Biological Opinion, under which many rookery and haulout sites were closed to all directed fishing for pollock, Pacific cod, and Atka mackerel out to 20 nm. The reason for the difference in protected areas is based on the results of analyses of recent telemetry data and the importance of certain areas to commercial fishing. Previous data indicated that maximum foraging distances from the point of tagging ranged between 20 to 60 nm. While this still remains valid for some individuals, the more recent telemetry data show that Steller sea lions spend a significant amount of their time at sea within 10 nm of the shoreline. Tagged animals ranged in a line that was parallel to and within 10 nm of the shoreline. Therefore, even though the telemetry data indicated that an animal may travel a great distance during a foraging trip, most of that movement is parallel to the shoreline and not perpendicular to it.

The RPA Committee recommended that the 3 nm no-entry zones established around selected rookeries under the authority of the ESA remain in effect. The RPA Committee also recommended that major rookeries and haulouts be closed to directed fishing for pollock, Pacific cod, and Atka mackerel out to 10 nm in all three fishery areas—the Gulf of Alaska, the Aleutian Islands, and the Eastern Bering Sea—and that rookeries that had experienced an annual decline in Steller sea lion population of 10 percent or greater since 1991 be closed out to 20 nm. Exceptions were recommended in some areas for non-trawl gear.

Some allowance is provided for fishing outside of 3 nm, but within 10 nm by pot and hook-and-line vessels equal to or greater than 60 ft (18.3 m) LOA, given the slower rate of harvest by these vessels, the limited amount of groundfish harvested by these vessels during the remainder of 2001, and commensurate reduction of concerns about competition with Steller sea lions during this time period. Based on this information, NMFS believes that the protection of rookeries and haulouts out to 10 nm adequately protects a significant portion of the Steller sea lion population.

Adjustments to the Pacific Cod Fishing Seasons

The January 18, 2001, emergency interim rule established two fishing seasons for the BSAI and GOA Pacific cod fisheries, January 1 to June 10 (with 60 percent of the TAC available for harvest) and June 10 to December 31 (with 40 percent of the TAC available for harvest), except that directed fishing for Pacific cod with trawl gear was prohibited after November 1, 2001. The emergency interim rule effective March 23, 2001, removed the season restrictions for the BSAI jig gear fisheries and BSAI vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear. Separate allocations of the BSAI Pacific cod TAC for these two groups of vessels at § 679.20(a)(7)(i)(C) facilitated separate seasonal fishing restrictions. Justification for this relief of seasonal harvest constraints was discussed in the preamble to the emergency interim rule (66 FR 17083, March 29, 2001).

In April, the Council recommended delaying the June 10 opening date of the GOA Pacific cod fishery and the BSAI Pacific cod fishery by vessels greater than 60 ft (18.3 m) LOA using pot or hook-and-line gear. The Council's recommendation was based on the following management considerations: Poor product recovery and quality in summer months; competition with summer salmon fisheries for processing facilities; potential gear conflicts between pot and trawl gear fleets; and coordination between BSAI Pacific cod fisheries within the CDQ and non-CDQ sectors. The Council's recommended season delays also would address salmon and Pacific halibut bycatch concerns and are intended to manage the Pacific cod fisheries in a manner consistent with the objectives of 2001 Steller sea lion protection measures to avoid localized depletion of Pacific cod.

Specifically, the Council recommended, and NMFS approves, except for the Eastern GOA, the second season opening date for the Gulf of Alaska Pacific cod fisheries be delayed from June 10 to September 1. In the preamble to the emergency interim rule amendment effective June 10, 2001 (66 FR 31845, June 13, 2001), all of the GOA was intended to be closed to directed fishing for Pacific cod until the emergency interim rule extension took place in July. Due to a technical error, the regulatory text closed only the Western and Central areas of the GOA. As of June 28, 2001, only 3 percent of the annual TAC for the Eastern GOA has been harvested. Five Steller sea lion sites are located in the Eastern GOA. By this action today, each of these sites is protected by a 20 nm no Pacific cod fishing zone. Because the Eastern GOA area is not likely to harvest much of the TAC apportioned and because Steller sea lion sites within the Eastern GOA are now protected by 20 nm no Pacific cod fishing zones, NMFS has determined that the season delay is necessary only for the Western and Central GOA. Except for an allocation between inshore and offshore sectors under § 679.20(a)(6)(iii), the GOA Pacific cod TAC is not allocated among different gear sectors. Therefore, separate treatment of vessels using jig, pot, hook-and-line, or trawl gear is not feasible and the season delay affects vessels using any gear type.

Also, the Council recommended a delay of the second season opening date of the BSAI hook-and-line vessels equal to or greater than 60 ft (18.3 m) LOA in the fisheries for Pacific cod from June 10 until August 15. In taking this action, the Council recognized that NMFS already has implemented the 2001 seasonal apportionment of the non-trawl Pacific halibut bycatch limit in a manner that currently delays the BSAI hook-and-line Pacific cod fisheries to August 1. The additional delay from August 1 to August 15 was adopted by the Council to maintain temporal distribution of the fishery consistent with the objectives of existing Steller sea lion protection measures and to minimize high halibut bycatch rates during summer months. The delay also reduces the potential for interaction of the hook-and-line gear fisheries with the endangered short-tailed albatross and other seabird species during summer months.

The Council recommended a June 10 to September 1 delay in the second season opening date for the BSAI Pacific cod pot gear fishery by vessels equal to or greater than 60 ft (18.3 m) LOA. This action was taken because the amount of BSAI Pacific cod that remains to be harvested by these vessels in the second season represents less than 2 percent of the BSAI Pacific cod TAC. The Council also recognized that harvest removals by this gear type are slow paced and are unlikely to affect Steller sea lions in a manner not already considered by NMFS.

The Pacific cod seasons recommended by the Council and approved by NMFS impose no seasonal harvest constraints for vessels fishing in the BSAI using jig gear, for vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear, or for vessels participating in the CDQ fisheries. The start dates for the second season in 2001 for Pacific cod sectors are summarized in the following table:

Pacific cod fishery sector*	Second season opening date of directed fishing for Pacific cod		
	June 10	August 15	September 1
Western and Central Gulf of Alaska:			
All gear types			X
Bering Sea and Aleutian Islands:			
All trawl	X		
Bering Sea and Aleutian Islands:			
Pot vessels ≥ 60 ft LOA			X
Bering Sea and Aleutian Islands:			
Vessels ≥ 60 ft LOA using hook-and-line gear		X	

*Seasonal harvest constraints are not established for BSAI vessels using jig gear, BSAI vessels less than 60 feet LOA using pot or hook-and-line gear, or for vessels participating in the CDQ fisheries.

The June 10 second season opening date for BSAI Pacific cod harvested by trawl vessels remained unchanged to maintain overall spatial and temporal distribution of the BSAI Pacific cod fisheries. Potential bycatch concerns ensuing from a summer trawl effort for Pacific cod was assumed by the Council to be self limiting due to low summer catch rates and the fleets' avoidance of high Pacific halibut bycatch rates that could preempt more lucrative fall fishing. Salmon bycatch in the non-pollock trawl fisheries typically has not posed a concern given that summer trawl fisheries are limited due to halibut bycatch concerns and restrictions. These fisheries also tend to operate on fishing grounds that avoid high bycatch rates of salmon.

Pacific cod fishing prohibitions were effective by June 10, 2001, to meet the intent of the Council for adjustments to the second season start dates and to avoid industry confusion and a race for the available Pacific cod TAC. NMFS prohibited fishing for Pacific cod by specified vessels consistent with the Council's recommendation by an amendment to the January 18, 2001, emergency interim rule published on June 13, 2001 (66 FR 31845). The closures resulting from the fishing prohibitions are in effect until the new season dates established by this amendment to the emergency interim rule take effect.

Exemptions for Selected Non-trawl Gear Pacific Cod Vessels From Steller Sea Lion Protective Measures Fishing Closures

The Council recommended exemptions for selected non-trawl gear vessels fisheries closures in the GOA designed to protect Steller sea lions. These exemptions are in addition to those already implemented by NMFS. On March 23, 2001, NMFS amended the emergency interim rule to relieve fishing restrictions on vessels fishing for groundfish off Alaska with jig gear and on vessels less than 60 ft (18.3 m) LOA fishing for BSAI groundfish with hook-and-line or pot gear (66 FR 17083, March 29, 2001). Vessels under the March 23, 2001, exemption are permitted to fish to the shore around haulouts and beyond 3 nm around rookeries in areas closed to groundfish, pollock, Atka mackerel, and Pacific cod fishing. The Council's recommendation expands the areas opened and the types of vessels exempted. Areas specified in the Council's recommendation are identified by specific locations in Tables 21, 22, and 23 of 50 CFR part 679 and in § 679.22. Exemptions include:

1. In Area 8 of the Bering Sea, all pot vessels may operate within 3 nm to 10 nm or 20 nm Pacific cod fishing closures around rookeries and haulouts.

2. In Areas 5 and 6 of the GOA, non-trawl gear vessels less than 60 ft (18.3 m) LOA may operate Pacific cod and pollock fisheries within 3 nm to 10 nm around haulouts and rookeries.

3. In Area 2 of the GOA, non-trawl gear vessels less than 60 ft (18.3 m) LOA may operate Pacific cod and pollock fisheries within 3 nm to 20 nm around haulouts.

Based on the continuation of 3 nm no groundfish fishing zones under the exemption specified above, these exemptions will not locally deplete important prey species and thus will not detrimentally impact Steller sea lions.

The Chiniak Gully Pollock Research Program

The Council endorsed a research project proposed by NMFS in the Chiniak Gully off Kodiak Island to determine the effect of pollock fisheries on short term changes in the pollock school dynamics, and if the pollock fisheries cause localized depletion of Steller sea lion prey off the east side of Kodiak Island. The experiment will include the closure of Chiniak Gully to trawl fishing from August 1 to no later than September 20. The 20 nm Pacific cod and pollock fishing closure in the Chiniak Gully area around Cape Chiniak and Long Island haulouts will be reduced to 10 nm closures from October 1 through December 31. A more detailed description of the experiment is provided in the draft environmental assessment/regulatory impact review/final regulatory flexibility analysis for the proposed rule to implement a seasonal closure of a portion of the Central Regulatory Area, GOA, to vessels using trawl gear (65 FR 41044, July 3, 2000). For copies of these documents, please contact NMFS (see **ADDRESSES**). Amendments are made to the emergency interim rule (66 FR 7276) to implement this experiment including trawl closures necessary to conduct the experiment.

Elimination of the Steller Sea Lion Conservation Area (SCA) Pollock Harvest Limit

The Council recommended the elimination of the pollock harvest limit for the SCA for the second half of 2001. The January 18, 2001, emergency interim rule established a harvest limit for pollock in the SCA based upon the level of harvest established for the 2000 fishing season. This was done to ensure adequate prey resources were available for Steller sea lions. Additional information may be found in the January 18, 2001, emergency interim rule (66 FR 7276, January 22, 2001). The Council based its recommendations on the following:

1. *Steller sea lion population growth.* Non-pup counts of Steller sea lions in the areas of the Bering Sea where the pollock and Pacific cod fisheries occur have experienced the least decline or increase. Steller sea lion abundance near Unimak Island and to the east, including the rookery on Amak Island, are increasing at a 3-percent annual rate. Steller sea lion abundance on rookeries near Dutch Harbor are increasing at a 7-percent annual rate, the fastest increase of any group within the western population. However, NMFS notes that when looking at the eastern Aleutian Islands subpopulation of Steller sea lions, which includes animals from the Dutch Harbor area, Unimak Island, Amak Island, and waters on the south side of the Aleutian Island from these areas, the overall trend is a population decline of 1.75 percent.

2. *Steller sea lion diet.* Recent scat analysis indicates that sea lion diet may be more variable in the summer and early fall than previously thought. Primary prey for sea lions on Amak Island is highly varied and dependent on spawning aggregations. The top three species appearing in scat samples in the summer were herring, pollock, and sand lance. Scats collected from Amak Island were found to include a dozen fish species that occurred in more than 10 percent of the scats. For the rookeries and haulouts from Unimak and west to Dutch Harbor, the top summer prey were salmon, pollock, herring, and some Atka mackerel. Although pollock is one of the primary prey species from Unimak west to Dutch Harbor, the sea lions in these areas eat many different species, particularly in the summer. The frequency of occurrence of Pacific cod in Steller sea lion scat is less in the summer than in the winter, approximately 28 percent in the winter and 7 percent in the summer.

3. *Steller sea lion foraging distance.* Telemetry data indicate that the great majority of at-sea locations for the lactating females, juveniles, and pups that were tagged were very close to shore, with 60-to-75 percent occurrences within 2 miles of the shore and 85-to-92 percent occurrences within 10 miles of the shore. Although the data cannot specify whether the animals were foraging, the extremely high percentage of ''hits'' so close to shore must include most foraging trips.

4. *Summer/fall Pacific cod fishery.* The Pacific cod fishery by all gear groups is significantly dispersed in the summer and fall because of the dispersion of the Pacific cod. During the period 1995 through 1999, when no critical habitat restrictions on Pacific cod were in place, hook-and-line catch of Pacific cod occurred in significant amounts northwest of the Pribilof Islands and north of the SCA. Pacific cod fishing by trawl gear occurred both inside and outside the SCA, but the summer trawl fishery is small because of the low catch per unit of effort.

5. *Catcher Vessel Operational Area (CVOA) exclusion.* Current closure regulations prohibit pollock fishing during the ''B season'' inside the CVOA by the catcher/processor offshore component, which has 40 percent of the pollock TAC. Section 679.22(a)(5) of 50 CFR is amended with this action to ensure continued closure in the CVOA to pollock catcher processor vessels during the C/D season, June 10 through November 1. This closure reduces the amount of fishing effort in a large portion of the SCA.

6. *Reduction of the inshore pollock trawl fleet.* The American Fisheries Act (AFA) authorized the Bering Sea pollock trawlers to organize into cooperatives. This allowed the sector to decapitalize, which resulted in a 24-percent reduction in the number of boats in the inshore pollock fleet. Consequently, the amount of fishing effort on pollock at any one time has been reduced in the last 2 years.

7. *Vessel safety.* Although summer weather in the Bering Sea is certainly less threatening than winter weather, smaller boats are at risk when they must travel far from land and far from processing facilities. The SCA boundaries and harvest limits would require vessels to travel more than 60 miles offshore and even further from their processing facilities to fully utilize available resources. The Magnuson-Stevens Act requires NMFS to consider safety in fishery management decisions (national standard 10).

8. *Product quality and cost.* Pollock quality varies considerably by location and an exclusion from the SCA often results in poor quality because of fishing location and long trips back to processing facilities. In addition, costs increase significantly, particularly with the current high cost of fuel. The Magnuson-Stevens Act requires that efficiency and cost minimization be goals in fisheries management (national standards 5 and 7).

9. *Salmon bycatch.* Concerns over poor chum salmon returns in Western Alaska have put serious pressure on the pollock trawl fleet to reduce chum salmon bycatch. For the 2001 season, the AFA cooperatives have established a salmon savings plan to address salmon bycatch. If pollock trawling is largely excluded from the SCA, salmon bycatch will be higher than if the fleet has more flexibility to move away from bycatch hotspots. The Magnuson-Stevens Act requires fishery management measures to minimize or avoid bycatch (national standard 9).

10. *Limited period of applicability.* The second half of a year is not considered as critical to Steller sea lions as the first half of the year. The Council's recommendations are for the second half of 2001 only.

11. *Availability of new information.* Extended foraging areas were originally established in 1993 based on the platform of opportunity data (POP data), on the theory that indirect competition could exist with the fisheries. Yet, with Steller sea lion populations currently at a low level, and pollock populations at a near record high, 8 to 15 times more pollock are available per Steller sea lion today than in 1993. Further, new telemetry information suggests that sea lions spend very little time beyond 10 nm during this time of the year.

NMFS approves the elimination of the SCA limit for the second half of 2001 because the action is for a short duration, prey resources are likely to be available because of the increase in pollock biomass over 2000, and the telemetry data indicate that foraging may be occurring closer to shore than thought when the SCA was established so that a large foraging area may not be necessary for prey availability.

In summary, for the reasons set forth above, NMFS approves all the Council's recommendations and implements them by this action. It should be noted that (1) these measures are limited to the second half of 2001; (2) a large increase in 2001 pollock biomass has occurred without the equivalent large increase in total allowable catch (TAC) over 2000 levels, making prey more likely to be available to Steller sea lions; (3) the protection measures are in the process of being reassessed through NEPA and ESA analyses; and (4) the recommended protection measures met the Comprehensive Biological Opinion criteria for closure areas by meeting or exceeding minimum requirements for protection of critical habitat, protection of the non-pup population, and protection of areas where pups are born.

Part II. Specifications

This emergency interim rule extends the 2001 harvest specifications through December 31, 2001, including corrections and amendments made to the January 18, 2001, emergency interim rule (66 FR 7276, January 22, 2001; 66 FR 15656, March 20, 2001; 66 FR 17083, March 29, 2001; 66 FR 17087, March 29, 2001), recommendations made by the Council at its April 2001 meeting for pollock and Pacific cod season dates for the remainder of 2001, recommendations made by the Council at its June 2001 meeting for CDQ non-specified reserve allocations and halibut PSC seasonal allocations, and further corrects some errors found in the January 18, 2001, emergency interim rule specifications not previously corrected. A detailed discussion on the 2001 harvest specifications appears in the preamble to the January 18, 2001, emergency interim rule and in the preambles to the corrections and amendments to the January 18, 2001, emergency interim rule (66 FR 7276, January 22, 2001; 66 FR 15656, March 20, 2001; 66 FR 17083, March 29, 2001; 66 FR 17087, March 29, 2001; 66 FR 31845, June 13, 2001; and 66 FR 34852, July 2, 2001, halibut PSC reapportionment and shallow water trawl closure). The discussion in this preamble is limited to the amendments contained in this emergency interim rule.

The amendments included in this action are: (1) A technical correction for AFA sectoral allocations in the BSAI fisheries; (2) elimination of the SCA pollock harvest limits; (3) changes to Pacific cod seasons; (4) corrections to AFA inshore cooperative allocations; (5) corrections to the non-exempt AFA catcher vessel groundfish harvest specifications; (6) an increase in the contribution of arrowtooth flounder to the CDQ non-specific reserve; and (7) reallocation of GOA halibut PSC apportionment in the shallow water trawl fishery to account for the Pacific cod season changes. The following is a discussion of each amendment to the 2001 harvest specifications included in this emergency interim rule.

Bering Sea and Aleutian Islands

AFA Sectoral Allocations

Section 679.20(a)(5)(i)(C) contains the sectoral allocations for AFA vessels in the BSAI. This section expired January 16, 2001, and was inadvertently left out of the January 18, 2001, AFA emergency interim rule (66 FR 7327, January 22, 2001), and the January 18, 2001, 2001 harvest specifications and Steller sea lion protection measures emergency interim rule (66 FR 7276, January 22, 2001). This section is added to the regulations and appears in the regulatory text under the same section number. No changes were made to the language.

Elimination of SCA Harvest Limits

As explained in Part I of the preamble, in April 2001 the Council recommended that the SCA pollock harvest limits be eliminated for the C/D fishing season. Table 5 is amended and published to show the allocations of the pollock TAC for the C/D season without SCA harvest limits. Offshore components of catcher/processors continue to be prohibited from fishing in the CVOA within the SCA per § 679.22(a)(5), which is amended by this emergency interim rule.

TABLE 5.—ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS [1]

[All amounts are in metric tons]

Area and Sector	2001 DFA	A/B Season [1]			C/D Season [1]
		A/B DFA	A SCA limit [2]	B SCA limit [2]	C/D DFA
Bering Sea subarea	1,400,000	560,000	166,751	55,497	840,000
CDQ	140,000	56,000	28,247	9,339	84,000
ICA [3]	50,400	.....	.....	.....	.....
AFA Inshore	604,800	241,920	81,802	27,267	362,880
AFA C/Ps [4]	483,840	193,536	38,564	12,854	290,304
Catch by C/Ps	442,714	177,085	.....	.....	265,628
Catch by CVs [4]	41,126	16,451	.....	.....	24,676
Restricted C/P cap [5]	2,419	968	.....	.....	1,452
AFA Motherships	120,960	48,384	14,607	4,869	72,576
Excessive shares cap [6]	211,680	.....	.....	.....	.....
Aleutian Islands:					
ICA [7]	2,000				
Bogoslof District:					
ICA [7]	1,000				

[1] After subtraction for the CDQ reserve and the incidental catch allowance, the pollock TAC is allocated as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. Under paragraph 206(a) of the AFA, the CDQ reserve for pollock is 10 percent. NMFS, under regulations at § 679.24(b)(4), prohibits nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI. The A/B season, January 20–June 10, is allocated 40 percent and the C/D season, June 10–October 31 is allocated 60 percent.

[2] The SCA limits are established as the amount, in metric tons, authorized for the 2000 pollock fishery (65 FR 3896, January 25, 2000).

[3] The pollock incidental catch allowance for the BS subarea is 4 percent of the TAC after subtraction of the CDQ reserve.

[4] Subsection 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[5] The AFA requires that vessels described in section 208(e)(21) be prohibited from exceeding a harvest amount of one-half of one percent of the directed fishing allowance allocated to vessels for processing by AFA catcher/processors.

[6] Paragraph 210(e)(1) of the AFA specifies that ''No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.''

[7] Consistent with the RPAs, the Aleutian Islands subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season or sector.

Under § 679.20(a)(5)(i)(C), NMFS must subdivide the inshore pollock allocation into allocations for cooperatives and vessels not fishing in a cooperative (i.e., the open access sector). Accordingly, Table 11 lists the apportionment of the BS subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and for vessels not participating in a cooperative. Table 11, as published January 22, 2001, emergency interim rule was corrected by NMFS (66 FR 15656, March 20, 2001). The March amendment had an incorrect value of 3,192 mt for the A season inside the SCA open access sector. The correct value is 319 mt. Table 11 is amended and published here without the SCA limits for the C and D seasons and with the correct value for the open access A season inside the SCA.

TABLE 11.—BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY

[Amounts are expressed in metric tons]

	A/B season TAC	A season inside SCA [1]	B season inside SCA	C/D season TAC
Cooperative sector:				
Vessels > 99 ft	n/a	65,036	n/a	n/a
Vessels ≤ 99 ft	n/a	16,447	n/a	n/a
Total	241,184	81,483	27,161	361,772
Open access sector	736	319	106	1,105
Total inshore	241,920	81,802	27,267	362,880

[1] Steller sea lion conservation area established at § 679.22(a)(11)(iv) until July 18, 2001.

[2] Reserved.

Pacific Cod Seasons

Effective June 10, 2001, NMFS prohibited directed fishing for Pacific cod in the GOA and by vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line or pot gear in the BSAI (66 FR 31845, June 13, 2001). This action was necessary to prohibit certain Pacific cod fisheries, which had been authorized to start on June 10, 2001, and was intended to provide for orderly implementation of Steller sea lion protection measures for the second half of 2001. The text of this emergency interim rule incorporates Council recommendations in the January 18 emergency interim rule preamble and republishes Table 7 for the opening date of the Pacific cod B season by vessels using trawl gear and non-trawl gear.

Table 7 also lists the 2001 gear shares and seasonal apportionments of the BSAI Pacific cod TAC. Under § 679.23(e)(6)(ii)(B), directed fishing for Pacific cod in the B season in the BSAI by vessels using trawl gear closes 0001 hours, A.l.t., November 1, 2001. As recommended by the Council in April 2001 and as discussed in Part I of the preamble, the beginning dates for the B season for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear is August 15, 2001, and for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is September 1, 2001.

TABLE 7.—2001 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC

Gear sector	Percent	Share [1] (mt)	Subtotal percentages for gear sectors	Share of gear-sector total (mt)	Seasonal apportionment [2]	
					Date	Amount (mt)
Total hook-and-line and pot gear allocation of Pacific cod TAC.	51	88,689				
Incidental Catch Allowance				500		
Processor and Vessel sub-Total				88,189		
Hook-and-line Catcher			80	70,551	Jan 1–Jun 10	42,331
Processors (≥ 60 ft LOA)			80	70,551	Aug 15–Dec 31	28,220
Hook-and-Line Catcher			0.3	265	Jan 1–Jun 10	159
Vessels (≥60 ft LOA)					Aug 15–Dec 31	106
Pot Gear Vessels			18.3	16,139	Jan 1–Jun 10	9,683
(≥60 ft LOA)					Sept 1–Dec 31	6,455
Catcher Vessels < 60 feet (18.3 m) LOA using Hook-and-line or Pot gear.			1.4	1,235	no seasonal apportionment	
Trawl gear Total	47	81,733				
Trawl Catcher Vessel			50	40,867	Jan 1–Jun 10	24,520
					Jun 10–Nov 1	16,347
Trawl Catcher Processor			50	40,867	Jan 1–Jun 10	24,520
					Jun 10–Nov 1	16,347
Jig	2	3,478				
Total				173,900		

[1] The reserve has been released for Pacific cod see (Table 4).
[2] The first season is allocated 60 percent of the TAC and the second season is allocated 40 percent of the TAC. Any unused portion of the first seasonal Pacific cod allowance will be reapportioned to the second seasonal allowance.

The Council also recommended that the harvest by vessels less than 60 ft (18.3 m) LOA using pot gear be applied to the 18.3 percent harvest share of the vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear only when directed fishing by vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is open. When Pacific cod directed fishing by vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is closed, the harvest by vessels less than 60 ft (18.3 m) LOA using pot gear will be applied to the 1.4 percent Pacific cod allocation for this vessel size. This recommendation is implemented by amending the regulatory text in § 679.20(a)(7)(i)(C)(*4*). This amendment will provide the larger pot vessels more opportunity to harvest the amount of Pacific cod allocated to them under the 2001 harvest specifications.

AFA Inshore Cooperative Allocations

Table 12 of the January 18, 2001, emergency interim rule preamble lists the pollock allocations to the seven inshore catcher vessel pollock cooperatives that have been approved and permitted by NMFS for the 2001 fishing year. These allocations are revised based on corrections to AFA vessels' catch history and Table 12 is amended and published as follows.

TABLE 12.—BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories [1]	Percentage of inshore sector allocation (%)	Annual co-op allocation
Akutan Catcher Vessel Association:			
Aldebaran, Arcturus, Blue Fox, Cape Kiwanda, Columbia, Dominator, Dona Martita, Exodus, Gladiator, Golden Dawn, Golden Pisces, Hazel Lorraine, Intrepid Explorer, Leslie Lee, Lisa Melinda, Majesty, Marcy J, Margaret Lyn, Nordic Explorer, Northern Patriot, Northwest Explorer, Pacific Ram, Pacific Viking, Pegasus, Peggie Jo, Perseverance, Predator, Raven, Royal American, Seeker, Sovereignty, Traveler, Viking Explorer	249,800	28.682	173,466
Arctic Enterprise Association:			
Arctic Explorer, Bristol Explorer, Ocean Explorer, Pacific Explorer	51,022	5.858	35,431
Northern Victor Fleet Cooperative:			
Anita J, Nordic Fury, Pacific Fury, Goldrush, Excalibur II, Half Moon Bay, Sunset Bay, Commodore, Storm Petrel, Poseidon, Royal Atlantic, Miss Berdie	72,517	8.326	50,358

TABLE 12.—BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS—Continued

Cooperative name and member vessels	Sum of member vessel's official catch histories [1]	Percentage of inshore sector allocation (%)	Annual co-op allocation
Peter Pan Fleet Cooperative:			
Amber Dawn, American Beauty, Elizabeth F, Morning Star, Oceanic, Ocean Leader, Topaz, Walter N, Providian	15,347	1.762	10,657
Unalaska Cooperative:			
Alaska Rose, Bering Rose, Destination, Great Pacific, Messiah, Morning Star, Ms Amy, Progress, Sea Wolf, Vanguard, Western Dawn	106,737	12.255	74,121
UniSea Fleet Cooperative:			
Alsea, American Eagle, Argosy, Auriga, Aurora, Defender, Gun-Mar, Nordic Star, Pacific Monarch, Seadawn, Starfish, Starlite, Starward	212,608	24.411	147,640
Westward Fleet Cooperative:			
A.J., Alaskan Command, Alyeska, Arctic Wind, Caitlin Ann, Chelsea K, Hickory Wind, Fierce Allegiance, Ocean Hope 3, Pacific Challenger, Pacific Knight, Pacific Prince, Viking, Westward I	160,257	18.400	111,286
Open access AFA vessels	2,652	0.304	1,841
Total inshore allocation	870,941	100	604,800

[1] Under § 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.
[2] Reserved.

Increase the Contribution of Arrowtooth Flounder CDQ to the CDQ Non-specific Reserve

Regulations at § 679.31(f) establish the CDQ non-specific reserve, comprised of 15 percent of the CDQ reserves of arrowtooth flounder and ''other species'' (skates, sharks, sculpin, and octopus). These species are taken incidentally in the CDQ fisheries. A CDQ group may request that NMFS transfer amounts in the CDQ non-specific reserve back into either its arrowtooth flounder or ''other species'' CDQ categories to reduce the possibility that the catch of these species would limit overall CDQ catch. Species or species groups that comprise the CDQ non-specific reserve are low-valued species for which no target fishery currently exists. These species have an adequate buffer between the TAC and the overfishing limit (OFL).

During the 2001 harvest specification process for the BSAI fisheries, the Bering Sea pollock TAC was set at 1,400,000 mt, based on increases to the 2001 pollock ABC and OFL. This is a 23-percent increase over the 2000 pollock TAC of 1,139,000 mt. The total BSAI TAC for all groundfish must be maintained within a required optimum yield range of 1.4 million to 2.0 million mt. In order to stay within the 2.0 million mt limit, the Council chose to decrease the arrowtooth flounder TAC to approximately 20 percent of the arrowtooth flounder ABC. This meant that the amount of the arrowtooth flounder CDQ reserve and the subsequent contribution of this amount to the CDQ non-specified reserve was proportionately decreased for 2001.

During the first 3 years of the groundfish CDQ fisheries, the non-specific reserve contained sufficient amounts of quota to support the bycatch needs in the ''other species'' CDQ category. Arrowtooth flounder was the largest contributor to the non-specific reserve in 1999 and 2000, the first complete years of groundfish CDQ fishing. For these years, the arrowtooth flounder TAC was set at or close to the acceptable biological catch (ABC) level. However, in 2001, the arrowtooth flounder TAC was set significantly less than the arrowtooth flounder ABC.

At the April 2001 Council meeting, CDQ representatives testified about their concern that vessels fishing for the groups were going to catch the ''other species'' CDQ allocation before they fully harvested target species such as pollock, Pacific cod, sablefish, and Greenland turbot. One of the primary reasons they cited for the shortfall in ''other species'' CDQ was the reduction in the 2001 arrowtooth flounder TAC. The concern about the effect of reducing the arrowtooth flounder TAC on the CDQ fishery was not recognized at the time the Council recommended the 2001 TACs in December 2000. NMFS regulations limit the amount of ''other species'' CDQ available to each CDQ group and prohibit the groups from exceeding their allocations.

In response to the groups' testimony, the Council asked staff to prepare an analysis of alternatives to address whether the catch of target species in the CDQ fisheries are constrained by the ''other species'' CDQ allocation and options to address this issue. Initial review of this analysis is scheduled for the October 2001 meeting and final action at the December 2001 meeting. The Council also stated that the CDQ non-specific reserve was ''intended, in part, to provide adequate 'other species' quota to allow reasonable CDQ fisheries.'' At its June 2001 meeting, the Council requested that NMFS adjust the contribution of arrowtooth flounder CDQ to the CDQ non-specific reserve from 15 percent to 50 percent via emergency rulemaking.

In response to the Council's request, NMFS is amending the CDQ non-specific reserve to increase the contribution of arrowtooth flounder to the CDQ non-specific reserve from 15 percent of the arrowtooth flounder CDQ reserve to 50 percent of the arrowtooth flounder CDQ reserve for the remainder of 2001. This increase will allow the CDQ groups to transfer quota from the CDQ non-specific reserve to the ''other species'' CDQ account to reduce the possibility that the incidental catch of ''other species'' would prevent the CDQ groups from fully harvesting their target species allocations.

The maximum amount of ''other species'' available for harvest in the combined CDQ and non-CDQ fisheries is the aggregate amount of the following components: The open access ITAC (22,525 mt), the CDQ reserve (1,988 mt), and the current amount of arrowtooth flounder in the CDQ non-specific reserve that could be released to the ''other species'' category (248 mt). The sum of these components is 24,761 mt. If 50 percent (826 mt) of the arrowtooth flounder CDQ reserve is moved to the

non-specific CDQ reserve and subsequently released to the ''other species'' CDQ category, the revised total amount of ''other species'' available for harvest in the combined open access and CDQ fisheries would increase to 25,339 mt. This is 578 mt more than the currently available total ''other species'' amount of 24,761 mt. However, the increase in the amount of ''other species'' CDQ available for harvest through transfers from the CDQ non-specific reserve is still less than the combined CDQ and non-CDQ fisheries 2001 ''other species'' TAC of 26,500 mt and will not likely result in the total catch of ''other species'' exceeding the 2001 ''other species'' TAC. NMFS has determined that the TAC, ABC and OFL controls associated with both the ''other species'' and arrowtooth flounder species categories are not compromised by this action.

Gulf of Alaska

Seasons for Pacific Cod TAC in the GOA

This emergency interim rule corrects the January 18, 2001, emergency interim rule preamble for the opening and closing date of the B season Pacific cod fishery by vessels using trawl gear in the Western and Central Regulatory Areas of the GOA. The reasons for changing the season dates is discussed in detail in Part I of this preamble and in the preamble to the amendment to the emergency interim rule published June 13, 2001 (66 FR 31845). Under amendments to § 679.23(d)(4)(ii)(B) in this emergency interim rule, directed fishing for Pacific cod in the B season in the Western and Central Regulatory Areas of the GOA by vessels using trawl gear opens at 1200 hours, A.l.t., September 1, 2001, and closes at 0001 hours, A.l.t., November 1, 2001. The B season for non-trawl vessels directed fishing for Pacific cod in the GOA is changed to 1200 hours A.l.t. September 1, 2001, through 2400 hours A.l.t. December 31, 2001, by amending § 679.23(d)(4)(i)(B).

Pacific Halibut PSC Seasonal Allocation Reapportionment

At its April 2001 meeting, the Council recommended changing the GOA Pacific cod B season to September 1, without recommending changes to the Pacific halibut PSC seasonal allowance. Pacific halibut PSC seasonal allowance was still available starting June 10. At the Council's June 2001, meeting, certain industry representatives expressed their concern that fishermen could start fishing for the other species in the ''shallow water trawl fishery'' and could catch substantial amounts of the Pacific halibut PSC seasonal limit, leaving insufficient amounts of this seasonal limit to support the September 1 Pacific cod fishery.

In response to industry concerns, at its June meeting, the Council recommended that NMFS close by emergency interim rule directed fishing for the shallow-water complex by vessels using trawl gear until July 1 and to reapportion what remained of the original 150 mt seasonal apportionment of the Pacific halibut trawl PSC to the September 1 through October 1 period instead of during the June 10 through July 1 period. Trawl gear bycatch of Pacific halibut in the GOA Pacific cod fishery is deducted from the Pacific halibut PSC seasonal allowance established for the shallow-water complex trawl fishery. Effective June 27, 2001 (66 FR 34852, July 2, 2001), NMFS prohibited directed fishing in the shallow-water complex fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This closure was intended to ensure that remainder of the original June 10 through July 1 halibut PSC allocation is available for reallocating to a September 1 through October 1 season. NMFS has determined that as of July 1, 2001, 100 mt remains of the original 150 mt apportionment of halibut PSC to trawl vessels targeting the shallow-water complex from the June 10 to July 1, 2001 period.

The text of this emergency interim rule incorporates the Council's recommendation to reapportion the remaining 100 mt of the 150 mt Pacific halibut PSC allocated June 10 through July 1 to a new September 1 through October 1 season to provide for the Pacific cod trawl fishery. Accordingly, Tables 24 and 25 of the 2001 harvest specifications (66 FR 7276, January 22, 2001, amended 66 FR 17087, March 29, 2001) are adjusted to read as follows:

TABLE 24.—FINAL 2001 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[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.]

[Values are im mt]

Trawl gear		Hook-and-line gear			
			DSR		
Dates	Amount	Other than DSR	Dates	Amount	Dates
Jan 1–Apr 1	550 (28%)	Jan 1–May 17	205 (70%)	Jan 1–Dec 31	10 (100%)
Apr 1–Jul 1	450 (22%)	May 17–Aug 31	Any rollover		
Jul 1–Oct 1	700 (35%)	Aug 31–Dec 31	85 (30%)		
Oct 1–Dec 31	300 (15%)				
Total	2,000 (100%)		290 (100%)		10 (100%)

TABLE 25.—FINAL 2001 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
Jan. 20–Apr. 1	450	100	550
Apr. 1–Jul. 1	150	300	450
Jul. 1–Sep. 1	200	400	600
Sep. 1–Oct. 1	100	Any rollover	100

TABLE 25.—FINAL 2001 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX—Continued

[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
Subtotal—Jan. 20–Oct. 1	900	800	1,700
Oct. 1–Dec. 31	.....	.....	300
Total	.....	.....	2,000

Unused seasonal apportionments of halibut PSC limits specified for trawl gear will be added to the respective seasonal apportionment for the next season during a current fishing year. No apportionment between shallow-water and deep-water fishery complexes during the October 1 through December 31.

Non-exempt American Fisheries Act (AFA) Catcher Vessel Groundfish Harvest

Non-exempt AFA catcher vessel groundfish harvest in 2001 are shown in Table 27 to the preamble in the January 18, 2001, emergency interim rule. In this emergency interim rule, NMFS is correcting several numerical errors that appeared in the preamble in Table 27 in the January 18, 2001, emergency interim rule and is publishing in this preamble the amended Table 27. In column 3, Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC, the pollock annual ratio in the Southeast Outside District is corrected from 0.3542, to read 0.3642, the Pacific cod ratio in the Western GOA for the offshore component during the A and B seasons is corrected from 0.1206, to read 0.1026, and the Pacific ocean perch ratio in the Eastern GOA is corrected from 0.0255, to read 0.0225. In column 5, 2001 non-exempt AFA catcher vessel sideboard (amounts in mt), the amount for trawl sablefish in the Central and Eastern GOA is corrected from 44 and 7, to read 42 and 6, respectively, and the amount for ''other rockfish'' in the Central GOA is corrected from 3 to 30 mt. These corrected amounts are presented in Table 27 listing the final 2001 GOA groundfish harvest limitations (sideboards).

TABLE 27.—FINAL 2001 GOA NON-EXEMPT AFA CATCHER VESSEL (CV) GROUNDFISH HARVEST LIMITATIONS (SIDEBOARDS)

[Values are in mt]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 Non-Exempt AFA CV catch to 1995–1997 TAC	2001 TAC	2001 Non-Exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only)			
	January 20–March 1			
	Shelikof Strait	0.1672	12,431	2,075
	Shumagin (610)	0.6238	7,707	4,808
	Chirik of (620) (outside Shelikof)	0.1262	560	71
	Kodiak (630) (outside Shelikof)	0.1984	5,474	1,086
	B Season (W/C areas only):		6,206	1,038
	March 15–May 31	0.1672	3,854	2,404
	Shelikof Strait	0.6238		
	Shumagin (610)		280	35
	Chirikof (620) (outside Shelikof)	0.1262	2,737	543
	Kodiak (630) (outside Shelikof)	0.1984		
	C Season (W/C areas only)		10,998	6,861
Pacific code	A Season (W/C areas January 1–June 10		6,546	826
	W inshore	0.1310	9,882	1,295
	offshore	0.1026	1,098	113
	C inshore	0.0542	16,335	885
	offshore	0.0721	1,815	131
	B Season (W/C areas only) Sept. 1–December 31 (non-trawl); Sept. 1–Nov. 1 (trawl).			
	W inshore	0.1310	6,588	863
	C inshore	0.1026	732	75
	offshore	0.0721	1,210	87
	Annual			
	E inshore	0.000	3,206	0
	offshore	0.0078	356	3
Flatfish deep-water	W	0.0000	280	0
	C	0.0620	2,710	168
	E	0.0021	2,310	5
Rex sole	W	0.0043	1,230	5
	C	0.0117	5,660	66
	E	0.0026	2,550	7
Flathead sole	W	0.0129	2,000	26
	C	0.0097	5,000	49

TABLE 27.—FINAL 2001 GOA NON-EXEMPT AFA CATCHER VESSEL (CV) GROUNDFISH HARVEST LIMITATIONS (SIDEBOARDS)—Continued

[Values are in mt]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 Non-Exempt AFA CV catch to 1995–1997 TAC	2001 TAC	2001 Non-Exempt AFA catcher vessel sideboard
	E	0.0008	2,060	2
Flatfish shallow-water	W	0.0260	4,500	117
	C	0.0420	12,950	544
	E	0.0106	1,950	21
Arrow-tooth flounder	W	0.0047	8,000	38
	C	0.0206	25,000	515
	E	0.0016	5,000	8
Sable-fish	W trawl gear	0.0023	402	1
	C trawl gear	0.0384	1,082	42
	E trawl gear	0.0236	271	6
Pacific ocean perch	W	0.0051	1,280	7
	C	0.0692	9,610	655
	E	0.0225	2,620	59
Short-raker/rougheye	W	0.0000	210	0
	C	0.0145	930	13
	E	0.0105	590	6
Other rockfish	W	0.0000	20	0
	C	0.0410	740	30
	E	0.0000	250	0
Northern rockfish	W	0.0005	600	0
	C	0.0307	4,280	131
Pelagic shelf rockfish	W	0.0004	550	0
	C	0.0000	4,480	0
	E	0.0066	1,350	9
Thorny-head rockfish	W	0.0118	420	5
	C	0.0118	970	11
	E	0.0118	920	11
Deferral shelf rockfish	SEO	0.0000	330	0
Atka mackerel	Gulfwide	0.0443	600	27
Other species	Gulfwide	0.0067	13,619	91

Response to Comments

NMFS received one letter of comment in response to the January 18, 2001, emergency interim rule (66 FR 7672). The letter indicated concern over the economic impact of the Steller sea lion protection measures on the freezer longliners fishing for Pacific cod in the BSAI and expressed support for NMFS working with the Council in the development of Steller sea lion protection measures for 2002.

Comment 1. The Comprehensive Biological Opinion provides little data regarding the decline of the Steller sea lions and the relationship to the Pacific cod fisheries. The Comprehensive Biological Opinion refers to the hook-and-line method of fishing as conducive to minimizing adverse effects on Steller sea lions. In spite of this determination, the 2001 protection measures will be economically harmful to the freezer longliner fishery and will impose disproportionate and adverse impacts on this sector with the implementation of closure areas in 2001.

Response. The Comprehensive Biological Opinion contained the best available information at the time the document was prepared on: (1) The importance of Pacific cod to the diet of Steller sea lions; and (2) the competition between fish and Steller sea lions for prey. NMFS has acknowledged that the harvest rates for the Pacific cod hook-and-line sector as reported in the Comprehensive Biological Opinion were higher than actual rates and that future consultations will use the corrected information.

The Steller sea lion protection measures phased-in for 2001 impose some, but not all, of the protection measures specified in the RPA to the Comprehensive Biological Opinion to reduce impacts on industry and coastal communities while maintaining consistency with the goals of the Comprehensive Biological Opinion. As a result, potential impacts in 2001 on the fishing industry and coastal communities have been reduced from what they would have been if the RPA had been fully implemented. Further, the freezer longliner fishery for BSAI Pacific cod typically is spatially distributed over a wide geographic area so that closure of some critical habitat during the second half of 2001 should not impose undue hardship.

For 2002, NMFS has reinitiated consultation on the effects of the pollock, Pacific cod, and Atka mackerel fisheries on the threatened and endangered populations of the Steller sea lions. The consultation will include accurate harvest rates for the Pacific cod hook-and-line fishery and other fisheries. Based on the best scientific and commercial data available, and with input from the Council and the RPA Committee, NMFS will reconsider the potential impact of the hook-and-line gear fisheries on the Steller sea lions and their critical habitat. Based on this consultation, NMFS will implement 2002 protection measures. However, until that consultation is complete, NMFS must take a cautious approach and implement the measures contained in this emergency interim rule extension

and amendments for the second half of 2001.

Comment 2. Closing portions of the Aleutian Islands to freezer hook-and-line vessels will force these vessels into less productive fishing grounds already dominated by trawl and pot gear vessels. As a result, gear conflicts will increase.

Response. NMFS agrees that incidences of gear conflicts may increase if various gear sectors share fishing areas that have not been shared in the past as portions of critical habitat are closed to fishing. Some of these areas also may be less productive. Nonetheless, the critical habitat closures implemented for the Pacific cod fisheries during the second half of 2001 have been modified from those established in the Comprehensive Biological Opinion to better accommodate historical fishing practices while ensuring minimal thresholds established in the Comprehensive Biological Opinion for protection of critical habitat and Steller sea lion pups and non-pups are met.

Comment 3. Hook-and-line vessels will have higher halibut bycatch outside of closed areas, leading to earlier closure of the fishery.

Response. NMFS disagrees. A 2000 draft environmental assessment of the interaction between the Pacific cod fisheries in the BSAI and GOA and Steller sea lions [1] determined that in 1999, the rate of Pacific halibut bycatch was similar inside and outside critical habitat. On June 10, 2001, NMFS prohibited directed fishing for Pacific cod by most vessels using hook-and-line gear (66 FR 31845, June 13, 2001) to allow the Pacific cod hook-and-line seasons to be delayed to August 15 in the BSAI and September 1 in the GOA with this emergency interim rule amendment. The delay in the season will help reduce the amount of halibut bycatch in the summer and will likely allow the Pacific cod hook-and-line fishery to have halibut bycatch allocations available for the fall fishery that would have otherwise been taken in the summer.

Comment 4. If the hook-and-line fleet cannot harvest a large portion of the TAC in the early part of the year, the potential exists that part of the annual TAC will not be harvested and the CDQ portion of the TAC may not be harvested, which is important to Native communities.

Response. The 2001 Steller sea lion protection measures authorized up to 60 percent of the non CDQ TAC to be harvested early in the year and no limitation was placed on the amount of Pacific cod CDQ that could be harvested early in the year. These provisions, as well as the delay of the second season start date from June 10 to September 1, are intended to increase the opportunity to harvest the Pacific cod CDQ reserve and reduce the potential of premature closure of the non CDQ hook-and-line gear Pacific cod fishery due to halibut bycatch restrictions.

Comment 5. The Pacific cod freezer hook-and-line fishery will experience a disproportionate and adverse impact with the implementation of the 40 percent A season and 60 percent B season TAC allocation in 2002.

Response. The 2002 seasonal apportionments of TAC have not been established at this time and comments on the 2002 protection measures are outside the scope of the subject action that implement protection measures for the second half of 2001. NMFS is working with the Council to develop Steller sea lion protection measures, including TAC seasonal allocations for 2002. The impact of Pacific cod TAC allocations will be analyzed in the supplemental environmental impact statement and regulatory impact review being prepared for 2002 Steller sea lion protection measures. This analysis will be considered by the Council and NMFS before 2002 protection measures are implemented.

Comment 6. Freezer hook-and-line vessels do not create ''holes in the prey field''.

Response. See response to Comment 1. NMFS acknowledges that the hook-and-line fishery generally removes fish at rates slower than trawl gear. Nonetheless, removal rates by hook-and-line gear are not inconsequential and will be reassessed in the SEIS and biological opinion being prepared for proposed Steller sea lion protection measures in 2002 and beyond.

Comment 7. Freezer hook-and-line vessels are affected by near shore closures.

Response. NMFS agrees and acknowledges that all groundfish fisheries are affected by the 3 nm groundfish fishing closures around rookeries and haulouts. See also response to comment 1.

Comment 8. The freezer longliner sector is committed to pursuing conservation measures that are supported by sound science.

Response. NMFS commends this commitment.

NMFS received one letter of comment on the March 23, 2001, amendments (66 FR 17083, March 29, 2001) to the emergency interim rule exempting jig vessel off Alaska and vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI from certain Steller sea lion protection measures. In general, the letter did not support the exemptions.

Comment 1. NMFS must rethink its entire RPA proposal from the Comprehensive Biological Opinion.

Response. NMFS has reinitiated consultation on the 2002 Steller sea lion protection measures under development by the Council and the proposed action will be analyzed to determine if it avoids jeopardy to Steller sea lions and adverse modification to their critical habitat. If the 2002 Steller sea lion protection measures are determined to not avoid jeopardy for Steller sea lions or result in adverse modification of their critical habitat, an RPA will be developed.

Comment 2. NMFS' action to exempt specified small non-trawl vessels from critical habitat closures within 3 nm of Steller sea lion haulouts in the BSAI will encourage the use of these areas and further erodes the protections afforded to the most vulnerable segments of the sea lion populations.

Response. NMFS agrees that near shore waters will be more accessible to small non-trawl gear vessels with the exemptions in the amendment to the emergency interim rule. NMFS believes that the important aspect of protection for these sites is maintaining prey availability for the Steller sea lions. As stated in the justification accompanying the amendment, the relatively small harvest of Pacific cod and Atka mackerel by the jig gear fleet and other small non-trawl vessels in the BSAI during the 2001 phase-in year of the RPA poses little concern to Steller sea lions or their critical habitat. In 2000, jig gear vessels in the BSAI harvested no Atka mackerel and only 77 mt of Pacific cod. For comparison, the BSAI 2001 ABC specifications for Atka mackerel and Pacific cod are 69,300 mt and 188,000 mt, respectively. In the GOA, jig gear vessels harvested 42 mt of Pacific cod during the Federal waters fishery. For comparison, the GOA 2001 ABC for Pacific cod is 67,800 mt. The amount of Pacific cod harvested in 2000 in the BSAI by vessels less than 60 ft (18.8 m) LOA using pot or hook-and-line gear was 501 mt, which, by comparison, amounts to only 0.3 percent of the 2001 Pacific cod ABC (188,000 mt). NMFS did not provide relief for small vessels using pot or hook-and-line gear in the GOA because the amount of Pacific cod

[1] Draft Environmental Assessment: Interactions Between the Pacific Cod Fisheries in the Bering Sea, Aleutian Islands, and the Gulf of Alaska and Steller Sea Lions. August 23, 2000. Available from NMFS Alaska Region (See **ADDRESSES**).

harvested by these vessels approached 17 percent of the ABC.

Comment 3. Haulouts and rookeries are traditionally used by generations of sea lions making it important that disturbances in the immediate vicinity of these sites is minimized so that sea lions are not driven away. Oregon studies of rookeries and urchin fisheries show that sea lions were displaced during fishing activities. These disturbances with the small non-trawl gear vessel exemptions are also likely around haulouts.

Response. NMFS acknowledges that near shore activity around rookeries could disturb Steller sea lions and will maintain the 3 nm groundfish fishing closures around all rookeries. It is not known if Steller sea lions on haulouts have the same potential for disturbance from near shore fishing activity, as seen with Oregon sea lions on rookeries and the urchin fishery. NMFS will be reconsidering this issue in the biological opinion being prepared for the 2002 protection measures.

Comment 4. Young-of-the-year Steller sea lions may be in near shore waters around haulouts while their mothers are foraging, and fishing activities may have an adverse effect on these animals.

Response. NMFS agrees that small fishing vessels within 3 nm may interact with Steller sea lions. The specific effect on young-of-the-year animals is not known. However, NMFS determined that the relatively small number of vessels and harvest levels resulting from the exemption likely would not pose irreversible harm to Steller sea lions or their critical habitat during the 2001 phase-in year of the RPA.

Comment 5. Near shore habitat (3 nm or less) around rookeries and haulouts should remain off-limits to all fishing.

Response. See response to comment 3.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this emergency interim rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this emergency interim rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This action has been determined to be significant for purposes of Executive Order 12866 and a regulatory impact review was prepared. Consistent with the National Environmental Policy Act, an environmental assessment was prepared for this action. This rule contains no reporting, recordkeeping, or compliance requirements, and no relevant Federal rules exist that may duplicate, overlap, or conflict with this action.

This amended emergency interim rule is consistent with the objectives for Steller sea lion protection measures implemented in 2001 under section 209(c)(6) of Pub. L. No. 106–554, the ESA, and other applicable law. This action also will minimize bycatch rates of salmon and Pacific halibut in the pollock and Pacific cod fisheries while providing for continued temporal and spatial distribution of the pollock and Pacific cod fisheries. As such, the opportunity for harvest of pollock and Pacific cod will be optimized under prohibited species catch restrictions and the desire to avoid high bycatch rates of chum salmon in the Bering Sea and GOA groundfish fisheries. The extension and amendments to the emergency interim rule must be in place by July 18, 2001, to allow the continued management of the 2001 groundfish fisheries with Steller sea lion protection measures. Thus, this action must be implemented as soon as practical and in a manner that makes it impracticable to provide prior notice and an opportunity for public comment. Therefore, good cause exists to waive those requirements pursuant to 5 U.S.C. 553(b)(3). For the same reason, good cause exists to waive the 30-day delay in effective date. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived. Because prior notice and opportunity for public comment are not required for this emergency interim rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are not applicable. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 12, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The effective date period for the amendments to the following sections, published January 22, 2001, at 66 FR 7276, is extended through December 31, 2001:

Sections

679.2
679.5(f)(4)
679.7(a)(17)
679.7(j)
679.20(a)(5)(i)(B)(*1*) and (a)(5)(ii)(C)
679.20(c)(2)(iii)
679.22(a)(12)(iii)(B), (C), and (D)
679.23(d)(3)
679.23(e)(4)(iv) and (e)(4)(v)
679.23(e)(5) and (e)(6)(ii)
679.23 (i)

2. The suspension date period for the amendments to the following sections, published January 22, 2001, at 66 FR 7276, is extended through December 31, 2001:

Sections

679.7(a)(11) and (b)
679.20(a)(5)(i)(A) and (a)(5)(ii)(B)
679.20(c)(2)(ii)
679.22(a)(7) and (a)(8)
679.22(b)(2)
679.23(d)(2)
679.23(e)(2) and (e)(4)(iii)

2a. The suspension date period for § 679.23(e)(6)(i), published March 29, 2001, at 66 FR 17087, is extended through December 31, 2001.

3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 10–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

4. In § 679.20, paragraph (a)(7)(i)(C)(*2*) is suspended and paragraphs (a)(5)(i)(C), (a)(7)(i)(C)(*4*), and (c)(7) are added to read as follows:

§ 679.20 General limitations.

(a) * * *

(5) * * *

(i) * * *

(C) *AFA allocations (applicable through December 31, 2001).* The pollock TAC apportioned to each BSAI subarea or district, after subtraction of the 10 percent CDQ reserve under § 679.31(a), will be allocated as follows:

(*1*) *Incidental catch allowance.* The Regional Administrator will establish an incidental catch allowance to account for projected incidental catch of pollock by vessels engaged in directed fishing for groundfish other than pollock and by vessels harvesting non-pollock CDQ. If during a fishing year the Regional Administrator determines that the incidental catch allowance has been set too high or too low, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates pollock to or from the directed pollock fisheries to or from the incidental catch allowance according to the proportions established under § 679.20(a)(5)(i)(C)(*2*).

(*2*) *Directed fishing allocations.* The remaining pollock TAC apportioned to each BSAI subarea or district will be allocated for directed fishing as follows:

(*i*) 50 percent to vessels harvesting pollock for processing by AFA inshore processors,

(*ii*) 40 percent to vessels harvesting pollock for processing by catcher/processors, with not less than 8.5 percent of this allocation made available for harvest by AFA catcher vessels and not more than 0.5 percent of this allocation made available for harvest by restricted AFA catcher/processors, and

(*iii*) 10 percent to vessels harvesting pollock for processing by AFA motherships.

(*3*) *Allocations for fishing by inshore cooperatives and vessels not participating in cooperatives.* The TAC allocated to vessels harvesting pollock for processing by AFA inshore processors will be divided into separate allocations for cooperatives and vessels not participating in cooperatives. The TAC allocation for cooperative fishing will be equal to the aggregate annual allocations of all inshore cooperatives that receive pollock allocations under § 679.61(e). The TAC allocation for fishing for vessels not participating in cooperatives will be equal to the allocation made to vessels harvesting pollock for processing by AFA inshore processors minus the TAC allocation for cooperative fishing.

(*4*) *Excessive harvesting share.* NMFS will establish an excessive harvesting share limit equal to 17.5 percent of the sum of the allocations made under § 679.20(a)(5)(i)(C)(*2*). The excessive share limit will be published in the proposed, interim, and final specifications.

* * * * *

(7) * * *

(i) * * *

(C) * * *

(*4*) *(Applicable through December 31, 2001).* Harvest of Pacific cod made by catcher vessels less than 60 ft (18.3 m) LOA using pot gear:

(*i*) Will accrue against the 18.3 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iii*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is open.

(*ii*) Will accrue against the 1.4 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is closed.

* * * * *

(c) * * *

(7) *BSAI and Western and Central GOA Pacific cod season allocations (applicable through December 31, 2001).* (i) The annual TAC of Pacific cod in the BSAI and the Western and Central GOA will be divided, after the subtraction of any reserves and incidental catch between the A Season and B Season as provided in §§ 679.23(d)(4) and (e)(6).

(ii) Each season apportionment will be allocated among the various sectors as provided in §§ 679.20(a)(6)(iii) and (a)(7).

(iii) Any overage or underage of Pacific cod harvest from the A season may be subtracted from or added to the subsequent B season.

* * * * *

5. In § 679.22, paragraph (a)(5)(i) is suspended and paragraphs (a)(5)(iv), (a)(11), (a)(12)(i), (a)(12)(ii), (a)(12)(iii)(A), (a)(12)(iv) through (viii), (a)(13), (b)(3), (b)(6), and (b)(7) are added to read as follows:

§ 679.22 Closures.

* * * * *

(a) * * *

(5) * * *

(iv) *AFA catcher/processor restrictions (applicable through December 31, 2001).* A catcher/processor or vessel authorized to fish for BSAI pollock under § 679.4(l)(2) is prohibited from conducting directed fishing for pollock in the CVOA during the C/D pollock season defined at § 679.23(e)(5)(i)(B).

* * * * *

(11) *Steller sea lion protection measures—Bering Sea subarea and Bogoslof Foraging Area (applicable through December 31, 2001)*—(i) *Bogoslof Foraging Area*—(A) *Boundaries.* The Bogoslof Foraging area consists of all waters of Area 518 as described in Figure 1 of this part south of a straight line connecting 55°00′ N/170°00′ W, and 55°00′ N/168°11′4.75″ W;

(B) *Fishing prohibition.* All waters within the Bogoslof Foraging area are closed to directed fishing for pollock, Pacific cod, and Atka mackerel.

(ii) Directed fishing for groundfish by federally permitted vessels is prohibited within 3 nm of selected sites. These sites are listed on Table 21 of this part and are identifiable by ''Bering Sea'' in column 2.

(iii) Directed fishing for Pacific cod is prohibited within the Pacific cod no fishing zones around selected sites. These sites are listed in Table 23 of this part and are identifiable by ''Bering Sea'' in column 2 and either ''20'' or ''10'' in column 7.

(iv) Directed fishing for pollock is prohibited within pollock no fishing zones around selected sites. These sites are listed in Table 22 of this part and are identifiable by ''Bering Sea'' in column 2 and either ''20'' or ''10'' in column 7.

(v) Directed fishing for Atka mackerel is prohibited within Atka mackerel no fishing zones around selected sites. These sites are listed in Table 24 of this part and are identifiable by ''Bering Sea'' in column 2 and either ''20'' or ''10'' in column 7.

(12) *Steller sea lion protection measures—Aleutian Islands Subarea (applicable through December 31, 2001)*—(i) *Pollock closure.* Directed fishing for pollock within the Aleutian Islands subarea is prohibited at all times.

(ii) *Seguam foraging area.* (A) The Seguam foraging area is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30′ W long. and 172°30′ W.

(B) Directed fishing for Pacific cod and Atka mackerel is prohibited in the Seguam Foraging area as described in paragraph (a)(12)(ii)(A) of this section.

(iii) *Western and Central Aleutian Islands closures.* (A) *General.* Trawling is prohibited within 20 nm of selected rookery and haulout sites in the Aleutian Islands subarea when the Regional Administrator announces by notification in the **Federal Register** that the criteria for a trawl closure in a district set out in paragraph (a)(12)(iii)(B) of this section have been met. These sites are listed in Table 21 of this part and are identifiable by ''Aleutian Islands'' in column 2 and by coordinates west of 177° W long. and east of 177° E long. for the Central area (542), and west of 177° E long. for the Western area (543) in column 4. Rat Island/Krysi Point and Amchitka Island/Cape Ivakin are excluded from the trawling prohibition described in this paragraph.

* * * * *

(iv) Directed fishing for groundfish by federally permitted vessels is prohibited within 3 nm of selected sites. These sites are listed in Table 21 of this part and are identifiable by ''Aleutian Islands'' in column 2.

(v) Directed fishing for Pacific cod by all gear types is prohibited within the Pacific cod no fishing zones around selected sites. These sites are listed in Table 23 of this part and are identifiable by ''Aleutian Islands'' in column 2 and either ''20'' or ''10'' in column 7.

(vi) Directed fishing for Pacific cod by trawl gear is prohibited within the trawl Pacific cod no fishing zones around selected sites. These sites are listed in Table 23 of this part and are identifiable by ''Aleutian Islands'' in column 2 and ''20'' in column 8.

(vii) Directed fishing for Pacific cod by non-trawl gear is prohibited within the non-trawl gear Pacific cod no fishing

zones around selected sites. These sites are listed in Table 23 of this part and are identifiable by ''Aleutian Islands'' in column 2 and ''3'' in column 9.

(viii) Directed fishing for Atka mackerel is prohibited within Atka mackerel no fishing zones around selected sites. These sites are listed in Table 24 of this part and are identifiable by ''Aleutian Islands'' in column 2 and either ''20'' or ''10'' in column 7.

(13) *Fishing Prohibition Exemptions (applicable through December 31, 2001).* The following vessels are exempt from fishing prohibitions described in this section.

(i) For federally permitted vessels directed fishing for groundfish:

(A) All jig vessels are exempt from 3 nm closures around selected sites. These sites are listed in Table 21 and identifiable by a ''Bering Sea'' or ''Aleutian Islands'' in column 2 and ''Y'' in column 10.

(B) All vessels less than 60 ft (18.3 m) LOA using non-trawl gear are exempt from the 3 nm fishing closure around selected sites. These sites are listed in Table 21 and identifiable by a ''Bering Sea'' or ''Aleutian Islands'' in column 2 and a ''Y'' in column 9.

(ii) For vessels directed fishing for Atka mackerel:

(A) All vessels using jig gear and vessels less than 60 ft (18.3 m) LOA using non-trawl gear are exempt from the fishing prohibitions of paragraphs (a)(11)(i)(B) and (a)(12)(ii)(B) of this section and from Atka mackerel no fishing zones for all sites listed in Table 24 of this part.

(B) All pot vessels are exempt from the Atka mackerel no fishing zones for selected sites. These sites are listed in Table 24 of this part and identifiable by a ''Bering Sea'' in column 2 and a ''Y'' in column 8.

(iii) For vessels directed fishing for Pacific cod:

(A) All vessels using jig gear are exempt from the fishing prohibitions of paragraphs (a)(11)(i)(B) and (a)(12)(ii)(B) of this section and from Pacific cod no fishing zones for selected sites. These sites are listed in Table 23 of this part and identifiable by a ''Bering Sea'' or ''Aleutian Islands'' in column 2.

(B) All vessels less than 60 ft (18.3 m) LOA using non-trawl gear are exempt from the fishing prohibitions of paragraphs (a)(11)(i)(B) and (a)(12)(ii)(B) of this section and from Pacific cod no fishing zones for selected sites. These sites are listed in Table 23 of this part and identifiable by a ''Bering Sea'' or ''Aleutian Islands'' in column 2.

(C) All pot vessels are exempt from Pacific cod no fishing zones for selected sites. These sites are listed in Table 23 of this part and identifiable by a ''Bering Sea'' in column 2 and a ''Y'' in column 11.

(iv) All vessels less than 60 ft (18.3 m) LOA using non-trawl gear in directed fishing for pollock are exempt from the fishing prohibitions of paragraphs (a)(11)(i)(B) and (a)(12)(ii)(B) of this section and from pollock no fishing zones for selected sites. These sites are listed in Table 22 of this part and identifiable by a ''Bering Sea'' in column 2 and a ''Y'' in column 8.

* * * * *

(b) * * *

(3) *Steller sea lion protection measures (applicable through December 31, 2001)*—(i) *Shelikof Strait Conservation Area*—(A) *Boundaries.* The Shelikof Strait conservation area consists of the area bound by straight lines and shoreline connecting the following coordinates in the following order:

58°51′ N lat. 153°15′ W long.

58°51′ N lat. 152°00′ W long.

and the intersection of the 152°00′ W long. with Afognak Island; aligned counterclockwise around the shoreline of Afognak, Kodiak, and Raspberry Islands to:

57°00′ N lat. 154°00′ W long.
56°30′ N lat. 154°00′ W long.
56°30′ N lat. 155°00′ W long.
56°00′ N lat. 155°00′ W long.
56°00′ N lat. 157°00′ W long.

and the intersection of 157°00′ W long. with the Alaska Peninsula.

(B) Directed fishing for pollock, Pacific cod, and Atka mackerel is prohibited in all waters of the Shelikof Strait conservation area that lie east of Kodiak Island to the east of 154° W long.

(ii) Directed fishing for groundfish by federally permitted vessels is prohibited within 3 nm of selected sites. These sites are listed in Table 21 of this part and are identifiable by ''Gulf of Alaska'' in column 2.

(iii) Directed fishing for Pacific cod is prohibited within Pacific cod no fishing zones around selected sites. These sites are listed in Table 23 of this part and are identifiable by ''Gulf of Alaska'' in column 2 and either ''20'' or ''10'' in column 7.

(iv) Directed fishing for pollock is prohibited within pollock no fishing zones around selected sites. These sites are listed in Table 22 of this part and are identifiable by ''Gulf of Alaska'' in column 2 and either ''20'' or ''10'' in column 7.

* * * * *

(6) Chiniak Gully Research Area (applicable through December 31, 2001)—(i) *Description of Chiniak Gully Research Area.* The Chiniak Gully Research Area is defined as that part of statistical Area 630 bounded by straight lines connecting the coordinates in the order listed:

57.81° N lat., 152.37° W long.;
57.81° N lat., 151.85° W long.;
57.22° N lat., 150.64° W long.;
56.98° N lat., 151.27° W long.;
57.62° N lat., 152.16° W long.; and hence counterclockwise along the shoreline of Kodiak Island to 57.81° N lat., 152.37° W long.

(ii) *Closure.* (A) The Chiniak Gully Research Area is closed to vessels using trawl gear from August 1 to a date no later than September 20, except that trawl gear may be tested in the manner described at § 679.24(d)(2) in the Kodiak Test Area defined at § 679.24(d)(4)(i) and illustrated in Figure 7 to this part.

(B) Prior to September 20, the Regional Administrator may publish notification in the **Federal Register** rescinding the trawl closure in the Chiniak Gully Research Area described in paragraph (b)(6)(ii)(A) of this section.

(7) *Fishing Prohibition Exemptions (applicable through December 31, 2001).* The following vessels are exempt from fishing prohibitions described in this section.

(i) All jig vessels directed fishing for groundfish are exempt from 3 nm closures around selected sites. These sites are listed in Table 21 of this part and identifiable by a ''Gulf of Alaska'' in column 2 and a ''Y'' in column 10.

(ii) For vessels directed fishing for Pacific cod:

(A) All vessels using jig gear are exempt from the fishing prohibitions of paragraph (b)(3)(i)(B) of this section and from Pacific cod no fishing zones for selected sites. These sites are listed in Table 23 of this part and identifiable by a ''Gulf of Alaska'' in column 2.

(B) All vessels less than 60 ft (18.3 m) LOA using non-trawl gear are exempt from the fishing prohibitions of paragraph (b)(3)(i)(B) of this section and from Pacific cod no fishing zones for selected sites. These sites are listed in Table 23 of this part and identifiable by a ''Gulf of Alaska'' in column 2 and a ''Y'' in column 10.

(iii) All vessels less than 60 ft (18.3 m) LOA using non-trawl gear in directed fishing for pollock are exempt from the fishing prohibitions of paragraph (b)(3)(i)(B) of this section and from pollock no fishing zones for selected sites. These sites are listed in Table 22 of this part and identifiable by a ''Gulf of Alaska'' in column 2 and a ''Y'' in column 8.

* * * * *

6. In § 679.23, paragraphs (d)(4) and (e)(6)(iii) are added to read as follows:

§ 679.23 Seasons.

(d) * * *

(4) *Directed fishing for Pacific cod (applicable through December 31, 2001)*—(i) *Non-trawl gear.* Subject to other provisions of this part, directed fishing for Pacific cod with non-trawl gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1, through 2400 hours A.l.t., December 31.

(ii) *Trawl gear.* Subject to other provisions of this part, directed fishing for Pacific cod with trawl gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1, through 0001 hours A.l.t., November 1.

* * * * *

(e) * * *

(6) * * *

(iii) *Non-trawl gear (applicable through December 31, 2001).* Except for vessels using jig gear and for vessels less than 60 ft (18.3 m) LOA using pot and hook-and-line gear, subject to other provisions of this part, directed fishing for Pacific cod with non-trawl gear in the BSAI is authorized only during the following two seasons:

(A) *A season.* From 0001 hours A.l.t., January 1, through 1200 hours A.l.t., June 10; and

(B) *B season.* (*1*) For vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear, from 1200 hours A.l.t., August 15, through 2400 hours A.l.t., December 31.

(*2*) For vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear, from 1200 hours A.l.t., September 1, through 2400 hours A.l.t., December 31.

* * * * *

7. In § 679.31, paragraph (f) is suspended and paragraph (g) is added to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(g) *Non-specific CDQ reserve (applicable through December 31, 2001).* Annually, NMFS will apportion 50 percent of the arrowtooth flounder CDQ and 15 percent of the ''other species'' CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group's non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific reserve to the CDQ group's arrowtooth flounder or ''other species'' CDQ is a technical amendment to a community development plan as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

8. Tables 21, 22, 23, and 24 to part 679 are added to read as follows:

BILLING CODE 3510–22–P

Table 21 to 50 CFR Part 679 Steller Sea Lion Protection Areas 3nm No Groundfish Fishing Sites

Column Number 1	2	3	4	5	6	7	8	9	10
Site name	Management Region	Boundaries from		Boundaries to [1]		Site Type	No transit [2] 3 nm	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from 3 nm fishing closure[3]	Jig vessels exempt from 3 nm fishing closure[4]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)				
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			H		Y	Y
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			H		Y	Y
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			H		Y	Y
St Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			H		Y	Y
St Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			H		Y	Y
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			R	Y		
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			H		Y	Y
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			H		Y	Y
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			H		Y	Y
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			H		Y	Y
Attu I./Cape Wrangell	Aleutian Islands	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	R	Y		
Agattu I./Gillon Pt	Aleutian Islands	52 24.13 N	173 21.31 E			R	Y		
Attu I./Chirikof Pt.	Aleutian Islands	52 49.75 N	173 26.00 E			H		Y	Y
Agattu I./Cape Sabak	Aleutian Islands	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	R	Y		
Alaid I.	Aleutian Islands	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	H		Y	Y
Shemya I.	Aleutian Islands	52 44.00 N	174 08.70 E			H		Y	Y
Buldir I.	Aleutian Islands	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	R	Y		
Kiska I./Cape St. Stephen	Aleutian Islands	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	R	Y		
Kiska I./Sobaka & Vega	Aleutian Islands	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	H		Y	Y
Kiska I./Lief Cove	Aleutian Islands	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	R	Y		
Kiska I./Sirius Pt.	Aleutian Islands	52 08.50 N	177 36.50 E			H		Y	Y
Tanadak I. (Kiska)	Aleutian Islands	51 56.80 N	177 46.80 E			H		Y	Y
Segula I.	Aleutian Islands	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	H		Y	Y
Ayugadak Point	Aleutian Islands	51 45.36 N	178 24.30 E			R	Y		
Rat I./Krysi Pt.	Aleutian Islands	51 49.98 N	178 12.35 E			H		Y	Y
Little Sitkin I.	Aleutian Islands	51 59.30 N	178 29.80 E			H		Y	Y
Amchitka I./Column Rocks	Aleutian Islands	51 32.32 N	178 49.28 E			R	Y		
Amchitka I./East Cape	Aleutian Islands	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	R	Y		
Amchitka I./Cape Ivakin	Aleutian Islands	51 24.46 N	179 24.21 E			H		Y	Y
Semisopochnoi/Petrel Pt.	Aleutian Islands	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	R	Y		
Semisopochnoi I./Pochnoi Pt.	Aleutian Islands	51 57.30 N	179 46.00 E			R	Y		
Amatignak I./Nitrof Pt.	Aleutian Islands	51 13.00 N	179 07.80 W			H		Y	Y
Unalga & Dinkum Rocks	Aleutian Islands	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	H		Y	Y
Ulak I./Hasgox Pt.	Aleutian Islands	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	R	Y		
Kavalga I.	Aleutian Islands	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	H		Y	Y
Tag I.	Aleutian Islands	51 33.50 N	178 34.50 W			R	Y		
Ugidak I.	Aleutian Islands	51 34.95 N	178 30.45 W			H		Y	Y
Gramp Rock	Aleutian Islands	51 28.87 N	178 20.58 W			R	Y		

Column Number 1	2	3	4	5	6	7	8	9	10
Site name	Management Region	Boundaries from		Boundaries to [1]		Site Type	No transit [2] 3 nm	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from 3 nm fishing closure[3]	Jig vessels exempt from 3 nm fishing closure[4]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)				
Tanaga I./Bumpy Pt.	Aleutian Islands	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	H		Y	Y
Bobrof I.	Aleutian Islands	51 54.00 N	177 27.00 W			H		Y	Y
Kanaga I./Ship Rock	Aleutian Islands	51 46.70 N	177 20.72 W			H		Y	Y
Kanaga I./North Cape	Aleutian Islands	51 56.50 N	177 09.00 W			H		Y	Y
Adak I.	Aleutian Islands	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	R	Y		
Little Tanaga Strait	Aleutian Islands	51 49.09 N	176 13.90 W			H		Y	Y
Great Sitkin I.	Aleutian Islands	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	H		Y	Y
Anagaksik I.	Aleutian Islands	51 50.86 N	175 53.00 W			H		Y	Y
Kasatochi I.	Aleutian Islands	52 11.11 N	175 31.00 W			R	Y		
Atka I./N. Cape	Aleutian Islands	52 24.20 N	174 17.80 W			H		Y	Y
Amlia I./Sviech. Harbor	Aleutian Islands	52 01.80 N	173 23.90 W			H		Y	Y
Sagigik I.	Aleutian Islands	52 00.50 N	173 09.30 W			H		Y	Y
Amlia I./East	Aleutian Islands	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	H		Y	Y
Tanadak I. (Amlia)	Aleutian Islands	52 04.20 N	172 57.60 W			H		Y	Y
Agligadak I.	Aleutian Islands	52 06.09 N	172 54.23 W			R	Y		
Seguam I./Saddleridge Pt.	Aleutian Islands	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	R	Y		
Seguam I./Finch Pt.	Aleutian Islands	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	H		Y	Y
Seguam I./South Side	Aleutian Islands	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	H		Y	Y
Amukta I. & Rocks	Aleutian Islands	52 27.25 N	171 17.90 W			H		Y	Y
Chagulak I.	Aleutian Islands	52 34.00 N	171 10.50 W			H		Y	Y
Yunaska I.	Aleutian Islands	52 41.40 N	170 36.35 W			R	Y		
Uliaga	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	H		Y	Y
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			H			Y
Kagamil	Bering Sea	53 02.10 N	169 41.00 W			H		Y	Y
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			H			Y
Adugak I.	Bering Sea	52 54.70 N	169 10.50 W			R	Y		
Umnak I./Cape Aslik	Bering Sea	53 25.00 N	168 24.50 W			H		Y	Y
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			R	Y		
Bogoslof I./Fire Island	Bering Sea	53 55.69 N	168 02.05 W			R	Y		
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			H			Y
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			H			Y
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			H			Y
Unalaska/Bishop Pt	Bering Sea	53 58.40 N	166 57.50 W			H		Y	Y
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	H		Y	Y
Unalaska I./Cape Sedanka	Gulf of Alaska	53 50.50 N	166 05.00 W			H			Y
Old Man Rocks	Gulf of Alaska	53 52.20 N	166 04.90 W			H			Y
Akutan I./Cape Morgan	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	R	Y		

Column Number 1	2	3	4	5	6	7	8	9	10
Site name	Management Region	Boundaries from		Boundaries to [1]		Site Type	No transit [2] 3 nm	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from 3 nm fishing closure[3]	Jig vessels exempt from 3 nm fishing closure[4]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)				
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	R	Y		
Rootok	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	H			Y
Tanginak I.	Gulf of Alaska	54 12.00 N	165 19.40 W			H			Y
Tigalda/Rocks NE	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	H			Y
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			H		Y	Y
Aiktak	Gulf of Alaska	54 10.99 N	164 51.15 W			H			Y
Ugamak I.	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	R	Y		
Round (GOA)	Gulf of Alaska	54 12.05 N	164 46.60 W			H			Y
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			R	Y		
Amak I. and rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	H		Y	Y
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			H			Y
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			H			Y
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			H			Y
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			R	Y		
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			R	Y		
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			R	Y		
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			H			Y
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	H			Y
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			H			Y
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			H			Y
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	H			Y
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			H			Y
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	R	Y		
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			H			Y
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			R	Y		
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			H			Y
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			H			Y
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			H			Y
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			H			Y
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	H			Y
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	R	Y		
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			H			Y
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	R	Y		
Puale Bay	Gulf of Alaska	57 40.60 N	155 23.10 W			H			Y
Kodiak/Cape Ikolik	Gulf of Alaska	57 17.20 N	154 47.50 W			H			Y
Takli I.	Gulf of Alaska	58 01.75 N	154 31.25 W			H			Y
Cape Kuliak	Gulf of Alaska	58 08.00 N	154 12.50 W			H			Y
Cape Gull	Gulf of Alaska	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	H			Y
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			H			Y
Sitkinak/Cape Sitkinak	Gulf of Alaska	56 34.30 N	153 50.96 W			H			Y
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			H			Y
Twoheaded I.	Gulf of Alaska	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	H			Y

Column Number 1	2	3	4	5	6	7	8	9	10
Site name	Management Region	Boundaries from		Boundaries to [1]		Site Type	No transit [2] 3 nm	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from 3 nm fishing closure[3]	Jig vessels exempt from 3 nm fishing closure[4]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)				
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			H			Y
Kodiak/Cape Barnabas	Gulf of Alaska	57 10.20 N	152 53.05 W			H			Y
Kodiak/Gull Point	Gulf of Alaska	57 21.45 N	152 36.30 W			H			Y
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			H			Y
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			H			Y
Ugak I.	Gulf of Alaska	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	H			Y
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			H			Y
Long I.	Gulf of Alaska	57 46.82 N	152 12.90 W			H			Y
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			H			Y
Kodiak/Cape Chiniak	Gulf of Alaska	57 37.90 N	152 08.25 W			H			Y
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			R	Y		
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			H			Y
Marmot I.	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	R	Y		
Nagahut Rocks	Gulf of Alaska	59 06.00 N	151 46.30 W			H			Y
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			H			Y
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			H			Y
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	R	Y		
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			H			Y
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			H			Y
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			H			Y
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	H			Y
Point Elrington	Gulf of Alaska	59 56.00 N	148 15.20 W			H			Y
Perry I.	Gulf of Alaska	60 44.00 N	147 54.60 W			H			Y
The Needle	Gulf of Alaska	60 06.64 N	147 36.17 W			H			Y
Point Eleanor	Gulf of Alaska	60 35.00 N	147 34.00 W			H			Y
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			R			
Glacier Island	Gulf of Alaska	60 51.30 N	147 14.50 W			H			Y
Seal Rocks (Cordova)	Gulf of Alaska	60 09.78 N	146 50.30 W			R			
Cape Hinchinbrook	Gulf of Alaska	60 14.00 N	146 38.50 W			H			Y
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			H			Y
Hook Point	Gulf of Alaska	60 20.00 N	146 15.60 W			H			Y
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			H			Y

H = haulout

R = rookery

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 50 CFR 223.202(a)(2)(i) for regulations regarding 3 nm no transit zones.

[3] See 679.22(a)(14)(B)

[4] See 679.22(a)(14)(A) and (b)(8)

Table 22 to 50 CFR Part 679 Steller Sea Lion Protection Areas for Pollock Fisheries

Column Number 1	2	3	4	5	6	7	8
Site name	Management Region	Boundaries from		Boundaries to [1]		Pollock no fishing zone[2,7] (nm)	Vessels < 60 Ft (18.3m) using non-trawl gear exempt from pollock fishing closures[3]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)		
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20	Y
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20	Y
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20	Y
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10	Y
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20	Y
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20	Y
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			20	
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			20	
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			20	
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			20	
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			20	
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			20	
Unalaska/Bishop Pt	Bering Sea	53 58.40 N	166 57.50 W			10	Y
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	Y
Unalaska I./Cape Sedanka	Gulf of Alaska	53 50.50 N	166 05.00 W			20	
Old Man Rocks	Gulf of Alaska	53 52.20 N	166 04.90 W			20	
Akutan I./Cape Morgan	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	Y
Rootok	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	
Tanginak I.	Gulf of Alaska	54 12.00 N	165 19.40 W			20	
Tigalda/Rocks NE	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			10	Y
Aiktak	Gulf of Alaska	54 10.99 N	164 51.15 W			20	
Ugamak I.	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	
Round (GOA)	Gulf of Alaska	54 12.05 N	164 46.60 W			20	
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			10	Y
Amak I. and rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	Y
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			10	Y
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			10	Y
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			10	Y
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			10	Y
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			10	Y
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			10	Y
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			10	Y
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10	Y
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			10	Y
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			10	Y
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	10	Y
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			10	Y

Column Number 1	2	3	4	5	6	7	8
Site name	Management Region	Boundaries from		Boundaries to [1]		Pollock no fishing zone[2,7] (nm)	Vessels < 60 Ft (18.3m) using non-trawl gear exempt from pollock fishing closures[3]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)		
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	10	Y
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			10	Y
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			10	Y
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			10	Y
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			10	Y
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			20	
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			20	
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20	
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			20	
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			20	Y
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			20	Y
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			20	Y
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			20	Y
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			20	Y
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			20	Y
Long I.[4]	Gulf of Alaska	57 46.82 N	152 12.90 W			20	Y
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			20	Y
Kodiak/Cape Chiniak[4,6]	Gulf of Alaska	57 37.90 N	152 08.25 W			20	Y
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			20	
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			20	Y
Marmot I.	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	20	
Nagahut Rocks	Gulf of Alaska	59 06.00 N	151 46.30 W			20	Y
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			20	Y
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			20	Y
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20	
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			20	Y
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			20	Y
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			20	Y
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	20	Y
Point Elrington[5]	Gulf of Alaska	59 56.00 N	148 15.20 W			20	
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			20	
Seal Rocks (Cordova)	Gulf of Alaska	60 09.78 N	146 50.30 W			20	
Cape Hinchinbrook	Gulf of Alaska	60 14.00 N	146 38.50 W			20	
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			20	
Hook Point	Gulf of Alaska	60 20.00 N	146 15.60 W			20	
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			20	

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 679.22(a)(11)(v) and (b)(3)(v).

[3] See 679.22(a)(14)(iv) and (b)(8)(iii).

[4] Pollock fishing closure to 10 nm from October 1 through December 31.

[5] Pollock fishing closure extends 20 nm into federal waters outside of Prince William Sound only.

[6] The pollock no fishing area extends in an arc from 3nm to 20 nm to a line connecting the point 57°31'3" N lat./152°17'48" W long. with the point 57°24'36" N lat./151° 40'29" W long

[7] No fishing zones are the waters within 3 nm to the nm specified in columns 7 around each site.

Table 23 to 50 CFR Part 679 Steller Sea Lion Protection Areas for Pacific Cod Fisheries

Column Number 1	2	3	4	5	6	7	8	9	10	11
Site name	Management Region	Boundaries from		Boundaries to [1]		All P. Cod no fishing zone[3, 8]	Trawl Gear P. Cod no fishing Zone[4, 8]	Non-trawl Gear P. Cod no fishing Zone[5, 8]	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from column 7 P. cod fishing closures[6]	All pot vessels exempt from P. cod fishing closures[7]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	(nm)	(nm)	(nm)		
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20			Y	Y
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20			Y	Y
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20			Y	Y
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10			Y	Y
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20			Y	Y
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20			Y	Y
Attu I./Cape Wrangell	Aleutian Island	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E		20	3		
Agattu I./Gillon Pt	Aleutian Island	52 24.13 N	173 21.31 E				20	3		
Attu I./Chirikof Pt.	Aleutian Island	52 49.75 N	173 26.00 E				20			
Agattu I./Cape Sabak	Aleutian Island	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E		20	3		
Alaid I.	Aleutian Island	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E		20			
Shemya I.	Aleutian Island	52 44.00 N	174 08.70 E				20			
Buldir I.	Aleutian Island	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20			Y	
Kiska I./Cape St. Stephen	Aleutian Island	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E		20	3		
Kiska I./Sobaka & Vega	Aleutian Island	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E		20			
Kiska I./Lief Cove	Aleutian Island	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E		20	3		
Kiska I./Sirius Pt.	Aleutian Island	52 08.50 N	177 36.50 E				20			
Tanadak I. (Kiska)	Aleutian Island	51 56.80 N	177 46.80 E				20			
Segula I.	Aleutian Island	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E		20			
Ayugadak Point	Aleutian Island	51 45.36 N	178 24.30 E				20	3		
Rat I./Krysi Pt.	Aleutian Island	51 49.98 N	178 12.35 E				20			
Little Sitkin I.	Aleutian Island	51 59.30 N	178 29.80 E				20			
Amchitka I./Column Rocks	Aleutian Island	51 32.32 N	178 49.28 E				20	3		
Amchitka I./East Cape	Aleutian Island	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E		20	3		
Amchitka I./Cape Ivakin	Aleutian Island	51 24.46 N	179 24.21 E				20			
Semisopochnoi/Petrel Pt.	Aleutian Island	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E		20	3		
Semisopochnoi I./Pochnoi Pt.	Aleutian Island	51 57.30 N	179 46.00 E				20	3		
Amatignak I./Nitrof Pt.	Aleutian Island	51 13.00 N	179 07.80 W				20			
Unalga & Dinkum Rocks	Aleutian Island	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W		20			
Ulak I./Hasgox Pt.	Aleutian Island	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W		20	3		
Kavalga I.	Aleutian Island	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W		20			
Tag I.	Aleutian Island	51 33.50 N	178 34.50 W				20	3		
Ugidak I.	Aleutian Island	51 34.95 N	178 30.45 W				20			
Gramp Rock	Aleutian Island	51 28.87 N	178 20.58 W				20	3		
Adak I.	Aleutian Island	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10			Y	
Kasatochi I.	Aleutian Island	52 11.11 N	175 31.00 W			10			Y	
Agligadak I.	Aleutian Island	52 06.09 N	172 54.23 W			20			Y	
Seguam I./Saddleridge Pt.	Aleutian Island	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20			Y	
Yunaska I.	Aleutian Island	52 41.40 N	170 36.35 W			10			Y	
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			20				
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			20				
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			20				

Column Number 1	2	3	4	5	6	7	8	9	10	11
Site name	Management Region	Boundaries from		Boundaries to [1]		All P. Cod no fishing zone[3, 8]	Trawl Gear P. Cod no fishing Zone[4, 8]	Non-trawl Gear P. Cod no fishing Zone[5, 8]	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from column 7 P. cod fishing closures[6]	All pot vessels exempt from P. cod fishing closures[7]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	(nm)	(nm)	(nm)		
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			20				
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			20				
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			20				
Unalaska/Bishop Pt	Bering Sea	53 58.40 N	166 57.50 W			10			Y	Y
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10			Y	Y
Unalaska I./Cape Sedanka	Gulf of Alaska	53 50.50 N	166 05.00 W			20				
Old Man Rocks	Gulf of Alaska	53 52.20 N	166 04.90 W			20				
Akutan I./Cape Morgan	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20				
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10			Y	Y
Rootok	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20				
Tanginak I.	Gulf of Alaska	54 12.00 N	165 19.40 W			20				
Tigalda/Rocks NE	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20				
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			10			Y	Y
Aiktak	Gulf of Alaska	54 10.99 N	164 51.15 W			20				
Ugamak I.	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20				
Round (GOA)	Gulf of Alaska	54 12.05 N	164 46.60 W			20				
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			10			Y	
Amak I. and rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10			Y	
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			10			Y	
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			10			Y	
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			10			Y	
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			10			Y	
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			10			Y	
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			10			Y	
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			10			Y	
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10			Y	
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			10			Y	
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			10			Y	
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	10			Y	
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			10			Y	
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	10			Y	
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			10			Y	
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			10			Y	
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			10			Y	
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			10			Y	
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			20				
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			20				
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20				
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20				
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			20				
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20				
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			20			Y	
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			20			Y	
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			20			Y	

Column Number 1	2	3	4	5	6	7	8	9	10	11
Site name	Management Region	Boundaries from		Boundaries to [1]		All P. Cod no fishing zone[3, 8]	Trawl Gear P. Cod no fishing Zone[4, 8]	Non-trawl Gear P. Cod no fishing Zone[5, 8]	Vessels < 60 ft. (18.3m) using non-trawl gear exempt from column 7 P. cod fishing closures[6]	All pot vessels exempt from P. cod fishing closures[7]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	(nm)	(nm)	(nm)		
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			20			Y	
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			20			Y	
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			20			Y	
Long I.[2]	Gulf of Alaska	57 46.82 N	152 12.90 W			20			Y	
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			20			Y	
Kodiak/Cape Chiniak[2,9]	Gulf of Alaska	57 37.90 N	152 08.25 W			20			Y	
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			20				
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			20			Y	
Marmot I.	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	20				
Nagahut Rocks	Gulf of Alaska	59 06.00 N	151 46.30 W			20			Y	
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			20			Y	
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			20			Y	
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20				
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			20			Y	
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			20			Y	
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			20			Y	
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	20			Y	
Point Elrington	Gulf of Alaska	59 56.00 N	148 15.20 W			20				
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			20				
Seal Rocks (Cordova)	Gulf of Alaska	60 09.78 N	146 50.30 W			20				
Cape Hinchinbrook	Gulf of Alaska	60 14.00 N	146 38.50 W			20				
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			20				
Hook Point	Gulf of Alaska	60 20.00 N	146 15.60 W			20				
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			20				

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Fishing closure zone is 10 nm between October 1 through December 31.

[3] See 679.22(a)(11)(iv) and (a)(12)(v)

[4] See 679.22(a)(12)(vi)

[5] See 679.22(a)(12)(vii).

[6] See 679.22(a)(13)(iii)(B).

[7] See 679.22(a)(13)(iii)(C).

[8] No fishing zones are the waters within 3 nm to the nm specified in columns 7, 8, and 9 around each site.

[9] The Pacific cod no fishing area extends in an arc from 3nm to 20 nm to a line connecting the point 57°31'3" N lat./152°17'48" W long. with the point 57°24'36" N lat./151° 40'29" W long

Table 24 to 50 CFR Part 679 Steller Sea Lion Protection Areas for Atka Mackerel Fisheries

Column Number 1	2	3	4	5	6	7	8
Site name	Management Region	Boundaries from		Boundaries to [1]		Atka mackerel no fishing zone[2,4]	All pot vessels exempt from Atka mackerel fishing closures[3]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	(nm)	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20	Y
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20	Y
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20	Y
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10	Y
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20	Y
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20	Y
Attu I./Cape Wrangell	Aleutian Islands	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	10	
Agattu I./Gillon Pt	Aleutian Islands	52 24.13 N	173 21.31 E			10	
Agattu I./Cape Sabak	Aleutian Islands	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	10	
Buldir I.	Aleutian Islands	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20	
Kiska I./Cape St. Stephen	Aleutian Islands	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	10	
Kiska I./Lief Cove	Aleutian Islands	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	10	
Ayugadak Point	Aleutian Islands	51 45.36 N	178 24.30 E			10	
Amchitka I./Column Rocks	Aleutian Islands	51 32.32 N	178 49.28 E			10	
Amchitka I./East Cape	Aleutian Islands	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	10	
Semisopochnoi/Petrel Pt.	Aleutian Islands	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	10	
Semisopochnoi I./Pochnoi Pt.	Aleutian Islands	51 57.30 N	179 46.00 E			10	
Ulak I./Hasgox Pt.	Aleutian Islands	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	10	
Tag I.	Aleutian Islands	51 33.50 N	178 34.50 W			10	
Gramp Rock	Aleutian Islands	51 28.87 N	178 20.58 W			10	
Tanaga I./Bumpy Pt.	Aleutian Islands	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20	
Bobrof I.	Aleutian Islands	51 54.00 N	177 27.00 W			20	
Kanaga I./Ship Rock	Aleutian Islands	51 46.70 N	177 20.72 W			20	
Kanaga I./North Cape	Aleutian Islands	51 56.50 N	177 09.00 W			20	
Adak I.	Aleutian Islands	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20	
Little Tanaga Strait	Aleutian Islands	51 49.09 N	176 13.90 W			20	
Great Sitkin I.	Aleutian Islands	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20	
Anagaksik I.	Aleutian Islands	51 50.86 N	175 53.00 W			20	
Kasatochi I.	Aleutian Islands	52 11.11 N	175 31.00 W			20	
Atka I./N. Cape	Aleutian Islands	52 24.20 N	174 17.80 W			20	
Amlia I./Sviech. Harbor	Aleutian Islands	52 01.80 N	173 23.90 W			20	
Sagigik I.	Aleutian Islands	52 00.50 N	173 09.30 W			20	
Amlia I./East	Aleutian Islands	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20	
Tanadak I. (Amlia)	Aleutian Islands	52 04.20 N	172 57.60 W			20	
Agligadak I.	Aleutian Islands	52 06.09 N	172 54.23 W			20	
Seguam I./Saddleridge Pt.	Aleutian Islands	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20	
Seguam I./Finch Pt.	Aleutian Islands	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20	
Seguam I./South Side	Aleutian Islands	52 21.60 N	172 19.30 W	52 15.55 N	172. 31.22 W	20	
Amukta I. & Rocks	Aleutian Islands	52 27.25 N	171 17.90 W			20	
Chagulak I.	Aleutian Islands	52 34.00 N	171 10.50 W			20	
Yunaska I.	Aleutian Islands	52 41.40 N	170 36.35 W			20	
Unalaska/Bishop Pt	Bering Sea	53 58.40 N	166 57.50 W			10	Y
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	Y
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	Y

Column Number 1	2	3	4	5	6	7	8
Site name	Management Region	Boundaries from		Boundaries to [1]		Atka mackerel no fishing zone[2,4]	All pot vessels exempt from Atka mackerel fishing closures[3]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	(nm)	
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			10	Y
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			10	
Amak I. and rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 679.22(a)(12)(viii)

[3] See 679.22(a)(14)(ii)(B)

[4] No fishing zones are the waters within 3 nm to the nm specified in columns 7 around each site.

[FR Doc. 01–17850 Filed 7–16–01; 8:45 am]

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Proposed Rules

Federal Register
Vol. 66, No. 137
Tuesday, July 17, 2001

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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 98–099–1]

Viruses, Serums, Toxins, and Analogous Products; Erysipelothrix Rhusiopathiae Bacterin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the standard requirement for Erysipelothrix Rhusiopathiae Bacterin to specify that those requirements apply only to bacterins recommended for use in swine and turkeys, to require that the immunogenicity of such bacterins be demonstrated in a host animal protection study, to establish ''protection to market weight/age'' as the minimum duration of immunity requirement, and to replace the current mouse protection potency test used for serial release with an in vitro potency test. We are proposing these changes as a result of our evaluation that showed that some swine vaccinated with Erysipelothrix Rhusiopathiae Bacterins that meet the current standard requirement may be diagnosed with acute erysipelas infection before they reach market age. These actions would update the regulations by standardizing the efficacy and duration of immunity requirements, provide for the use of a validated serial release potency test, and ensure that serials that pass the serial release potency test will also protect swine and turkeys to market weight.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 17, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 98–099–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–099–1.

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, between 8 a.m. and 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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1228; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

Standard requirements are prescribed in 9 CFR part 113 for the preparation and testing of certain veterinary biological products. A standard requirement consists of test methods, procedures, and criteria that define the standards of purity, safety, potency, and efficacy for a veterinary biological product. The regulations in 9 CFR 113.119 specify purity, safety, and potency requirements for Erysipelothrix Rhusiopathiae Bacterin.

Although purity, safety, and potency requirements for Erysipelothrix Rhusiopathiae Bacterin are specified in § 113.119 of the standards, they do not prescribe the requirements by which such bacterin must be evaluated for immunogenicity and duration of immunity. Most of the currently available Erysipelothrix Rhusiopathiae Bacterins were licensed on the basis of host animal protection studies performed in either swine or turkeys. In the typical host animal protection study, swine or turkeys were vaccinated with Erysipelothrix Rhusiopathiae Bacterin and challenged with virulent *Erysipelothrix rhusiopathiae* culture 2 to 4 weeks post vaccination. The elapsed time between the completion of the immunization regimen and the administration of the challenge culture establishes the duration of vaccinal immunity. Therefore, 2 to 4 weeks' protection would be the demonstrated duration of immunity provided by Erysipelothrix Rhusiopathiae Bacterin licensed in accordance with the requirements currently specified in the regulations in § 113.119.

Currently, the serial release potency test prescribed in § 113.119 is a mouse protection relative potency assay in which an Erysipelothrix Rhusiopathiae Bacterin (Unknown) and an *Erysipelothrix rhusiopathiae* standard reference bacterin (Standard) are compared in their ability to protect mice challenged with a virulent *Erysipelothrix rhusiopathiae* culture. The mouse potency test measures the relative strength of the Unknown as compared to the Standard and provides an indication of the ability of the Unknown to protect swine against erysipelas. The Standard used in the mouse potency test must have been shown to protect swine against erysipelas. The Unknown is considered to be potent enough to protect swine against erysipelas if it passes the mouse protection test.

Based on the current standards, it was expected that a serial of Erysipelothrix Rhusiopathiae Bacterin would protect swine or turkeys until they reached market weight/age if it passed the mouse protection test. However, we have received complaints that swine vaccinated with Erysipelothrix Rhusiopathiae Bacterin at an early age were being diagnosed with erysipelas before reaching market weight/age. In response to these complaints, we evaluated four representative Erysipelothrix Rhusiopathiae Bacterins recommended for use in swine and found that three of the four failed to protect swine at 22 weeks of age, which is the age at which most swine are marketed. We did not evaluate Erysipelothrix Rhusiopathiae Bacterin recommended for use in turkeys for duration of immunity.

On the basis of our evaluation of Erysipelothrix Rhusiopathiae Bacterins, we concluded that the mouse protection serial release potency test using the *Erysipelothrix rhusiopathiae* standard reference bacterin should be discontinued. This is because all of the

serials that failed to protect swine to market weight had passed the mouse protection relative potency test required for serial release. Western blot analyses performed on *Erysipelothrix rhusiopathiae* cultures used in our studies provided evidence that mice and swine recognize different immunogens. This may account for the failure in our analysis.

As a result of our findings, we are proposing to amend the regulations in § 113.119 to require that Erysipelothrix Rhusiopathiae Bacterin be tested for immunogenicity and duration of immunity in swine and/or turkeys. As a serial release potency test, we are proposing to require each serial of Erysipelothrix Rhusiopathiae Bacterin to be: (1) Tested for relative antigen content (potency) as compared with an unexpired *Erysipelothrix rhusiopathiae* reference bacterin by an in vitro parallel line immunoassay or other procedure acceptable to APHIS, or (2) evaluated in animals using antibody titers or other animal test data previously correlated to host animal protection as evidence of immunogenicity.

We are also proposing to specify that the requirements prescribed in § 113.119 pertain to Erysipelothrix Rhusiopathiae Bacterins for use in swine and turkeys. The basis for this proposed amendment is a host animal vaccination challenge study conducted by APHIS in which 6-week old pigs vaccinated with Erysipelothrix Rhusiopathiae Bacterin were protected against challenge with a virulent *Erysipelothrix rhusiopathiae* culture at 22 weeks of age.

Immunogenicity

We are further proposing that Erysipelothrix Rhusiopathiae Bacterins be evaluated for immunogenicity in swine and/or turkeys as appropriate. Thirty *Erysipelothrix rhusiopathiae*-susceptible swine and/or turkeys (20 vaccinates and 10 controls) of the youngest age recommended on the label would be vaccinated with an Erysipelothrix Rhusiopathiae Bacterin (master reference bacterin or qualifying serial, as defined in the regulations in § 101.5) by each route of administration recommended on the label.

Protection to Market Weight/Age (Duration of Immunity)

The proposed changes to the regulations in § 113.119 would also require Erysipelothrix Rhusiopathiae Bacterin to protect vaccinates against the characteristic signs of erysipelas until they reach market weight, which occurs at approximately 22 weeks of age for swine and 14 weeks of age for turkeys. To demonstrate protection and duration of immunity, swine used in the immunogenicity study would be challenged with a virulent culture of *Erysipelothrix rhusiopathiae* at 22 weeks of age or older, while turkeys would be challenged with a virulent culture of *Erysipelothrix rhusiopathiae* at 14 weeks of age or older.

Potency

Under this proposed rule, each serial would have to be evaluated for relative antigen content by a direct or indirect in vitro parallel line immunoassay using a monospecific antibody that has been shown to provide passive protection in animals after challenge with virulent *Erysipelothrix rhusiopathiae.* Alternatively, potency could also be determined by measuring serologic response in animals, provided that such response had been correlated to protection in a host animal immunogenicity study using a protective protein.

Reagents

In order to facilitate the development of Erysipelothrix Rhusiopathiae Bacterin that provides the host animal protection and duration of immunity specified in this proposed rule, APHIS will supply reagent (monospecific antibody) produced by the hybridoma cell line ERHU1–B60–91, which is the same cell line that produced the antisera used to demonstrate passive protection and to purify the protein used to demonstrate active protection in the host animal vaccination-challenge study conducted by APHIS that serves as the basis for this proposed rule. If they prefer, firms could develop their own reagents for use in satisfying the requirements specified in this proposed rule. However, we believe that the use of APHIS-supplied reagent would greatly reduce the expenditure of time and resources needed to develop a potency test that would ensure that the product provides the duration of immunity that would be required by this proposed rule.

Safety

Currently, the regulations require each serial of biological product containing *Erysipelothrix rhusiopathiae* to be tested for safety in guinea pigs in accordance with § 113.38. However, for consistency with the regulations for other bacterins, we are proposing that each serial of biological product containing *Erysipelothrix rhusiopathiae* immunogen be tested for safety in mice in accordance with § 113.33.

Currently Licensed Bacterins

Veterinary biologics manufacturers that produce Erysipelothrix Rhusiopathiae Bacterin under the present standards would be allowed 1 year after the effective date of the final rule to come into compliance. In the interim, we would allow such manufacturers to continue to release serials of Erysipelothrix Rhusiopathiae Bacterins using the current standards, provided that such serials of product are shown to be effective and the labels for such products specify the demonstrated duration of immunity.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations regarding the standard requirement for Erysipelothrix Rhusiopathiae Bacterins to require that such bacterins be shown to protect vaccinated swine and/or turkeys at least to market weight based on vaccination-challenge studies conducted in host animals. We are also proposing to replace the mouse protection (potency) test used for serial release with an in vitro parallel line immunoassay because we have data that demonstrate that some Erysipelothrix Rhusiopathiae Bacterins that pass the mouse potency test do not protect animals to market weight (normally reached at 22 weeks of age for swine and 14 weeks of age for turkeys) when used as directed. The effect of these actions would be to standardize the duration of immunity and potency test requirements for Erysipelothrix Rhusiopathiae Bacterins and ensure that serials that pass the potency test also protect animals to market weight.

This proposed rule would affect all licensed manufacturers of veterinary biologics that produce Erysipelothrix Rhusiopathiae Bacterins. Currently, there are approximately 135 veterinary biologics establishments, and approximately 45 of these establishments produce Erysipelothrix Rhusiopathiae Bacterins. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

This proposed rule would require each manufacturer of Erysipelothrix Rhusiopathiae Bacterins to incur the expense of developing an Erysipelothrix

Rhusiopathiae Bacterin that provides the duration of immunity specified in this proposed rule. However, the cost of developing such a bacterin would be greatly reduced if manufacturers use the reagents developed and provided by APHIS. In addition, the in vitro potency test specified in this proposed rule would result in a reduction in the number of animals used for serial release testing and would also reduce the time and personnel costs associated with animal care and housing.

Veterinary biologics manufacturers that produce Erysipelothrix Rhusiopathiae Bacterin under the present standards would be allowed 1 year after the effective date of the final rule to come into compliance. In the interim, we would allow such manufacturers to continue to release serials of Erysipelothrix Rhusiopathiae Bacterins using the current standards, provided that such serials of product are shown to be effective and the labels for such products specify the demonstrated duration of immunity.

We do not have an alternative option to this proposed rule because swine and turkey producers need a vaccine that offers protection until the animals reach market weight. However, we believe that, in the long term, expended developmental costs would be recovered and manufacturers would actually realize a savings, as the cost of purchasing, feeding, and housing the animals needed to test Erysipelothrix Rhusiopathiae Bacterins, as currently required, would be reduced and/or eliminated by utilizing nonanimal (in vitro) potency tests for serial release as proposed in this document.

This proposed rule would not require manufacturers to use the same monospecific antibodies that APHIS used in the host animal protection study. However, manufacturers may use the reagents developed by APHIS to facilitate their ability to comply with the requirements specified in this proposed rule or develop their own.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 113 as follows:

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. Section 113.119 would be revised to read as follows:

§ 113.119 Erysipelothrix Rhusiopathiae Bacterin.

Erysipelothrix Rhusiopathiae Bacterin must be produced from a culture of *Erysipelothrix rhusiopathiae* or a culture expressing protective proteins from *Erysipelothrix rhusiopathiae* that are inactivated and nontoxic. Each serial of biological product containing *Erysipelothrix rhusiopathiae* immunogen must meet the applicable requirements of § 113.100 and must be tested for purity, safety, potency, and immunogenicity as prescribed in this section. A serial found unsatisfactory by any prescribed test may not be released. The requirements in this section apply to bacterins used in swine and turkeys. Firms currently producing *Erysipelothrix rhusiopathiae* bacterin that does not satisfy the immunogenicity and/or duration of immunity requirement will have 1 year from the effective date of this rule to be in compliance with this requirement unless granted an extension by the Administrator based on a showing by the firm that it has made a good faith effort with due diligence to achieve compliance.

(a) Erysipelothrix Rhusiopathiae Bacterins must be tested for immunogenicity as follows:

(1) For Erysipelothrix Rhusiopathiae Bacterins recommended for use in swine or turkeys, 30 *Erysipelothrix rhusiopathiae*-susceptible animals (20 vaccinates and 10 controls) of the youngest age recommended on the label must be used as test animals for each route of administration.

(2) A master reference (as defined in § 101.5 of this chapter) must be established before the immunogenicity test is conducted. The method of production and conditions of storage of the master reference must be described in the outline of production filed with the Animal and Plant Health Inspection Service (APHIS). The 20 animals used as vaccinates must be injected as recommended on the label with either the master reference or a qualifying serial (as defined in § 101.5 of this chapter). The vaccinates and controls must be examined and their body temperature determined daily for 3 days prior to challenge. At 22 weeks of age or older for swine or 14 weeks or age or older for turkeys, the vaccinates and controls must be challenged with a virulent *Erysipelothrix rhusiopathiae* culture and observed for 7 days. The challenge culture and instructions for preparation and use must be obtained from APHIS.

(3) A satisfactory challenge in swine will be evidenced in the controls by a high body temperature or clinical signs, including, but not limited to, acute illness with hyperemia of the abdomen and/or ears, possibly terminating in sudden death; moribundity, with or without skin lesions; depression with anorexia, stiffness, and/or joint involvement; or any combination of these symptoms and lesions. If at least 8 of the 10 controls do not show characteristic signs of erysipelas during the observation period, including, but not limited to, a body temperature of at least 105.6 °F on at least 2 consecutive days, the test will be considered inconclusive. However, control swine that meet the requirements for susceptibility, except for high body temperature, will be considered susceptible if *Erysipelothrix rhusiopathiae* organisms are isolated from the blood, spleen, or other organs.

(4) A satisfactory challenge in turkeys will be evidenced in the controls by a generalized septicemia accompanied by the isolation of *Erysipelothrix rhusiopathiae* organisms from the joints or organs. If at least 8 of the 10 controls do not show characteristic signs or demonstrate other evidence of infection during the observation period, the test will be considered inconclusive.

(5) To demonstrate immunity after challenge, at least 80 percent of the vaccinates must remain free of clinical signs, and the body temperature of 80

percent of the swine must not exceed 104.6 °F on 2 or more consecutive days.

(6) The allowable dating of the master reference previously qualified as specified in paragraph (a)(2) of this section is the same as the dating of a serial of product or as approved by APHIS. The expiration date and the lot number of the master reference must be specified in the filed outline of production. The dating of the master reference may be extended by confirming its stability in accordance with § 113.8 prior to the expiration date specified in the filed outline of production.

(7) The master reference may be requalified by one of the following methods:

(i) Performing an immunogenicity test as specified in paragraph (a)(1) through (a)(5) of this section, except that the number of test animals may be reduced to 10 vaccinates and 5 controls, provided that 8 of 10 vaccinates and 4 of 5 controls meet the criteria specified in paragraphs (a)(3), (a)(4), and (a)(5) of this section.

(ii) Immunologic methods not requiring vaccination and challenge (e.g., serology) may be used to demonstrate the stability of a reference if the immunologic response was initially correlated to protection during the immunogenicity test. For a satisfactory test, 5 of 5 controls must remain seronegative at a 1:2 dilution, and 80 percent of the vaccinates must demonstrate bioequivalent serologic titers when compared to the protective titers established during the immunogenicity test. The length of the serologic study need not be the same as the immunogenicity test if adequate data acceptable to APHIS exist to correlate the serologic response earlier after vaccination than the immunogenicity test with protection at market weight.

(iii) A purified protein from *Erysipelothrix rhusiopathiae* that has been shown to elicit a protective response to challenge with virulent *Erysipelothrix rhusiopathiae* in swine may be used to requalify a working reference or qualify a new working reference. Such protein must be prepared by immunoaffinity purification methods using monospecific antisera or by other purification methods acceptable to APHIS. The purity and potency of a purified protein master reference must be well-characterized by in vitro methods such as high-performance liquid chromatography, protein quantification methods, immunoblot analyses, and/or other methods acceptable to APHIS. The immunogenicity of a purified protein master reference must be directly established or indirectly established using a qualifying serial of product as provided in § 113.8 and paragraphs (a)(3), (a)(4), and (a)(5) of this section.

(8) An outline of production and data acceptable to APHIS must be approved for filing before authorization for the use of a new lot of master reference, a new lot of working reference, or a requalified master reference is granted.

(b) *Test requirements for release.* Each serial of Erysipelothrix Rhusiopathiae Bacterin must meet the applicable requirements of § 113.100 and must be tested for purity, safety, and potency as prescribed in this section. A serial found unsatisfactory by any prescribed test is not eligible for release.

(1) *Purity test.* Final container samples of completed product from each serial must be tested for viable bacteria and fungi as prescribed in § 113.26.

(2) *Safety test.* Bulk or final container samples of completed product from each serial must be tested for safety as provided in § 113.33(b).

(3) *Potency test.* In accordance with § 113.8(c), bulk or final container samples of completed product from each serial derived from an approved master seed must be evaluated for relative antigen content (potency) by the procedure specified in the filed outline of production as compared with an unexpired reference (which has been shown directly or indirectly to elicit acceptable duration of immunity) by a direct or indirect parallel line immunoassay. Potency may also be evaluated by measuring serologic response in animals that has been correlated to protection provided by a protective protein or other procedure acceptable to APHIS. The immunoassay must use a monoclonal antibody or monospecific antibody that has been shown to impart passive protection in animals following challenge with virulent *Erysipelothrix rhusiopathiae.*

(i) For a valid potency assay, at least two replications of at least six dilutions of the reference must be compared to at least two replications of at least six dilutions of each test serial on the same microtitration plate.

(ii) When comparing the test serial to the master reference by a relative potency method, a satisfactory test must have a minimum relative potency greater than or equal to 1.0. A relative potency of 1.0 is based on the antigen concentration of the master reference or qualifying serial of vaccine used in the host animal duration of immunity efficacy trial specified in paragraphs (a)(3), (a)(4), and (a)(5) of this section or on the serologic response to a protective immunogen elicited by the master reference or qualifying serial.

(iii) On the basis of the results of such tests, each serial that meets the required minimum relative potency of greater than or equal to 1.0 will be released for marketing. Each serial that does not meet the required minimum potency must be withheld from the market.

(c) *Products without the required duration of immunity.* This section's requirement that an Erysipelothrix Rhusiopathiae Bacterin provide 22 weeks' duration of immunity in swine and 14 weeks' duration of immunity in turkeys will become effective 1 year after the publication of the final rule. Producers of Erysipelothrix Rhusiopathiae Bacterin may use the 1-year interval between the date of publication of the final rule and its effective date to update their products to provide the required duration of immunity. During this 1-year period, Erysipelothrix Rhusiopathiae Bacterins that do not protect vaccinates to market age (22 weeks for swine and 14 weeks for turkeys) may continue to be marketed if the labels for such products specify the duration of immunity demonstrated in the host animal protection study required for licensing. At the end of this 1-year period, Erysipelothrix Rhusiopathiae Bacterins that do not provide the minimum specified protection must be withheld from the market until they comply with the requirements of this section.

Done in Washington D.C., this 11th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17802 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–27–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 727–100 series airplanes.

That action would have required repetitive inspections to detect corrosion of the lower surface of the wing center section and the surrounding area, and follow-on actions. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new information that indicates that the unsafe condition does not exist on the airplanes identified in the proposed rule. Accordingly, the NPRM is withdrawn.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Boeing Model 727–100 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on April 5, 2000 (65 FR 17827). The NPRM would have required repetitive inspections to detect corrosion of the lower surface of the wing center section and the surrounding area, and follow-on actions. The NPRM was prompted by a report from the manufacturer indicating that the affected airplanes were subject to corrosion progression through the lower surface of the wing center section into the center wing fuel tank, and subsequent fuel leakage into the ram air duct. The proposed actions were intended to detect and correct such conditions, which, if combined with a leak in the primary or secondary heat exchanger, could result in the release of fuel vapors into the cabin and consequent adverse effects on flight crew and passengers.

Actions Since the NPRM Was Issued

Since the issuance of the NPRM, the FAA has received new information concerning the configuration of Model 727–100 series airplanes, which are identified in the applicability of the NPRM. The NPRM was based on configuration similarities between those airplanes and Model 727–200 series airplanes, which are identified in the applicability of AD 85–24–02, amendment 39–5170 (50 FR 47356, November 18, 1985). That AD addresses a corrosion problem in the area of the lower surface of the wing center section, which forms the upper wall of the ram air plenum chambers. As a result of the corrosion problem, fuel leaked into the plenum chambers and fuel vapors were circulated into the airplane air conditioning system and cockpit. The FAA has verified that the configuration of the subject area on Model 727–100 series airplanes is not the same as that on Model 727–200 series airplanes. Therefore, the three Model 727–100 series airplanes affected by the NPRM are not susceptible to the unsafe condition.

FAA's Conclusions

Upon further consideration, the FAA has determined that the identified unsafe condition does not exist on the airplanes identified in the NPRM. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2000–NM–27–AD, published in the **Federal Register** on April 5, 2000 (65 FR 17827), is withdrawn.

Issued in Renton, Washington, on July 10, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17759 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 20

[Notice No. 923]

RIN 1512–AB57

Distribution and Use of Denatured Alcohol and Rum (2000R–291P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to amend the regulations in 27 CFR part 20 by eliminating the requirement for users of specially denatured spirits (SDS) to file a bond. ATF believes that elimination of the requirement to file a bond will greatly reduce and simplify the qualification process for industrial alcohol user permits. ATF also proposes to liberalize certain qualification requirements relating to industrial alcohol user permits.

DATES: Written comments must be received on or before September 17, 2001.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, (Attention: Notice No. 923). See ''Public Participation'' section of this notice if you want to comment by facsimile or e-mail.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226, (202–927–9347) or e-mail at LMGesser@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

Background on SDS

Specially denatured spirits (SDS) are alcohol or rum that have been treated with denaturants to make them unfit for beverage use. SDS include specially denatured alcohol (SDA) and specially denatured rum (SDR). A user purchases SDS to use in a process or in the manufacture of a substance, preparation, or product requiring SDS. SDS have many uses, such as:

- In laboratories as a solvent, for cleansing purposes, or in the preparation of indicator solutions and reagents.
- In the manufacture of such articles as perfumes, proprietary solvents, tobacco flavors, lotions, and sprays.
- In conversion processes to produce other substances, such as vinegar or ethyl acetate.

An industrial alcohol user permit is needed to procure, use, recover, or deal in SDS. To obtain an industrial alcohol user permit, certain registration requirements must be met. These requirements may include the submission of a detailed application with supporting data, the payment of special (occupational) tax (SOT), and the acquisition of bond coverage. Once

such registration requirements are met, the applicant is issued an industrial alcohol user permit and may commence conducting any of the uses authorized under the law and regulations for industrial alcohol user permittees. The permittee is allowed to purchase and acquire alcohol from a registered distilled spirits plant (DSP) free of the excise tax payments normally required by the DSP proprietor. For this reason, SDS authorized uses are limited or restricted under the law. Any permittee who uses SDS in a manner that violates the laws and regulations becomes liable for the tax and other provisions of the Internal Revenue Code of 1986, 26 U.S.C. 5001(a)(5).

Bonds and Consents of Surety

Section 5272 of the Internal Revenue Code of 1986 provides that bond coverage may be required as part of the industrial alcohol user permit qualification process. Prior to 1985, the regulations required applicants (other than States, political subdivisions, and the District of Columbia) who wished to obtain more than 120 gallons of SDS per year, to submit an Industrial Alcohol Bond, ATF Form 5150.25. In 1985, the SDS regulations were revised and the exemption from bond coverage was expanded. See, T.D. ATF–199, (50 FR 9152), published on March 6, 1985. Under those revisions, the percentage of users of SDS who were exempt from filing a surety bond increased from 43 percent, under the prior regulations, to 75 percent under the adopted regulations.

Subpart E of 27 CFR part 20 still reflects that expansion today. Specifically, applicants (other than States, political subdivisions, and the District of Columbia) who wish to obtain more than 5,000 gallons of SDS per year must, in addition to other requirements, submit an Industrial Alcohol Bond, ATF Form 5150.25.

Based on the post-1985 experience in administering part 20, ATF believes that bond coverage should no longer be required of any applicant for an industrial alcohol use permit. Additionally, ATF believes that elimination of the bond requirement under subpart E will result in substantially reduced administrative and financial burdens on industrial alcohol permittees. Therefore, ATF is soliciting public comments on the proposal to delete the bond requirements.

Qualification Requirements

Section 5271 of the Internal Revenue Code of 1986 requires the submission of an application before a permit may be issued to procure, deal in, or use SDS. Current regulations require the submission of a detailed application with supporting data by all applicants. The appropriate ATF officer is authorized to waive some of the application and supporting data requirements for applicants who are a State, political subdivisions thereof, or the District of Columbia, or whose annual withdrawal and sale or usage of SDS will not exceed 5,000 proof gallons.

ATF believes that this waiver should be available to all applicants when the appropriate ATF officer concludes that the revenue is adequately protected with respect to the person submitting the application and that there is no hindrance to the effective administration of part 20. Therefore, ATF is soliciting public comments on the proposal to amend the regulations to allow the appropriate ATF officer to waive detailed applications with supporting data for all applicants.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The proposed regulations will simplify the qualification process for an industrial alcohol user permit by eliminating the requirement to obtain a bond. A copy of the proposed rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, the proposed rule is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this proposed rule because there are no new reporting or recordkeeping requirements.

Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested parties. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

Can I Review Comments Received?

Copies of the proposed regulations and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of the Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Will ATF Keep My Comments Confidential?

ATF will not recognize any comment as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We will also disclose the name of any person who submits a comment.

Can I Request a Public Hearing?

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to (202) 927–8525.

Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be on paper 8½″ x 11″ in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-Mail) Comments?

You may submit comments by e-mail by sending the comments to nprm@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages, 8½″ x 11″ in size.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF internet web site at www.atf.treas.gov/alcohol/rules/index.htm.

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegations, Claims, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

Authority and Issuance

ATF is proposing to amend part 20 in title 27 of the Code of Federal Regulations as follows:

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Paragraph. 1. The authority citation for 27 CFR part 20 continues to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6065, 7805.

§ 20.3 [Amended]

Par. 2. Amend § 20.3, Related Regulations, by removing the cite to ''31 CFR Part 225.''

§ 20.21 [Amended]

Par. 3. Amend § 20.21(a) by removing the word ''bonds'' from the first sentence.

§ 20.22 [Amended]

Par. 4. Amend § 20.22 as follows:

a. Remove paragraph (a)(3); and

b. Redesignate paragraph (a)(4) as paragraph (a)(3).

§ 20.26 [Removed]

Par. 5. Remove § 20.26.

Par. 6. Amend § 20.43 by revising paragraphs (a)(2) and (b) to read as follows:

§ 20.43 Exceptions to application requirements.

(a) * * *

(2) Applications, Form 5150.22, filed by applicants, where the appropriate ATF officer has determined that the waiver of such requirements does not pose any jeopardy to the revenue or a hindrance of the effective administration of this part.

(b) The waiver provided for in this section will terminate for a permittee, other than States or political subdivisions thereof or the District of Columbia, when the appropriate ATF officer determines that the conditions justifying the waiver no longer exist. In this case, the permittee will furnish the information in respect to the previously waived items, as provided in § 20.56(a)(2).

Par. 7. Amend the second sentence of § 20.58 to read as follows:

§ 20.58 Adoption of documents by a fiduciary.

* * * The fiduciary may adopt the formulas and statements of process of the predecessor. * * *

§ 20.59 [Amended]

Par. 8. Amend § 20.59 as follows:

a. Remove paragraph (b);

b. Redesignate paragraph (c) as paragraph (b); and

c. Redesignate paragraph (d) as paragraph (c).

§ 20.61 [Amended]

Par. 9. Amend § 20.61 by removing the last sentence of the text.

§ 20.62 [Amended]

Par. 10. Amend § 20.62 as follows:

a. Remove the paragraph letter and title designation ''(a) Permit''; and

b. Remove paragraph (b).

§ 20.68 [Amended]

Par. 11. Amend § 20.68 as follows:

a. Remove paragraph (b).

b. Redesignate paragraph (c) as paragraph (b).

Subpart E—[Removed and Reserved]

Par. 12. Remove and reserve Subpart E—Bonds and Consents of Surety.

Par. 13. Revise paragraph (c) of § 20.175 to read as follows:

§ 20.175 Shipment for account of another dealer.

* * * * *

(c) The dealer who ordered the shipment shall be liable for the tax while the specially denatured spirits are in transit and the person actually shipping the specially denatured spirits shall not be liable.

§ 20.177 [Amended]

Par. 14. Amend paragraph (b) of § 20.177 by removing the word ''bonded'' in the first sentence.

§ 20.232 [Amended]

Par. 15. Amend § 20.232 as follows:

a. Remove paragraph (b).

b. Redesignate paragraph (c) as paragraph (b).

§ 20.241 [Amended]

Par. 16. Amend § 20.241 by removing the words ''and filing of a bond are'' and add, in their place, the word ''is.''

Signed: April 20, 2001.

Bradley A. Buckles,

Director.

Approved: June 11, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 01–17692 Filed 7–16–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–013]

RIN 2115–AE46

Special Local Regulations for Marine Events; Fireworks Displays, Atlantic Ocean, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for fireworks displays to be held over the waters of the Atlantic Ocean, Virginia Beach, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the fireworks displays. This action is intended to temporarily restrict vessel traffic during the fireworks displays to protect spectator craft and other vessels transiting the event area from the dangers associated with the fireworks.

DATES: Comments and related material must reach the Coast Guard on or before September 17, 2001.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9

a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, telephone number (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–01–013), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Virginia Beach sponsors fireworks displays at various times throughout the year over the waters of the Atlantic Ocean, adjacent to the beachfront between 17th Street and 24th Street. The events consist of pyrotechnic displays fired from a vessel positioned in the Atlantic Ocean. Spectator vessels gather nearby to observe the fireworks. Due to the need for vessel control during the fireworks displays, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish special local regulations on specified waters of the Atlantic Ocean. The special local regulations will temporarily restrict general navigation in the event area during the fireworks. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement time period. These regulations are needed to control vessel traffic during the fireworks displays to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed rule will prevent traffic from transiting a portion of the Atlantic Ocean adjacent to the beachfront during the events, the effect of this regulation will not be significant due to the limited duration of the events, the comparatively small size of the regulated area and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the owners or operators of vessels, some of which may be small entities, intending to transit or anchor in the effected portions of the Atlantic Ocean during the events.

Although this regulation prevents traffic from transiting or anchoring in portions of the Atlantic Ocean adjacent to the beachfront during the event, the effect of this regulation will not be significant because of its limited duration, the comparatively small size of the regulated area and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

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

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

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 and direct effect on one or more Indian tribes, on the relationship between the

Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under that section. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add § 100.522 to read as follows:

§ 100.522 Fireworks Displays, Atlantic Ocean, Virginia Beach, Virginia.

(a) *Regulated area.* The regulated area is defined as the waters of the Atlantic Ocean enclosed within the arc of a circle with a radius of 850 yards and with its center located at latitude 36°51′35″ N, longitude 075°58′30″ W. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

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

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

(i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander, and

(ii) Proceed as directed by the Coast Guard Patrol Commander.

(d) *Effective Dates.* This section is effective:

(1) Annually from 9 p.m. to 11 p.m. eastern time every Friday, Saturday and Sunday between May 1 and October 31;

(2) Annually from 9 p.m. to 11 p.m. eastern time on July 4; and

(3) As otherwise specified in the Coast Guard Local Notice to Mariners and a **Federal Register** notice.

Dated: July 2, 2001.

T.C. Paar,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 01–17796 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–15–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AB02

Records Disposition

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is proposing to change the records management regulations in Subchapter B to simplify certain records disposition procedures. The current rule addresses only hard copy distribution of agency records disposition manuals. This proposed rule reflects agencies' use of the Internet and Intranets to distribute copies of agency records manuals that include the disposition authorities approved by NARA. The proposed rule also eliminates the requirement that agencies request authority for a retention period that differs from the General Records Schedules if NARA previously has granted a disposition authority specifically to an agency. This proposed rule will affect Federal agencies, and we urge agencies to provide comments on the proposal.

DATES: Comments are due by September 17, 2001.

ADDRESSES: Comments must be sent to Regulation Comment Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270. You may also comment via the Internet to comments@nara.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: 3095-AB02'' and your name and return address in your Internet message. If you do not receive notification that we have received your Internet message, contact the Regulation Comment Desk at 301–713–7360, ext. 226.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360 or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: NARA requires agencies to provide copies of records manuals that contain records

disposition authorities approved by NARA for distribution to NARA appraisal staff and records centers. The records centers need to have current instructions for scheduling the records sent for storage by Federal agencies. This proposed rule would permit agencies to provide copies of their records disposition manuals to NARA electronically, instead of submitting 20 printed copies as is now required.

Currently, agencies that wish to retain records for a different period of time than specified in the General Records Schedules must request NARA approval, unless an agency received NARA approval for a shorter retention period prior to the issuance of the GRS. This means that if an agency wishes to retain records longer than provided in the GRS, it must submit an SF 115, Request for Records Disposition Authority, to NARA for approval even if NARA approved the longer retention period prior to issuance of the GRS item. This proposed rule would permit agencies to apply either the retention period in the GRS or the retention period previously approved for that agency's records. This change reduces the scheduling burden by eliminating the need for agencies to submit SF 115s when they have already scheduled a records series. Agencies must notify NARA if they will continue to use the agency schedule instead of the GRS.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies. This proposed rule has no federalism or tribalism implications.

List of Subjects in 36 CFR Part 1228

Archives and records, Federal buildings and facilities, Incorporation by reference.

For the reasons set forth in the preamble, NARA proposes to amend Part 1228 of Title 36 of the CFR as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

2. Revise § 1228.40 to read as follows:

§ 1228.40 Authority.

The Archivist of the United States issues schedules authorizing disposal, after specified periods of time, of temporary records common to several or all agencies of the U.S. Government. General Records Schedules authorize the destruction of records after the stated retention period expires. Application of the disposition instructions in these schedules is mandatory (44 U.S.C. 3303a), provided an agency has not already received disposition authority from NARA.

3. Amend § 1228.42 by redesignating paragraph (c) as paragraph (d); revising paragraphs (a) and (b); and adding new paragraph (c) to read as follows:

§ 1228.42 Applicability.

(a) Agencies must apply GRS authorizations except as provided in paragraphs (b) or (c) of this section. Agencies must not include on SFs 115 records covered by the GRS unless a different retention period is requested, as specified in paragraph (c) of this section.

(b) Agencies may apply either the disposition instructions in the GRS or the disposition instructions previously approved by NARA in an agency schedule for the same series or system of records, unless NARA indicates that the GRS standard must be applied without exception. The authority chosen by the agency must be applied on an agency-wide basis. The agency must notify NARA if it intends to continue using the agency schedule.

(c) Except as provided in paragraph (b) of this section, agencies that wish a different retention period must request an exception to the GRS by submitting an SF 115 in accordance with § 1228.30 accompanied by a written justification for the different retention period.

* * * * *

4. Amend § 1228.50 by revising paragraph (a)(4) to read as follows:

§ 1228.50 Application of schedules.

* * * * *

(a) * * *

(4) Agencies must submit to the National Archives and Records Administration (NWML) copies of published records schedules and all directives and other issuances relating to records disposition, within 30 days of implementation or internal dissemination.

(i) Agencies that print these materials for internal distribution must forward to NARA (NWML) three copies of each final directive or other issuance relating to records disposition and 20 copies of all published records schedules (printed agency manuals) and changes to all manuals as they are issued.

(ii) Agencies that make these materials available via the Internet or internally on an Intranet web site or by other electronic means must submit one printed or electronic copy to NARA in a format specified by NARA when the directive or manual is posted or distributed. If the document is posted on the Internet, the agency must also provide the Internet address (URL).

* * * * *

Dated: July 6, 2001.

John W. Carlin,

Archivist of the United States.

[FR Doc. 01–17791 Filed 7–16–01; 8:45 am]

BILLING CODE 7515–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA032–02–0241b; FRL–7001–3]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District, Monterey Bay Unified Air Pollution District, Modoc County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Kern County Air Pollution Control District (KCAPCD), Modoc County Air Pollution Control District (MCAPCD), and Monterey Bay Unified Air Pollution District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern visible emissions (VE) emissions from many different sources of air pollution. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 16, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301;
Modoc County Air Pollution Control, 202 West 4th Street, Alturas, CA 96101; and,
Monterey Bay Unified Air Pollution District, 24580 Silver Cloud Court, Monterey, CA 93940–6536.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: KCAPCD Rule 401—Visible Emissions, MCAPCD Rule 4.1—Visible Emissions, and MBUAPCD Rule 400—Visible Emissions. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. 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: June 8, 2001.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 01–17703 Filed 7–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241–0239b; FRL–7005–2]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and El Dorado County Air Pollution Control District (EDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from polyester resin operations and the manufacture of foam products composed of polystyrene, polyethylene or polypropylene. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 13, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

El Dorado County Air Pollution Control District, 2830 Fairlane Ct., Bldg. C, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1197.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: BAAQMD 8–52 and EDCAPCD 240. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions 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. 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: June 6, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–17701 Filed 7–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 063–0042; FRL–7013–8]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from organic solvents, dry cleaners, coating operations, and degreasers. We are proposing to remove from the SIP a local rule regulating these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). This action is a reproposal of EPA's July 14, 2000 proposed rule (65 FR 43727) to disapprove this revision to the Arizona SIP. We do not plan to finalize our July 14, 2000 proposed disapproval. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by August 16, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revision at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012
Pinal County Air Quality Control District, 31 North Pinal Street, Building F, Florence AZ 85232

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

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

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I. The State's Submittal

A. What Rule Is the State Requesting To Be Rescinded?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—RULE PROPOSED FOR RESCISSION

Local agency	Rule No.	Rule title	Adopted	Submitted
PCAQCD	7–7–3.4	Organic Solvents	10/12/95	11/27/95

PCAQCD concluded that Rule 7–3–3.4 was not necessary for purposes of attaining and maintaining the ozone National Ambient Air Quality Standards (NAAQS) and the ADEQ forwarded to us the PCAQCD's request to rescind the rule. On February 2, 1996, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 7–3–3.4 into the SIP on April 12, 1982. The PCAQCD rescinded the SIP-approved version on October 12, 1995 and ADEQ submitted the rescission request to us on November 27, 1995.

C. What Is the Purpose of the Submitted Rule Revision?

The submitted rule revision removes a previously approved rule from the SIP. The TSD has more information about why this rule was originally adopted by the PCAQCD and why it is now being removed from the SIP.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule Rescission?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The PCAQCD regulates an ozone attainment area (see 40 CFR part 81), so RACT is not required.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document,'' (Blue Book) notice of availability published in the **Federal Register** on May 25, 1988.

B. Does the Rule Rescission Meet the Evaluation Criteria?

We believe this rule rescission is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Reproposal

On July 14, 2000 (65 FR 43727), EPA proposed to disapprove the rescission of Rule 7–3–3.4 because this revision was submitted with several other replacement rules which weakened the SIP by establishing less stringent emissions limits and by narrowing the scope of regulated sources. During the original 30-day comment period provided in 65 FR 43727 and the subsequent 30-day reopening of the comment period provided in 65 FR 53962, EPA received extensive comments from the PCAQCD and local area businesses.

PCAQCD commented that the rescission of Rule 7–3–3.4 should be approved because it is not necessary to ensure continued attainment of the NAAQS and that the replacement provisions determined by EPA to not be enforceable should also be approved into the SIP as voluntary elements. Alternatively, the PCAQCD commented that EPA could rescind the current SIP rule without approving the replacement provisions.

Pinal County has never been classified as nonattainment for ozone pursuant to section 107 of the Act and Rule 7–3–3.4 is not specifically required by the Act. Supporting documentation submitted during the comment period by the PCAQCD on October 6, 2000 attests that anticipated changes in emissions associated with rescission of Rule 7–3–3.4 will not have a meaningful impact on Pinal County's continued ozone NAAQS attainment status. The TSD has more information on our evaluation.

EPA concurs that the rescission of Rule 7–3–3.4 will not have an adverse air quality impact or otherwise interfere with section 110, 111, 112, or any applicable provision of the Act. Therefore, EPA is proposing to fully approve the rescission of Rule 7–3–3.4 as described in section 110(k)(3) of the Act. At this time we are not finalizing action on the other associated replacement rules included in our original July 14, 2000 proposal.

We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will remove this rule from the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted and Why Is It Being Rescinded?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
Mar. 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
Nov. 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and

Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

(Authority: 42 U.S.C. 7401 et seq.)

Dated: June 28, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–17833 Filed 7–16–01; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 66, No. 137

Tuesday, July 17, 2001

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

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2001 to June 30, 2002

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof, to be provided in the 2002 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity only schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

EFFECTIVE DATE: July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Suzanne Rigby, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2001 Through June 30, 2002

This notice implements mandatory provisions of sections 6(c), 14(f) and 17(h)(1)(B) of the National School Lunch Act (the Act) (42 U.S.C. 1755(c), 1762a(f), and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR part 226) shall be 15.50 cents for the period July 1, 2001 through June 30, 2002.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May each year. The three-month average of the Price Index increased by 3.7 percent from 131.78 for March, April and May of 2000 to 136.60 for the same three months in 2001. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2001 through June 30, 2002 will be 15.50 cents per meal. This is an increase of .50 cents from the school year 2001 rate.

In addition to the 15.50 cents per meal, Congress has authorized additional funds to be used to purchase foods under Section 6(e) of the Act (42 U.S.C. 1755(e)). Therefore, for this school year, schools will receive more than 15.50 cents per meal in commodities.

Section 14(f) of the Act provides that commodity only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(c) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents per meal of this value in cash for processing and handling expenses related to the use of such commodities.

Commodity only schools are defined in section 12(d)(2) of the Act (42 U.S.C. 1760(d)(2)) as ''schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.'' For the 2002 school year, commodity only schools shall be eligible to receive donated food assistance valued at 35.50 cents for each free, reduced price, and paid lunch served. This amount is based on the sum of the section 6(c) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 2002. The section 4 factor for commodity only schools does not include the two cents per lunch increase for schools where 60 percent of the lunches served in the school lunch program in the second preceding school year were served free or at reduced prices, because that increase is applicable only to schools participating in the NSLP.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), 14(f) and 17(h)(1)(B) of the National School Lunch Act, as amended (42 U.S.C. 1755(c)(1)(A) and (B) and 6(e)(1), 1762a(f), and 1766(h)(1)(B)).

Dated: July 11, 2001.

George A. Braley,

Acting Administrator.

[FR Doc. 01–17752 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Written Assurances for Exports of Technical Data Under License Exception TSR.

Agency Form Number: None.

OMB Approval Number: 0694–0023.

Type of Request: Extension of a currently approved collection of information.

Burden: 103 hours.

Average Time Per Response: 31 minutes per response.

Number of Respondents: 200 respondents.

Needs and Uses: The Export Administration Regulations (EAR) require in Section 740.6 that exporters obtain letters of assurance from their importers stating that technology or software will not be reexported or released to unauthorized destinations that are subject to controls for national security or foreign policy and nuclear non-proliferation reasons. The importer, in making these assurances acknowledges his/her requirement to comply with the EAR. The written assurance requirement of License Exception TSR (Technology and Software Under Restriction) provides greater security for the protection of U.S. origin technology and software that becomes incorporated into foreign products.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: July 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17779 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Procedure for Voluntary Self-Disclosure of Violations.

Agency Form Number: None.

OMB Approval Number: 0694–0058.

Type of Request: Extension of a currently approved collection of information.

Burden: 800 hours.

Average Time Per Response: 10 hours per response.

Number of Respondents: 80 respondents.

Needs and Uses: BXA codified its voluntary self-disclosure policy to increase public awareness of this policy and to provide the public with a good idea of BXA's likely response to a given disclosure. Voluntary self-disclosures allow BXA to conduct investigations of the disclosed incidents faster than would be the case if BXA had to detect the violations without such disclosures.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: July 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17780 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Delivery Verification Certificate.

Agency Form Number: BXA–647P.

OMB Approval Number: 0694–0016.

Type of Request: Extension of a currently approved collection of information.

Burden: 31.

Average Hours Per Response: 31 to 271 minutes.

Number of Respondents: 100.

Needs and Uses: The Delivery Verification Certificate is the result of an agreement between the United States and a number of other countries to increase the effectiveness of their respective controls over international trade in strategic commodities. The form is issued and certified by the government of the country of ultimate destination, at the request of the U.S. government (BXA). It is a service performed to honor an agreement between the U.S. Government and the other countries participating in this Delivery Verification procedure.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: July 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17781 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Census Bureau

Field Representative Exit Questionnaire

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Geraldine Burt, Census/Field Division, Room 1784/FOB 3, Washington, DC 20233–4400, and 307–457–1935.

SUPPLEMENTARY INFORMATION:

I. Abstract

Retention of trained field interviewing staff is a major concern for the Census Bureau because of both the monetary costs associated with employee turnover, as well as the potential impact on data quality. The Field Representative Exit Survey is used to collect data from a sample of our former current survey interviewers (field representatives) and decennial operations interviewers (enumerators). The purpose of the Field Representative Exit Survey is to determine the reasons for interviewer turnover and what the Census Bureau might do to help reduce its turnover rate for interviewing staff.

We will use Form BC–1294 to collect data from field representatives who leave the Census Bureau. We will use Form BC–1294(D) to collect data from the enumerators hired to work on the 2010 Test Census in 2003/2004 who stop working before the operation for which they were hired is completed. Both forms ask questions about the factors that affected an interviewer's decision as to whether to stay with the Census Bureau. The BC–1294 and BC–1294(D) cover the same topics, but the questions and response choices on the BC–1294 (D) have been tailored to decennial census operations.

The 2010 Test Censuses (the first of which is scheduled to be conducted in 2004) will be used by the Census Bureau to test and experiment with procedures in a simulated census environment in preparation for the 2010 Census. It is expected that some early operations for the 2004 Test will begin in 2003. Interviewer turnover is of heightened concern during a decennial census because of the short time periods for data collection operations.

The information collected via the Field Representative Exit Survey will help the Census Bureau develop plans to reduce turnover in its current survey and decennial interviewing staff. This in turn should allow for better informed management decisions regarding the field work force and the implementation of more effective pay plans, interviewer training and retention strategies for both current and decennial interviewers.

II. Method of Collection

The data will be collected by telephone. Interviews with former field representatives should take approximately seven (7) minutes. The form BC–1294(D) contains a few more questions related to decennial pay and work conditions and interviews with former enumerators should take approximately ten (10) minutes. We estimate that interviews will be conducted with a total of 500 field representatives on a yearly basis. The first 2010 Test Census is scheduled for 2004 with initial hiring to begin in 2003 for early operations. It is estimated that interviews will be conducted with 375 former enumerators in 2003/2004.

Approximately every month, a sample of one-half of all field representatives who voluntarily resigned within the period will be contacted by telephone to complete a BC–1294 questionnaire. Beginning approximately two weeks after the start of 2010 Test Census operations, a sample of enumerators who have continuously been in a non-pay status for a period of two weeks will be contacted by telephone to complete a BC–1294(D) questionnaire.

III. Data

OMB Number: 0607–0404.

Form Number: BC–1294, BC–1294(D).

Type of Review: Regular Submission.

Affected Public: Former Census Bureau Interviewers (Field Representatives and Enumerators).

Estimated Number of Respondents: 500 Former Current Survey Interviewers; 375 Former 2010 Test Census Enumerators.

Estimated Time Per Response: 7 minutes for Former Current Survey Interviewers; 10 minutes for Test Census Enumerators.

Estimated Total Annual Burden Hours

FY02—59 hours for former Current Survey Interviewers

0 hours for former 2010 Test Census Enumerators

59 Total Hours

FY03—59 hours for former Current Survey Interviewers

0 hours for former 2010 Test Census Enumerators

59 Total Hours

FY04—59 hours for former Current Survey Interviewers

63 hours for former 2010 Test Census Enumerators

122 Total Hours

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 15 U.S.C. Section 3101 and Title 13 USC Section 23.

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: July 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17782 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Technical Data Letter of Explanation; Notice and Request for Comments

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington DC 20230 or via e-mail at MClayton@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information contained in these letters will assure BXA that no unauthorized technical data will be exported for unauthorized end-uses or to unauthorized destinations and thus provide assurance that U.S. national security and foreign policy programs are followed. In addition, shipments to Poland, Hungary, and Czechoslovakia, need an Import Certificate issued by the appropriate national government.

II. Method of Collection

Submitted, as appropriate, with form BXA–748P.

III. Data

OMB Number: 0694–0047.
Form Number: BXA 748–P.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 461.
Estimated Time Per Response: 2–4 hours per response.
Estimated Total Annual Burden Hours: 722.
Estimated Total Annual Cost: No capital start up expenditures.

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 will also become a matter of public record.

Dated: July 10, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer

[FR Doc. 01–17639 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computers and Related Equipment

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

When BXA receives this information it is thoroughly reviewed by a licensing officer who, depending on the limits of parameters of the system, may submit the application for review by other government agencies. If the application is approved, the respondent is issued a validated export license that authorizes shipment of the computer system. If additional information is required, the respondent will be notified. Applications may be rejected if it is determined that the export or reexport of the system poses a threat to U.S. national security.

II. Method of Collection

Submitted, as required, with form BXA–748P.

III. Data

OMB Number: 0694–0013.
Form Number: N/A.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 80.
Estimated Time Per Response: 32 minutes per response.
Estimated Total Annual Burden Hours: 86.
Estimated Total Annual Cost: No start-up capital expenditures.

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 will also become a matter of public record.

Dated: July 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17778 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1174]

Designation of New Grantee for Foreign-Trade Zone 76, Bridgeport, Connecticut; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the application (filed 12/12/2000) submitted by the City of Bridgeport, Connecticut, grantee of FTZ 76, Bridgeport, Connecticut, requesting reissuance of the grant of authority for said zone to the Bridgeport Authority, a municipal corporation, which has accepted such reissuance subject to approval of the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes the Bridgeport Port Authority as the new grantee of Foreign-Trade Zone 76.

The approval is subject to the FTZ Act and the FTZ Board's regulations, including § 400.28.

Signed at Washington, DC, this day 9th of July 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–17858 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1177]

Approval for Extension of Authority of Board Order 735, Foreign-Trade Zone 9, Pacific Allied Products, Ltd. (Plastic Food/Beverage Containers), Honolulu, HI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Board Order 735 (60 FR 26715, 5/18/95) granted authority on behalf of Pacific Allied Products, Ltd. (PAP) to manufacture plastic food/beverage containers under FTZ procedures subject to the following restrictions: (1) that manufacture under zone procedures was intended solely for the Hawaiian and export markets, and (2) the authority was approved at the outset for five years, subject to extension;

Whereas, the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of Foreign-Trade Zone 9, has requested authority, on behalf of PAP, to extend its manufacturing authority on a permanent basis by removing Restriction #2;

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 36887, 6/12/00);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the request would be in the public interest if approval were subject to the restriction listed below;

Now, Therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28, and further to a restriction requiring that manufacture under zone procedures be solely for the Hawaiian and export markets.

Signed at Washington, DC, this 9th day of July 2001.

Faryar Shirzad,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–17859 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Final Results of Changed-Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed-circumstances antidumping duty administrative review.

SUMMARY: On November 20, 2000, the Department of Commerce published a notice of initiation and preliminary results of changed-circumstances antidumping duty review of the antidumping duty order on brake rotors from the People's Republic of China, in which we preliminarily determined that Laizhou Auto Brake Equipment Co., Ltd. is the successor-in-interest to Laizhou Auto Brake Equipments Factory for purposes of determining antidumping liability. We are now affirming our preliminary results.

EFFECTIVE DATE: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to 19 CFR part 351 (April 2001).

Background

Since the Department published in the **Federal Register** on November 20, 2000, the initiation and preliminary results of this changed-circumstances review of the antidumping duty order on brake rotors from the PRC (65 FR 69732), the following events have occurred.

On January 16, 2001, the petitioner [1] submitted its case brief. In its case brief, the petitioner alleged that the information on the record was insufficient for purposes of demonstrating that Laizhou Auto Brake Equipment Co., Ltd. (''LABEC'') is the successor-in-interest to Laizhou Auto Brake Equipments Factory (''LABEF''). In addition, the petitioner requested that the Department verify the data contained in LABEC's response for purposes of establishing whether LABEC is the successor-in-interest to LABEF.

On January 26, 2001, the Department issued a supplemental questionnaire to LABEC, which addressed the petitioner's concerns raised in its case brief. On February 5, 2001, LABEC requested an extension of time until February 16, 2001, to file its response to the supplemental questionnaire, which the Department subsequently granted on February 7, 2001. On February 16, 2001, LABEC submitted its supplemental questionnaire response.

On January 31, 2001, the Department notified LABEC that it intended to conduct a verification of the data it submitted in support of its successor-in-interest claim and provided it with a sample verification outline for purposes of familiarizing LABEC with the verification process.

On February 23, 2001, the Department provided the complete verification outline to LABEC. On March 16, 2001, the Department conducted its verification of the information submitted by LABEC in accordance with 19 CFR 351.307.

On April 23, 2001, the Department issued its verification report. On June 7, 2001, we provided parties with an opportunity to submit comments on our verification findings for consideration in these final results. Neither party submitted comments.

Scope of Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans, recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those rotors which have undergone some drilling and on which the surface is not entirely smooth. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (e.g., General Motors, Ford, Chrysler, Honda, Toyota, and Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron which contain a steel plate but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Separate Rates

Because LABEC is owned by individuals in the People's Republic of China (''PRC''), the Department as a matter of practice first must conduct a separate rates analysis of the company. In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate.

Based on information contained in its September 29, 2000, submission, LABEC is registered in the PRC as a limited liability company owned by private individuals. Thus, a separate rates analysis is necessary to determine whether LABEC is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* (''*Bicycles*'') 61 FR 19026 (April 30, 1996)).

To establish whether a firm is sufficiently independent from government control, and therefore entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

LABEC has placed on the administrative record documentation to demonstrate absence of *de jure* governmental control, including the 1994 ''Foreign Trade Law of the People's Republic of China,'' and the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations,'' promulgated on June 3, 1988.

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of stock companies including limited liability companies. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* (''*Furfuryl Alcohol*'') 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China* 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to LABEC.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol.* Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of,

[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide* and *Furfuryl Alcohol.*

LABEC asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, statements contained in LABEC's September 29, 2000, submission indicate that the company does not coordinate its prices with other exporters.

The Department conducted verification of LABEC's separate rate claim and found no evidence at verification of government involvement in LABEC's business operations. Specifically, Department officials examined sales documents that showed that LABEC negotiated its contracts and set its own sales prices with its customers. In addition, the Department reviewed sales payments, bank statements and accounting documentation that demonstrated that LABEC received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention. Finally, the Department examined internal company memoranda, such as appointment notices and election results, which demonstrated that LABEC selected its own management. *See* Department verification report on LABEC at pages 3 through 6. This information, taken in its entirety, supports a finding that there is an absence of *de facto* governmental control of LABEC's export functions. Consequently, we have determined that LABEC has met the criteria for the application of a separate rate.

Final Results of the Review

We also verified data contained in LABEC's September 29, 2000, submission and February 16, 2001, supplemental submission as it pertained to the claim that LABEC is the successor-in-interest to LABEF.

In accordance with section 751(b) of the Act and in order to determine whether LABEC is the successor-in-interest to LABEF, we examined several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992) (''*Brass from Canada*''). While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review,* 59 FR 6944 (February 14, 1994); *Brass from Canada,* and *Fresh and Chilled Atlantic Salmon from Norway: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 63 FR 50880 (September 23, 1998). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

Based on our verification findings, we determine that LABEC is the successor-in-interest to LABEF. Specifically, LABEF has demonstrated through registration and ownership documentation examined at verification that it changed its name to LABEC as a result of decisions made by LABEF's original owners. Moreover, LABEF has demonstrated through production and accounting records examined at verification that changing its name to LABEC has resulted in no significant changes in either production facilities, supplier relationships, customer base, or management. *See* Department verification report on LABEC at pages 7 through 10.

Thus, we determine that LABEC is the successor-in-interest to LABEF for purposes of determining antidumping duty liability, and should receive the same antidumping duty treatment with respect to brake rotors as the former LABEF.

We will instruct the Customs Service to suspend shipments of subject merchandise made by LABEC at LABEF's cash deposit rate (*i.e.,* zero percent). The shipments of subject merchandise to be suspended are those which are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this changed-circumstances review.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: July 9, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17857 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–583–835

Postponement of Final Determination for Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final antidumping duty determination of certain hot-rolled carbon steel flat products from Taiwan.

SUMMARY: The Department of Commerce (the Department) is postponing the final determination in the antidumping duty investigation of certain hot-rolled carbon steel flat products from the Taiwan.

EFFECTIVE DATE: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia Tran at 202–482–1121, Mike Heaney at 202–482–4475, or Robert James at 202–482–0649, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 2000).

Postponement of Final Determination and Extension of Provisional Measures

On May 3, 2001, the Department published the affirmative preliminary determination for the investigation of

certain hot-rolled carbon steel flat products from Taiwan. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Taiwan,* 66 FR 22204 (May 3, 2001). Pursuant to 19 CFR 351.401(f)(2) of the Department's regulations, we determined that respondents China Steel Corporation (China Steel) and Yieh Loong Enterprise Co., Ltd. (Yieh Loong) are affiliated companies and should be collapsed for purposes of an antidumping analysis. *See* Memorandum to Joseph A. Spetrini, ''Affiliation Issue regarding China Steel * * * and Yieh Loong * * * ,'' dated April 19, 2001 (Affiliation Memorandum). The collapsed entity is hereafter referred to as China Steel.

Pursuant to section 735(a)(2) of the Tariff Act and § 351.210(b)(2)(ii) of the Department's regulations, on April 30, 2001, respondent China Steel requested the Department extend the final determination for the full sixty days as permitted by the statute and regulations. China Steel also agreed to the extension of provisional measures (*i.e.,* suspension of liquidation) from a four-month period to a period not to exceed six months, pursuant to 19 CFR 351.210(e)(2).

Section 735(a)(2) of the Tariff Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

In accordance with 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, (2) the respondent requesting a postponement accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting China Steel's request and are postponing the final determination to no later than 135 days after the publication of the preliminary determination in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(b)(2).

Dated: July 6, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17856 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–12A12.''

Northwest Fruit Exporters' (''NFE'') original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); November 2, 1998 (63 FR 60304, November 9, 1998); October 20, 1999 (64 FR 57438, October 25, 1999); and October 16, 2000 (65 FR 63567, October 24, 2000). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Northwest Fruit Exporters 105 South 18th Street, Suite 227, Yakima, Washington 98901–2149,

Contact: James R. Archer, Manager, Telephone: (509) 576–8004

Application No.: 84–12A12.

Date Deemed Submitted: July 9, 2001.

Proposed Amendment: Northwest Fruit Exporters seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Bertha's Marketing, Inc., Wenatchee, Washington; Crane & Crane, Inc., Brewster, Washington; Garrett Ranches Packing, Wilder, Idaho; Sun Fresh International, LLC, Wenatchee, Washington; and Valicoff Fruit Company, Wapato, Washington;

2. Delete the following companies as ''Members'' of the Certificate: Beebe Orchard Company, Chelan, Washington; Cashmere Fruit Exchange, Cashmere, Washington; Custom Fruit Packers,

Wenatchee, Washington; Chief Tonasket Growers, Tonasket, Washington; and Wells & Wade Fruit Co., Wenatchee, Washington; and

3. Change the listing of the following Members: ''Custom Apple Packers, Inc., Brewster and Quincy, Washington'' to the new listing ''Custom Apple Packers, Inc., Brewster, Quincy & Wenatchee, Washington''; ''Columbia Reach Pack, Yakima, Wasington'' to ''Chiawana, Inc. dba Columbia Reach Pack, Yakima, Washington''; and ''Double Diamond Fruit, Quincy, Washington'' to ''Morgan's of Washington dba Double Diamond Fruit, Quincy, Washington''.

Dated: July 12, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 01–17844 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071001D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Capacity Committee and Groundfish Oversight Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on August 1 and 2, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, August 1, 2001, 10 a.m.—Capacity Committee Meeting.

The Capacity Committee will discuss nine proposals for reducing latent effort and changing permit transfer restrictions in the Northeast Multispecies Fishery. The Council has directed the Committee to make recommendations on revising the restrictions, and combine these proposals for possible inclusion in Amendment 13 to the Multispecies Fishery Management Plan (FMP). The Committee will not make final decisions about the choice of alternatives, but will report its recommendations to the Council and the Council's Groundfish Committee.

Thursday, August 2, 2001, 9:30 a.m.—Groundfish Oversight Committee Meeting.

The Groundfish Oversight Committee will meet to continue development of management options for Framework Adjustment 36 and Amendment 13 to the Northeast Multispecies FMP. Framework 36 was initiated by the Council in January, 2001, to address the following issues: reducing excessive regulatory discards of Gulf of Maine cod resulting from a trip limit, meeting the fishing mortality objectives for Gulf of Maine cod, extending and/or adjusting the Western Gulf of Maine closure (currently scheduled to open May 1, 2002), considering allowing access to groundfish closures by tuna purse seine vessels, and expanding the area for the northern shrimp exempted fishery. The Council plans to complete its work on Framework 36 at the July 24-26, 2001 Council meeting, but, if necessary, the Committee will continue development of this action at this meeting.

The Committee will also continue development of Amendment 13. Amendment 13 will adopt programs to rebuild overfished stocks and end overfishing where necessary. The Committee will continue its efforts to develop management alternatives that will meet the goals of the Amendment. Options under consideration include approaches to addressing unused Days-at-Sea, and a wide variety of management tools (closed areas, gear restrictions, effort restrictions, trip limits, recreational fishing restrictions, etc.) as necessary to meet the amendment's objectives.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 10, 2001.

Richard W. Surdi,

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

[FR Doc. 01–17851 Filed 7–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0024]

Federal Acquisition Regulation; Proposed Collection; Buy American Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0024).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Certificate. The clearance currently expires on September 30, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can

minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 11, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Buy American Act requires that only domestic end products be acquired for public use unless specifically authorized by statute or regulation, provided that the cost of the domestic products is reasonable.

The Buy American Certificate provides the contracting office with the information necessary to identify which products offered are domestic end products and which are of foreign origin. Components of unknown origin are considered to have been supplied from outside the United States.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents: 3,906.
Responses Per Respondent: 25.
Total Responses: 59,475.
Hours Per Response: .167.
Total Burden Hours: 9,932.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0024, Buy American Certificate, in all correspondence.

Dated: July 11, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–17768 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer 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 August 16, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren__Wittenberg@omb.eop.gov.

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, 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: July 11, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Reinstatement.

Title: Streamlined Process for Education Department General Administrative Regulations (EDGAR) Approved Grant Applications.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1.
Burden Hours: 1.

Abstract: Since April 1997, EDGAR's menu of selection criteria become effective. For each competition, the Secretary would select one or more criteria that best enable the Department to identify the highest quality applications consistent with the program purpose, statutory requirements, and any priorities established. This allows the Secretary the flexibility to weigh the criteria according to the needs of each individual program. This menu of selection criteria will provide the Department the flexibility to choose a set of criteria tailored to a given competition and obviate the need to create specific selection criteria through individual program regulations. ED is requesting a streamlined clearance process for programs of approved applications who choose to change: (1) Criteria from the same EDGAR menu; (2) old EDGAR to new EDGAR criteria, or (3) program criteria to EDGAR criteria.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@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. 01–17769 Filed 7–16–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer 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 August 16, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, 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: July 11, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: National Study of Title I Schools—Data Collection Instruments.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 18,700.

Burden Hours: 23,425.

Abstract: This National Study of Title I Schools will be the main source of nationally-representative school-level information on the implementation of Title I provisions and standards-based reform generally, over a three-year period from the 2001–02 through 2003–04 school years. The study will examine and describe how Title I schools are using standards-based reforms to assist in improving learning, with a particular focus on implementation of provisions in the Title I program that are designed to support such improvements. The study will also examine more specifically the quality of instruction and instructional support in Title I schools, with a focus on implementation of Title I provisions designed to support more effective instruction and instructional support.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@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. 01–17770 Filed 7–16–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer 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 August 16, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren__Wittenberg@omb.eop.gov.

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, 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: July 11, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Moving Reading/English Language Arts Standards to the Classroom Study: The Impact of Systemic, Standards-based Reform on Instruction.

Frequency: One Time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,328.

Burden Hours: 1,455.

Abstract: The purpose of Moving Standards Reading is to understand the relationship between state-initiated standards-based reforms and student achievement. The study will assess the impact of grade 4 reading/English language arts content standards and instructional supports on teachers' classroom instructional practices. It will also assess the relationship between instruction aligned with standards and grade 4 student achievement on state-administered reading/English language

arts assessments. The study is to be conducted in 4 states, 100 districts, and 400 schools. The results of the study will highlight the features of effective standards-based reform policies and practices. The results are also expected to inform future federal programs and state, district, and school policy development and implementation.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@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. 01–17771 Filed 7–16–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Peer Review of DOE's Photovoltaic Program

AGENCY: Department of Energy.

ACTION: Announcement of a peer review of the Department of Energy's (DOE's) Photovoltaic Program.

SUMMARY: The U.S. Department of Energy (DOE), Office of Power Technology is announcing its intention to conduct a Peer Review of DOE's Photovoltaic Program August 6th and 7th, 2001 in Golden, Colorado at the Denver Marriott West.

DATES: Monday, August 6th, 2001 from 8:00 am–5:30 pm (MDT) and Tuesday, August 7th, 2001 from 8:00 am–4:30 pm (MDT).

ADDRESSES: Denver Marriott West, 1717 Denver West Parkway, Golden, CO 80401.

FOR FURTHER INFORMATION CONTACT: Jeffrey Mazer, Department of Energy, (202) 586–2455, via facsimile at (202) 586–8148 or electronically at *Jeffrey.Mazer@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The DOE Photovoltaic (PV) Program recognizes that achievement of aggressive technical goals is a formidable task that requires a highly directed and carefully monitored program of research and development, in partnership with the national laboratories, universities, and industry. Program management not only requires that the progress of all research participants be constantly monitored, but that the overall balance of program activities and relevance of the research be evaluated, particularly in view of limited budgets and multiple priorities. With this in mind, the Program conducts a series of ongoing review activities aimed at guiding the Program toward achievement of the long-term goals. From time to time, the Program has also benefited from independent reviews conducted by other organizations, which provided valuable feedback on the research progress, relevance, and priorities, as well as an assessment of the Program's own processes for conducting reviews.

The PV Program Peer Review during FY 2001 builds extensively on ongoing review processes and will address activities up to this point in Fiscal Year (FY) 2001 (Government's Fiscal Year is from October 1st through September 30th). Additional information on DOE's PV Program can be obtained at *www.eren.doe.gov/pv/.*

The goals of the PV Program Peer Review are to obtain input from DOE recognized experts from the research, technology and business communities. This independent and objective panel will convene to provide input for improving PV Program decision making of program priorities and balance, and improving the technical quality and relevance of research activities. The review will cover a representative group of projects supported by the PV Program in FY 2001. The review meeting is open to the public to attend and observe. Attendance is free of charge.

Issued in Golden, Colorado, on July 5, 2001.

Matthew A. Barron,

Acting Director, Office of Acquisition and Financial Assistance.

[FR Doc. 01–17822 Filed 7–16–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–481–000]

ANR Storage Company; Notice of Tariff Filing

July 11, 2001.

Take notice that on July 6, 2001, ANR Storage Company (ANR Storage), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 6, 2001:

Third Revised Sheet No. 1
First Revised Sheet No. 11
First Revised Sheet No. 45
Original Sheet No. 155A
Original Sheet No. 155B
Original Sheet No. 155C

ANR states that tariff sheets are being filed to expressly state in its tariff the types of conditions ANR Storage may apply to discounts without having to file the discount agreement with the Commission as a non-conforming service agreement and to implement the ability for ANR Storage to enter into negotiated rate agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17813 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–913–003]

Commonwealth Edison Company; Notice of Filing

July 11, 2001.

Take notice that on May 30, 2001, Commonwealth Edison Company, tendered for filing in compliance with Federal Energy Regulatory Commission (FERC) order dated April 30, 2001, in Docket Nos. EL94–38–001 and ER94–913–11, 95 FERC 61,163 (2001).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17818 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2464–000]

The Detroit Edison Company; Notice of Filing

July 11, 2001.

Take notice that June 28, 2001, the Detroit Edison Company (Detroit Edison) tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1.

Detroit Edison also tendered for filing Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Engage Energy America LLC dated as of June 4, 2001.

The parties have not engaged in any transactions under the Service Agreements prior to thirty days of this filing.

Detroit Edison requests that the Service Agreements become effective July 26, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17814 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2007–001]

The Detroit Edison Company; Notice of Filing

July 11, 2001

Take notice that on June 22, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to the Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, filed on May 7, 2001. These Service Agreements are between Detroit Edison and Exelon Generation Company, LLC dated as of April 23, 2001. The parties have not engaged in any transactions under the Service Agreements prior to thirty days of this filing.

Also Detroit Edison filed Service Agreements for Short-Term Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Exelon Generation Company, LLC dated as of April 23, 2001.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of July 21, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary,

[FR Doc. 01–17815 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2006–001]

The Detroit Edison Company; Notice of Filing

July 11, 2001.

Take notice that on June 22, 2001, The Detroit Edison Company (Detroit Edison) amended its Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1 filed with the Federal Energy Regulatory Commission (Commission) on May 7, 2001. These Service Agreements are between Detroit Edison and First Energy Services Corporation, dated as of April 20, 2001.

The Detroit Edison Company (Detroit Edison) also tendered for filing Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and First Energy Services Corporation, dated as of March 30, 2001. These parties have not engaged in any transactions under the Service Agreements prior to thirty days of this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of July 20, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17816 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2009–001]

The Detroit Edison Company; Notice of Filing

July 11, 2001.

Take notice that on June 22, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its Service Agreement for Short-term Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. This Service Agreement is between Detroit Edison and Quest Energy LLC, dated as of February 1, 2001. The parties have not engaged in any transactions under the Service Agreement prior to thirty days of this filing.

Detroit Edison also filed Service Agreements for Short-Term Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1. This Service Agreement is between Detroit Edison and Quest Energy LLC, dated as of February 1, 2001. The parties have not engaged in any transactions under the Service Agreement prior to thirty days of this filing.

Detroit Edison requests that the Service Agreements become effective July 20, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17817 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–396–000]

Equitrans, L.P. and Equitable Field Services, L.L.C. Notice of Abandonment Application

July 11, 2001

Take notice that on July 2, 2001, Equitrans, L.P. (Equitrans), 100 Allegheny Center Mall, Pittsburgh, Pennsylvania 15212, and Equitable Field Services, L.L.C. (EFS), 1710 Pennsylvania Avenue, Charleston, West Virginia 25302, filed an application in Docket No. CP01–396–000 pursuant to Section 1(b) and 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon certain certificated facilities by sale to EFS as part of a sale to EFS of five gathering systems. The application also requests that the Commission determine that the facilities sold to EFS, and the services rendered by means of such facilities, are non-jurisdictional gathering facilities and services, and will be exempt from the Commission's jurisdiction under the NGA.

EFS proposes to operate the facilities to be abandoned and other facilities to be acquired from Equitrans in Allegheny, Armstrong, Greene, Indiana and Washington Counties, Pennsylvania; and in Braxton, Clay, Doddridge, Fayette, Gilmer, Harrison, Lewis, Marion, Nicholas, Ritchie, Taylor, Tyler, Upshur and Wetzel Counties, West Virginia as a gas gatherer providing gas gathering and related services on a non-discriminatory basis to all customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' from the RIMS Menu

and follow the instructions (please call (202) 208–2222 for assistance).

Any questions regarding this application should be directed to Fredrick K. Dalena, Vice President, 100 Allegheny Center Mall, Pittsburgh, PA 15212, at (412) 395–3270 or Donald R. Nelson, Rate Analyst, at (412) 395–3237.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before August 1, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying abandonment will be issued.

David P. Boergers

Secretary.

[FR Doc. 01–17807 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–22–000]

Iroquois Gas Transmission System; Notice of Filing

July 11, 2001.

Iroquois Gas Transmission System filed revised standards of conduct on July 2, 2001 in Docket No. MG01–22–000.

Iroquois Gas Transmission System states that it mailed copies of this filing to all customers and state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before July 26, 2001. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17808 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–361–003]

Northern Border Pipeline Company; Notice of Compliance Filing

July 11, 2001.

Take notice that on July 6, 2001, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective May 1, 2001:

First Revised Sheet Number 235C

Northern Border states that the purpose of this filing is to comply with the Commission's order dated June 25, 2001 in Docket No. RP01–361–002 (95 FERC 61,427).

Northern Border states that copies of this filing have been served on all parties on the Commission's service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17811 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–005]

Texas Gas Transmission Corporation; Notice of Negotiated Rate and Tariff

July 11, 2001.

Take notice that on July 6, 2001, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective July 6, 2001:

Second Revised Sheet No. 40

Texas Gas states that the purpose of this filing is to reflect the a new negotiated rate/non-conforming contract in its tariff as required Section 154.112(b) of the Commission's regulations and as directed by Commission Letter Order dated April 27, 2001.

Texas Gas states that copies of the revised tariff sheet is being mailed to all parties on the service list, Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17810 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–480–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

July 11, 2001.

Take notice that on July 6, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to become effective July 6, 2001:

Fifteenth Revised Sheet No. 187

Williston Basin states that the purpose of this filing is to clarify that it will update information required by Section 161.3(l)(2) of the Commission's Regulations within three (3) business days of any change.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17812 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–841–000]

Xcel Energy Services, Inc.; Notice of Filing

July 11, 2001.

Take notice that on June 21, 2001, Xcel Energy Services, Inc. tendered for filing a notice of withdrawal of Section 206 of the Federal Power Act.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions and protests should be filed on or before July 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17819 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–913–000, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

July 11, 2001.

Take notice that the following filings have been made with the Commission:

1. Haleywest L.L.C.

[Docket No. ER01–1760–001]

Take notice that on July 2, 2001, Haleywest L.L.C., tendered for filing,

pursuant to the Federal Energy Regulatory Commission's (FERC) directive issued June 8, 2001 in the above referenced Docket No., files the FERC Rate Schedule No. 1 in the format as required by 18 CFR 35.9.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER01–1791–001]

Take notice that on July 6, 2001, Niagara Mohawk Power Corporation tendered for filing a service agreement, i.e. an Interconnection Agreement between Niagara Mohawk Power Corporation and Canastota Wind Power, LLC for a 30 MW wind-powered generating facility located in the Town of Fenner, Madison County, New York, dated as of April 2, 2001. The filing has been designated by the New York Independent System Operator, Inc. as Service Agreement No. 306 under its FERC Electric Tariff, Original Volume No. 1. Same was filed to comply with the June 6, 2001 Order of the Commission in this docket.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. West Texas Utilities Company

[Docket No. ER01–1798–001]

Take notice that on July 6, 2001, in compliance with the Commission's Order No. 614 and the June 6, 2001 letter order issued in the above referenced docket, West Texas Utilities Company (WTU) filed a revised Restated Service Agreement (Restated Agreement) between WTU and Tex-La Electric Cooperative of Texas, Inc. (Tex-La). The Restated Agreement was revised to reflect its designation as a Service Agreement under WTU's FERC Electric Tariff, Original Volume No. 1. WTU states that it has made no other changes to the Restated Agreement.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER01–1894–001]

Take notice that on July 6, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a service agreement, i.e. an Interconnection Agreement between Niagara Mohawk Power Corporation and Athens Generating Company, L.P. for a 1230 MW (winter rating) natural gas-fired combined cycle combustion turbine generating facility that is to be constructed in the Town of Athens, Greene County, New York, dated as of April 27, 2001. The filing has been designated by the New York Independent System Operator, Inc. as Service Agreement No. 307 under its FERC Electric Tariff, Original Volume No. 1. The filing was made to comply with a June 6, 2001 Order of the Commission in this docket.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER01–2519–000]

Take notice that on July 6, 2001, MidAmerican Energy Company (MidAmerican), filed with the Commission a Fourth Supplement to Service Agreement No. 15 (Fourth Supplement), dated June 8, 2001, entered into by MidAmerican and the Resale Power Group of Iowa, pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (FERC Docket No. ER96–719–000; amended in FERC Docket No. ER00–2051–000).

MidAmerican requests an effective date of June 8, 2001 for the Fourth Supplement and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Resale Power Group of Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER01–2520–000]

Take notice that on July 6, 2001, Southern California Edison Company (SCE) tendered for filing under SCE's Wholesale Distribution Access Tariff a Service Agreement for Wholesale Distribution Service and an Interconnection Facilities Agreement (collectively, Agreements) between SCE and California Portland Cement Company (CPCC). Copies of this filing were served upon the Public Utilities Commission of the State of California and CPCC.

SCE respectfully requests the Agreements to become effective July 7, 2001.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. MidAmerican Energy Company

[Docket No. ER01–2521–000]

Take notice that on July 6, 2001, MidAmerican Energy Company (MidAmerican), filed with the Commission a Firm Transmission Service Agreement with the City of Pella, Iowa, dated June 19, 2001, entered into pursuant to MidAmerican's Open Access Transmission Tariff. MidAmerican has served a copy of the filing on the Iowa Utilities Board and the City of Pella, Iowa.

MidAmerican requests an effective date of June 19, 2001 for the Agreement and seeks a waiver of the Commission's notice requirement.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER01–2522–000]

Take notice that PacifiCorp on July 6, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Long-Term Firm Transmission Service Agreement with Powerex Corporation (Powerex) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER01–2523–000]

Take notice that PacifiCorp on July 6, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Long-Term Firm Transmission Service Agreements with Idaho Power Company (Idaho) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER01–2524–000]

Take notice that PacifiCorp on July 6, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Long-Term Firm Transmission Service Agreements with Cargill-Alliant, LLC. under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER01–2525–000]

Take notice that PacifiCorp on July 6, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Long-Term Firm Transmission Service Agreement with PacifiCorp Power Marketing (PPM) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER01–2526–000]

Take notice that on July 6, 2001, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement with Axia Energy, LP, both dated June 19, 2001, and entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 19, 2001 for the Agreement and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board and Axia Energy, LP.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Southwest Power Pool, Inc.

[Docket No. ER01–2527–000]

Take notice that on July 6, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing three executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service, and Loss Compensation Service with Exelon Generation Company, LLC (Exelon), three executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service, and Loss Compensation Service with Blue Canyon Windpower, LLC (Blue Canyon), and two executed service agreements for Firm Point-to-Point Transmission Service and Loss Compensation Service with Arkansas Electric Marketing, LLC (AEM)(collectively, Transmission Customers). SPP requests an effective date of June 27, 2001 for the service agreements with Exelon and AEM and July 2, 2001, for the service agreements with Blue Canyon.

A copy of this filing was served on the Transmission Customers.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER01–2528–000]

Take notice that on July 6, 2001, PJM Interconnection, L.L.C. (PJM) tendered for filing proposed amendments to the Appendix to Attachment K of PJM Open Access Transmission Tariff and to Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to add a new section 8 implementing an interregional congestion pilot program between PJM and the New York Independent System Operator, Inc. (NYISO).

Copies of this filing have been served on all PJM Members, the NYISO, and the state electric regulatory commissions in the PJM control area the NYISO control areas.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Sierra Pacific Power Company and Nevada Power Company

[Docket No. ER01–2529–000]

Take notice that on July 6, 2000, Sierra Pacific Power Company (Sierra) and Nevada Power Company (Nevada Power) tendered for filing a Notice of Termination of Sierra Pacific Resources Operating Companies FERC Electric Tariff, Second Revised Volume No. 1 (the Retail Access Tariff), which was intended to implement retail access in Nevada. Sierra and Nevada Power note that the statute implementing retail access in Nevada was repealed before the Retail Access Tariff went into effect. Sierra and Nevada Power request that the termination be made effective as of October 1, 2001.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Exelon Generation Company, LLC

[Docket No. ER01–2530–000]

Take notice that on July 6, 2001, Exelon Generation Company, LLC (Exelon Generation) submitted for filing with the Federal Energy Regulatory Commission (FERC or Commission) a service agreement for wholesale power sales transactions between Exelon Generation and Central Illinois Light Company under Exelon Generation's wholesale power sales tariff, FERC Electric tariff, Original Volume No. 1.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Central Maine Power Company

[Docket No. ER01–2531–000]

Please take notice that on July 6, 2001, Central Maine Power Company (CMP) tendered for filing a service agreement for Short-Term Firm Point-to-Point Transmission Service entered into with NRG Power Marketing Inc. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated as CMP—FERC Electric Tariff, Fifth Revised, Volume No. 3, Original Service Agreement No. 132.

CMP request a waiver of the Commission's notice requirements to permit service under the agreement to begin effective as of June 21, 2001.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Central Maine Power Company

[Docket No. ER01–2532–000]

Please take notice that on July 6, 2001, Central Maine Power Company (CMP) tendered for filing a service agreement for Umbrella Non-Firm Point-to-Point Transmission Service entered into with NRG Power Marketing Inc. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated as CMP—FERC Electric Tariff, Fifth Revised, Volume No. 3, Original Service Agreement No. 130.

CMP requests waiver of the Commission's notice requirements to permit service under the agreement to begin effective as of June 6, 2001.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Central Maine Power Company

[Docket No. ER01–2533–000]

Please take notice that on July 6, 2001, Central Maine Power Company (CMP) tendered for filing a service agreement for Umbrella Non-Firm Point-to-Point Transmission Service entered into with Axia Energy, LP. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated as CMP—FERC Electric Tariff, Fifth Revised, Volume No. 3, Original Service Agreement No. 131.

CMP request waiver of the Commission's notice requirements to permit service under the agreement to begin effective as of June 12, 2001.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Pool

[Docket No. ER01–2534–000]

Take notice that on July 6, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted

changes to multiple Market Rules to implement changes to the treatment of Installed Capability (ICAP) transactions in order to facilitate and standardize the trading of ICAP and firm Energy products across control area boundaries. A September 1, 2001 effective date has been requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Vermont Electric Power Company, Inc.

[Docket No. ER01–2535–000]

Take notice that on July 6, 2001, Vermont Electric Power Company, Inc. (VELCO) submitted three firm point-to-point and three non-firm point-to-point service agreements establishing the following as customers under the terms of VELCO's Local Open Access Transmission Tariff: Axia Energy, LP, Legacy Energy Group, LLC, and Energy USA—TPC. VELCO also filed a revised List of Customers With Active Service Agreements.

VELCO asks that these agreements become effective as of the respective dates of the agreements, and that the revised List of Customers become effective as of the date of filing. Accordingly, VELCO requests a waiver of the Commission's notice requirements. Copies of this filing were served on the customers, the Vermont Department of Public Service, and the Vermont Public Service Board.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. New York Independent System Operator, Inc.

[Docket No. ER01–2536–000]

Take notice that the New York Independent System Operator, Inc. (NYISO) on July 6, 2001 tendered for filing proposed revisions to Sections 5.9—5.16 of its Market Administration and Control Area Services Tariff. The NYISO requests an effective date of 60 days after this filing (September 4, 2001).

Copies of this filing were served upon all persons who have executed Service Agreements under the ISO Market Services Tariff and all parties included on the service list for docket number ER98–3169–000.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. CalPeak Power—Midway LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Border LLC, and CalPeak Power—Mission LLC

[Docket Nos. ER01–2537–000, ER01–2543–000, ER01–2544–000, ER01–2545–000, ER01–2546–000, ER01–2547–000, and ER01–2548–000]

Take notice that on July 6, 2001, CalPeak Power—Midway LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Border LLC and CalPeak Power—Mission LLC (together, the Applicants) requested the Commission to: (1) Accept for filing the Applicants' proposed FERC Electric Tariffs, and grant their requests for blanket authority to make market-based sales of energy, capacity and certain ancillary services; and (2) grant the Applicants such waivers and authorizations as have been granted by the Commission to other entities authorized to transact at market-based rates.

Comment date: July 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions or protests should be filed on or before the comment date. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17806 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

July 11, 2001.

Take notice that the following request to use alternative procedures to prepare a license application has been filed 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 ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

a. *Type of Application:* Request to use alternative procedures to prepare a new license application.

b. *Project No.:* 2586.

c. *Date filed:* May 23, 2001.

d. *Applicant:* Alabama Electric Cooperative, Inc. (AEC).

e. *Name of Project:* Conecuh River Hydroelectric Project.

f. *Location:* On the Conecuh River near the towns of Gantt and River Falls, in Covington County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mike Noel, Environmental Engineer, Alabama Electric Cooperative, Inc., Post Office Box 550, Anadalusia, AL 36420, (334) 427–3248.

i. *FERC Contact:* Ron McKitrick, (770) 452–3778; e-mail ronald.mckitrick@ferc.fed.us.

j. *Deadline for Comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

k. The Conecuh River Project consists of two developments: The existing Point ''A'' development consists of a 2,800-foot-long earthen dam, 700-acre

reservoir, three generating units with an installed capacity of 5,200 kW, and a 0.39-mile-long transmission line. The existing Gantt Development consists of a 1,562-foot-long earthen dam, a 2,767-acre reservoir, and two generating units with an installed capacity of 3,050 Kw.

l. Alabama Electric Cooperative, Inc. (AEC) has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. AEC has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. AEC has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on AEC's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. AEC will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

AEC has had preliminary discussion with federal and state resources agencies, NGOs, county and local governments, homeowners, and members of the public regarding the Conecuh River Project. AEC intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by April 30, 2003.

David P. Boergers,

Secretary.

[FR Doc. 01–17809 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Preliminary Draft Environmental Assessment and Request for Preliminary Recommendations, Prescriptions, and Terms and Conditions

July 11, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 469.

c. *Date Filed:* July 5, 2001.

d. *Applicant:* Minnesota Power Inc.

e. *Name of Project:* Winton Hydroelectric Project.

f. *Location:* On the Kawishiwi River near the City of Ely, in Lake and St. Louis Counties, MN. The project occupies federal lands within the Superior National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Paulson, Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802, *jpaulson@mnpower.com,* 218–722–5642, ext. 3569.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us,* 202–219–2778.

j. *Status of Project:* With this notice the Commission is soliciting: (1) Preliminary recommendations, prescriptions, and terms and conditions on the Preliminary Draft Environmental Assessment (PDEA); and (2) comments on the Draft License Application.

k. *Deadline for filing preliminary comments, recommendations, prescriptions, and terms and conditions:* 60 days from the issuance date of this notice.

All comments on the Preliminary DEA and Draft License Application should be sent to the addresses noted above in Item h, with one copy filed with FERC at the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must include the project name and number and bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Prescriptions, or Preliminary Terms and Conditions. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371 and may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Minnesota Power Inc. has mailed notification to members of the collaborative team and interested parties of the filed PDEA and Draft License Application. Copies of these documents are also available from the internet at *www.mnpower.com/wintonrelicensing* or by calling the applicant contact identified in Item h above.

m. With this notice, we are initiating consultation with the Minnesota STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

David P. Boergers,

Secretary.

[FR Doc. 01–17820 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Soliciting Additional Study Requests and Establishing Procedures for Relicensing

July 11, 2001.

Take notice that additional study requests are being solicited for the following hydroelectric applications.

a. *Type of Application:* Amendment of License Application.

b. *Project No.:* 2030–036.[1]

c. *Date Filed:* June 29, 2001.

d. *Applicants:* Portland General Electric Company (PGE) and the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS).

[1] On December 16 and 17, 1999, PGE and the CTWS, respectively, filed competing applications for license for the Pelton Round Butte Project. On June 29, 2001, PGE and the CTWS filed a joint, final amendment to their applications for license to become co-applicants for license, thereby eliminating any competition for a new license for the project. Based on footnote No. 19 of the Commission's Order Approving Settlement and Amending Application, issued November 21, 2000, we are merging both applications into one docket, 2030–036. Docket 11832–000, established for the CTWS license application, and docket 2030–031, established for PGE's application have been merged into docket P–2030–036.

e. *Name of Project:* Pelton Round Butte Hydroelectric Project.

f. *Location:* The project is located on the Deschutes River in Jefferson, Marion, and Wasco Counties, Oregon. The project occupies lands of the Deschutes National Forest; Mt Hood National Forest; Willamette National Forest; Crooked River National Grassland; Bureau of Land Management; and tribal lands of the Warm Springs Reservation of Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Ms. Julie Keil, Director, Hydro Licensing, Portland General Electric Company, 121 SW Salmon Street, Portland, OR 97204, (503) 464–8864; and Mr. James Manion, General Manager, Warm Springs Power Enterprises, P.O. Box 690, Warm Springs, OR 97761, (541) 553–1046.

i. *FERC Contact:* Any questions on this notice should be addressed to Nan Allen at (202) 219–2839. E-mail address: *nan.allen@ferc.fed.us.*

j. *Deadline for filing additional study requests:* August 28, 2001.[2]

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, additional study requests, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The applications for license and the joint, final amendment application are not ready for environmental analysis at this time.

l. The Round Butte development consists of: (1) The 440-foot-high, 1,382-foot-long compacted rock-filled Round Butte dam with a crest elevation of 1,955 feet above mean sea level (msl) with a spillway intake structure, a spillway tunnel and a modified flip bucket discharge; (2) Lake Billy Chinook with a gross storage capacity of 535,000 acre-feet and a normal maximum water surface area of 4,000 acres at normal maximum water elevation of 1,945 feet msl; (3) a powerhouse intake structure, with trashracks, on the left abutment about 700 feet upstream from the dam; (4) a 23-foot-diameter, 1,425-foot-long steel-lined power tunnel; (5) a reinforced concrete-encased steel bifurcation consisting of three 14-foot-diameter penstocks; (6) the Round Butte powerhouse containing three turbine/generator units with a total installed capacity of 300 megawatts (MW); (7) a tailrace channel; (8) a 100-mile-long, 230-kilovolt (kV) transmission line from the switchyard to PGE's Bethel substation; (9) a 10.5-mile-long, 12.5-kV transmission line from the switchyard to the Reregulating dam; and (10) other appurtenances.[3]

The Pelton development consists of: (1) The 204-foot-high, 636-foot-long thin-arch variable-radius reinforced concrete Pelton dam with a crest elevation 1,585 feet msl; (2) a reinforced concrete spillway on the left bank with a crest elevation of 1,558 feet msl; (3) Lake Simtustus with a gross storage capacity of 31,000 acre-feet and a normal maximum surface area of 540 acres at normal maximum water surface elevation of 1,580 feet msl; (4) an intake structure at the dam; (5) three 16-foot-diameter penstocks, 107 feet long, 116 feet long, and 108 feet long, respectively; (6) a powerhouse with three turbine/generator units with a total installed capacity of 108 MW; (7) a tailrace channel; (8) a 7.9-mile-long, 230-kV transmission line from the powerhouse to the Round Butte switchyard; and (9) other appurtenances.

The Reregulating development consists of: (1) The 88-foot-high, 1,067-foot-long concrete gravity and impervious core rockfilled Reregulating dam with a spillway crest elevation of 1,402 feet msl; (2) a reservoir with a gross storage capacity of 3,500 acre feet and a normal maximum water surface area of 190 acres at normal maximum water surface elevation of 1,435 feet msl; (3) a powerhouse at the dam containing a 18.9-MW turbine/generator unit; (4) a tailrace channel; (5) a 3.2-mile-long, 69-kV transmission line from the development to the Warm Springs substation; and (6) other appurtenances.

m. A copy of PGE's and CTWS's applications for license and their joint, final amendment are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

n. With this notice, we are initiating consultation with the *OREGON STATE HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application being accepted for filing
Notice of NEPA Scoping
Notice of application being ready for environmental analysis
Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application

David P. Boergers,

Secretary.

[FR Doc. 01–17821 Filed 7–16–01; 8:45 am]

BILLING CODE 6717–01–P

[2] The Commission issued a tendering notice and solicitation for additional study requests for PGE's and the CTWS's license applications on December 28, 1999. On January 6, 2000, the Commission canceled the solicitation for additional study requests in anticipation of the joint final amendment filed on June 29, 2001. We now establish the deadline for additional study requests as 60 days from the date of filing of the joint amendment.

[3] On June 18, 2001, PGE filed an application to amend the current project license to install a 70-kilowatt-turbine/generator unit on a pipeline that drains ground water from the lower grout tunnel on the west abutment of the Round Butte dam. The Commission has not yet acted on PGE's application.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00678B; FRL–6793–6]

Announcement of Public Meeting; Opportunity to Comment on Implications of Revised Bt Crops Reassessment for Regulatory Decisions Affecting These Products, and on Potential Elements of Regulatory Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is currently engaged in a comprehensive reassessment of the time-limited registrations for all existing *Bacillus thuringiensis* (*Bt*) corn and cotton plant-pesticides (also known as plant-incorporated protectants). This

reassessment has been designed to assure that the decisions on the renewal and/or extension of these registrations are based on the most current scientific data (including recently reviewed non-target impact data), and incorporates recommendations made by the FIFRA Scientific Advisory Panel (SAP) and any public comments received by the Agency. The reassessment process has also been designed to assure maximum transparency of the decision-making process. This notice announces the opportunity to comment on the implications of the revised risk and benefit sections of the reassessment for regulatory decisions affecting these *Bt* products. This notice also announces EPA's plan to make available shortly a document discussing potential draft risk mitigation and regulatory options for public comment and a request for others to submit proposals for regulatory options for consideration. EPA's plans to hold a technical briefing for the public on these documents on July 24, 2001.

DATES: The technical briefing will be held on July 24, 2001, from approximately 9 a.m. to 4 p.m.

Comments, identified by docket control number OPP–00678B, must be received on or before August 31, 2001.

ADDRESSES: The public technical briefing will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00678B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8715; fax number: (703) 308–7026; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to manufacturers, producers, distributors, users, and other persons interested in the registrations listed below. This action may also be of interest to other persons who have an interest in the registration and/or the use of *Bt* corn, *Bt* cotton, and *Bt* potato plant-pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and under the Federal Food, Drug, and Cosmetic Act (FFDCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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. How Can I Get Additional Information, Including Copies of these Documents and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of these documents, and certain other related documents (including copies of EPA's fact sheets on each registered *Bt* plant-pesticide, workshop proceedings on resistance management, EPA technical papers on regulation of agricultural biotechnology including resistance management for *Bt* plant-pesticides, ecological effects data requirements for protein plant-pesticides, allergenicity and health effects for protein plant-pesticides, and SAP reports from EPA's Biopesticide Internet Home Page at http://www.epa.gov/pesticides/biopesticides and from EPA's SAP Home Page at http://www.epa.gov/scipoly/sap). To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–00678B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00678B in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00678B. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any 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 version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background and Explanation of Actions Being Taken

A. Revised Risk and Benefit Sections and Draft Risk Mitigation and Regulatory Options Section

This notice announces the opportunity for public comment on the implications of EPA's revised risk and benefit sections of the *Bt* crops reassessment. The risk and benefit sections have been revised based on the recent SAP report on the preliminary risk and benefit sections, as well as in response to public comment surrounding the regulatory decisions affecting these products.

Although the Agency's conclusions regarding risk to the Monarch butterfly are available, the Agency's analysis of Monarch butterfly risk is undergoing a CBI substantiation process due to claims of confidentiality by the data submitters. The Agency is working on a priority basis to resolve this issue.

The Agency anticipates to release prior to the July 24th technical briefing, a document discussing potential risk mitigation and regulatory options with questions to be considered by the public. In addition, EPA will be holding a briefing for the public on these documents on July 24, 2001, from 9 a.m. to 4 p.m. at the Sheraton Hotel Crystal City, 1800 Jefferson Davis Highway, Arlington, VA.

EPA encourages other submissions of potential risk mitigation and regulatory options at the public meeting and during the comment period. To encourage public participation and dialog, EPA will place all comments and proposals in the public docket, and, if possible, will also place all comments and proposals on the Biopesticides web site at: www.epa.gov/pesticides/biopesticides. In addition, EPA is likely to develop additional documents regarding this reassessment and will also make these documents available through the public docket and the Biopesticides web site.

B. Overall Bt Crops Reassessment

EPA is currently engaged in a comprehensive reassessment of the time-limited registrations for all existing *Bt* corn and cotton plant-pesticides. This reassessment has been designed to assure that the decisions on the renewal and/or extension of these registrations are based on the most current scientific data. Current registrations are set to expire September 30, 2001. As part of EPA's reassessment, the Agency will decide whether to extend the registrations and, if so, whether to include any additional terms and conditions in such registrations on issues that could include insect resistance management, compliance mechanisms, and the protection of non-target organisms among other measures.

During this reassessment, EPA is committed to conducting an open and transparent public process that incorporates sound and current science, public involvement, and balanced decision-making. The major components of the process and time frames for action are as follows:

1. *Comprehensive risk and benefit assessments.* This review incorporated consideration of all available scientific information on *Bt* products, including results of recent scientific studies and recommendations from various individuals and organizations.

2. *Scientific peer review and public comment.* After completing the scientific risk assessment, the Agency provided the registrants of the products an opportunity to review the risk assessment and suggest technical corrections to the Agency. After technical corrections were made, EPA released the risk assessments and invited public comment and scientific peer review. That release included EPA's regulatory assessment and the underlying data, along with registrants' technical error correction comments and the corrective actions taken by the Agency. All of these materials were placed in the *Bt* crop reassessment docket.

3. *Recommendations from the SAP, National Academy of Sciences, public comments, and the Administration-wide review.* Since there are many organizations providing regulatory and scientific recommendations, EPA used the time since the SAP report was issued in March to consider and incorporate these recommendations into our revised risk and benefit assessments, as appropriate. This included recommendations and comments from the public, from the SAP on insect resistance management, and on ecological and public health aspects of our regulatory program, along with consideration of issues identified from the report released by the National Academy of Sciences titled: ''Genetically Modified Pest-Protected Plants, Science and Regulation'' and from the Administration-wide review.

4. *Revised risk and benefits assessments and proposed regulatory options.* EPA has considered all of the public comments and the recommendations from the SAP in revising the risk and benefit assessments, and in developing elements to be included in risk mitigation and the potential options for regulatory decisions. EPA will hold a technical briefing to describe the revised scientific reassessment and take comments on potential regulatory options.

5. *Final decisions on Bt registrations.* This will complete the scientific and public process. EPA will continue to take public comments for 45 days from publication of this Notice before announcing any registration decisions regarding these *Bt* plant-pesticides for future growing seasons on or before September 30, 2001.

List of Subjects

Environmental protection, Plant-pesticides.

Dated: July 11, 2001.

Janet L. Andersen.

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 01–17906 Filed 7–13–01 12:20 pm]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1385–DR]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–1385–DR), dated July 7, 2001, and related determinations.

EFFECTIVE DATE: July 7, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 7, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, as follows:

I have determined that the damage in certain areas of the State of Montana, resulting from severe winter storms on June 3–14, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Bolch of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Montana to have been affected adversely by this declared major disaster:

Gallatin, Missoula and Powell Counties for Public Assistance.

All counties within the State of Montana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–17775 Filed 7–16–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1378–DR]

West Virginia; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia, (FEMA–1378–DR), dated June 3, 2001, and related determinations.

EFFECTIVE DATE: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2001:

Doddridge and Fayette Counties for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17776 Filed 7–16–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1378–DR]

West Virginia; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1378–DR), dated June 3, 2001, and related determinations.

EFFECTIVE DATE: July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the reopening of the incident period for this disaster. The incident period for this declared disaster is now May 15, 2001, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–17777 Filed 7–16–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL TRADE COMMISSION

[File No. 002 3308]

ValueVision International, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair

methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 13, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Daniel Kaufman or Keith Fentonmiller, FTC/S–4002, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2675 or 326–2263.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 11, 2001), on the World Wide Web, at ''http://www.ftc.gov/os/2001/07/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from respondent ValueVision International, Inc. (''ValueVision''), which operates a live, 24-hour per day television home shopping network.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves allegedly misleading representations about two weight-loss products (WeightPerfect Fat Loss Accelerators and Fight the Fat), an internal cleanser (NutriFirm Internal Cleanser), an anti-cellulite lotion (NutriFirm Perfect Body Solution), and a topical anti-hair-loss solution (NutriFirm Vitamin H Serum). It concerns unsubstantiated health, disease, and weight loss claims made on television and in Internet advertising about these products.

According to the FTC complaint, ValueVision made unsubstantiated claims that the WeightPerfect Fat Loss Accelerators: Cause substantial loss in body weight or body fat in one to twelve weeks without exercise or restricting caloric intake; prevent weight gain regardless of exercise or caloric intake; increase the body's metabolic rate and burn calories; suppress the appetite; and cause substantial loss in body weight or body fat while sleeping. The studies relied upon by ValueVision involved subjects who were on restricted calorie diets, and/or exercise programs, and the studies did not involve the specific formulation of WeightPerfect Fat Loss Accelerators.

The complaint also alleges that ValueVision made unsubstantiated claims that Fight the Fat: enables consumers to lose substantial weight without the need for a change in diet or exercise; enables consumers to lose substantial weight even if consumers eat substantial amounts of foods that are high in fat, including steaks, pizza, hamburgers, butter, fried chicken and chocolate; and prevents the human body from absorbing substantial amounts of fat consumed. The studies relied upon by ValueVision involved subjects who were on restricted calorie diets, and the studies did not involve the specific formulation of Fight the Fat.

The complaint also alleges that ValueVision made unsubstantiated claims that NutriFirm Perfect Body Solution substantially reduces or eliminates cellulite; that NutriFirm Internal Cleanser alleviates backaches, muscle aches, headaches, colds, influenza and allergies, and improves impaired memory; and that NutriFirm Vitamin H Serum prevents or reduces hair-loss, including hair-loss in women after pregnancy.

The proposed consent order contains provisions designed to prevent ValueVision from engaging in similar acts and practices in the future. Part I of the proposed order prohibits ValueVision from making any unsubstantiated claim (a claim lacking competent and reliable scientific evidence) that the WeightPerfect Fat Loss Accelerators, Fight the Fat, NutriFirm Perfect Body Solution, or any other food, drug, dietary supplement, or cosmetic: Causes substantial weight loss or fat loss; causes substantial loss in body weight or body fat without exercise or restrictions on caloric intake; prevents weight gain, regardless of exercise or caloric intake; increases metabolic rate or burns calories; reduces or eliminates cellulite; suppresses the appetite; causes substantial loss in body weight or body fat while sleeping; prevents the human body from absorbing fat; or enables consumers to lose weight even if consumers eat foods that are high in fat, including steaks, pizza, hamburgers, butter, fried chicken or chocolate.

Part II of the order prohibits unsubstantiated claims that NutriFirm Internal Cleanser, or any other food, drug, or dietary supplement, alleviates back aches, muscle aches or headaches; alleviates colds, influenza or allergies; or improves impaired memory.

Part III of the order prohibits unsubstantiated claims that NutriFirm Vitamin H Serum, or any other food, drug, dietary supplement or cosmetic, prevents or slows the rate of hair-loss, including hair-loss in women after pregnancy.

Part IV requires ValueVision to have competent and reliable scientific evidence for any claims it makes that any food, drug, dietary supplement, cellulite-treatment product or weight-loss program can or will cure, treat, or prevent disease, or will have any effect on the structure or function of the human body.

Part V of the order contains a consumer redress provision, requiring ValueVision to send a letter to all purchasers of the covered products from ValueVision since February 1, 2000, offering a completed refund for up to three bottles of the product, including shipping and handling charges. ValueVision may choose to offer consumers the choice of a refund or a credit toward the purchase of other ValueVision merchandise. The order, and appendices 1 through 4 thereto, specify the content of the consumer

letters and of the envelopes in which the refund offer and refund checks will be sent. Part V also requires ValueVision to provide the Commission with documentation regarding its efforts to provide refunds.

Part VI is a standard safe harbor for FDA-approved drug claims, and Part VII is a standard safe harbor for food or dietary supplement claims authorized under the Nutrition Labeling and Education Act of 1990.

Part VIII through XI of the order require ValueVision to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, to provide copies of the order to certain of its personnel, to notify the Commission of changes in corporate structure, and to file compliance reports with the Commission. Part XII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–17842 Filed 7–16–01; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0058]

Submission for OMB Review; Comment Request Entitled Deposit Bond Annual-Sale of Government Personal Property, Standard Form 151

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Deposit Bond Annual-Sale of Government Personal Property, Standard Form 151.

DATES: Comments may be submitted on or before September 17, 2001.

FOR FURTHER INFORMATION CONTACT: Judith R. Cotter, Federal Supply Services, GSA (703) 305–7052.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0058, concerning Deposit Bond Annual-Sale of Government Personal Property, Standard Form 151. This form is used by bidders participating in sales of Government personal property whenever the sales invitation permits an annual type of deposit bond in lieu of cash or other form of deposit.

B. Annual Reporting Burden

Respondents: 1000.
Annual Responses: 1000.
Burden Hours: 250.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0058, Deposit Bond Annual-Sale of Government Personal Property, in all correspondence.

Dated: July 3, 2001.

Gloria M. Sochon,

Acting Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17753 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0027]

Submission for OMB Review; Comment Request Entitled GSAM, Part 542, Contract Administration, and Part 546, Quality Assurance

AGENCY: Acquisition Policy, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning GSAM, Part 542, Contract Administration, and Part 546, Quality Assurance.

DATES: Comments may be submitted on or before September 17, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC, 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0027, concerning GSAM, Part 542, Contract Administration, and Part 546, Quality Assurance. Under certain contracts, because of reliance on contractor inspection in lieu of Government inspection. GSA's Federal Supply Service (FSS) requires documentation from its contractors to effectively monitor contractor performance and ensure that it will be able to take timely action should that performance be deficient.

B. Annual Reporting Burden

Respondents: 4604.
Annual Responses: 116,869.
Burden Hours: 7830.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0027, GSAM, Part 542, Contract Administration, and Part 456, Quality Assurance, in all correspondence.

Dated: July 3, 2001.

Gloria M. Sochon,

Acting Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17754 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0121]

Submission for OMB Review; Comment Request Entitled Contractor's Report of Sales

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance 3090–0121, Contractor's Report of Sales.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Contractor's Report of Sales.

DATES: Comment Due Date: September 17, 2001.

ADDRESSES: Comments regarding this collection of information should be submitted to: Ed Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0121, Contractor's Report of Sales. The information is used primarily by contracting officers to estimate requirements for the subsequent year, evaluate the effectiveness of a schedule, negotiate better prices based on volume and for special reports.

B. Annual Reporting Burden

Number of Responses: 9,214.
Total Annual Responses: 184,280.
Percentage of these responses collected electronically: 100.
Average hours per response: .0083 hrs.
Total Burden Hours: 1530.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0121, Contractor's Report of Sales.

Dated: July 3, 2001.

Gloria M. Sochon,

Acting Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17755 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0118]

Submission for OMB Review; Comment Request Entitled Standard Form 94, Statement of Witness

AGENCY: Federal Vehicle Policy Division, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Standard Form 94, Statement of Witness.

DATES: Comments may be submitted on or before September 17, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Moses, Federal Vehicle Policy Division, (202) 501–2507.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 2040.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0118, concerning Standard Form 94, Statement of Witness. This form is used by all Federal agencies to report accident information involving U.S. Government motor vehicles.

B. Annual Reporting Burden

Respondetns: 874.
Annual Responses: 874.
Burden Hours: 291.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0118, Standard Form 94, Statement of Witness, in all correspondence.

Dated: July 3, 2001.

Gloria M. Sochon,

Acting Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17756 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0057]

Submission for OMB Review; Comment Request Entitled Deposit Bond Individual—Sale of Government Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Deposit Bond Individual—Sale of Government Personal Property.

DATES: Comments may be submitted on or before September 17, 2001.

FOR FURTHER INFORMATION CONTACT: Judith R. Cotter, Federal Supply Services, GSA (703) 305–7052.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration, (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0057, concerning Deposit Bond Individual—Sale of Government

Personal Property. This form is used by bidders participating in sales of Government personal property whenever the sales invitation permits an individual type of deposit bond in lieu of cash or other form of bid deposit.

B. Annual Reporting Burden

Respondents: 500.
Annual Responses: 500.
Burden Hours: 125.
Obtaining Copies of Proposals. A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0057, Deposit Bond Individual—Sale of Government Personal Property, in all correspondence.

Dated: July 3, 2001.

Gloria M. Sochon,

Acting Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17757 Filed 7–16–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding an ''HIV Research Network''. The RFP was published in the Commerce Business Daily on May 30, 2001.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—''HIV Research Network''.
Date: July 31, 2001 (Closed to the public).
Place: Agency for Healthcare Research & Quality, 2101 East Jefferson Street, Suite 601, Conference Room 2, Rockville, Maryland 20852.
Contact Person: Anyone wishing to obtain information regarding this meeting should contact Fred Hellinger, Center for Cost and Delivery Studies, Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 605, Rockville, Maryland, 20852, 301–594–6817.

Dated: July 2, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–17849 Filed 7–16–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–01–53]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Survey to Assess Hepatitis B Vaccination Coverage Among U.S. Health-Care Workers—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Since 1982, CDC has recommended hepatitis B vaccination of health-care workers who perform tasks that place them at risk for exposure to blood or other potentially infectious materials that may contain hepatitis B virus. Data from 1997 indicated that approximately 65% of U.S. health-care workers had received the hepatitis B vaccine.

Increasing national hepatitis B vaccination coverage among health-care workers to 98% has been included as a goal in the Healthy People 2010 initiative published by the National Center for Health Statistics. A cross-sectional survey has been developed to assess hepatitis B vaccination coverage levels among health-care workers in the United States. The proposed survey will provide data that can be used to assess progress towards achieving the 2010 goal. This survey will also provide data on facility-based hepatitis B vaccination policies and procedures that may affect vaccine coverage levels. The results of the project will assist the Division of Viral Hepatitis, National Center for Infectious Diseases, in the prevention and control of hepatitis B among health-care workers. There are no costs to respondents. The total response burden for the study is estimated as follows:

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Form A	300	1	30/60	150
Form B	300	25	15/60	1875

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Total				2025

Dated: July 11, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 01–17792 Filed 7–16–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Impact Study.

OMB No.: New Collection.

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to conduct the Head Start Impact Study. This study is being conducted under contract with Westat, Inc. (with the Urban Institute, American Institutes for Research, and Decision Information Resources as their subcontractors) (#282–00–0022) to collect information for determining, on a national basis, how Head Start affects the school readiness of children participating in the program as compared to children not enrolled in Head Start and to determine under which conditions Head Start works best and for which children.

The Head Start Impact Study involves ten waves of data collection. The first two waves will occur during the field test in fall 2001 and spring 2002. The field test will involve approximately 600 first time enrolled three- and four-year old preschool children across eight grantee/delegate agencies representing different community contexts. The children participating will be randomly assigned to either a Head Start group (that receives Head Start program services) or a comparison group (that does not receive Head Start services but may enroll in other available services selected by their parents or be cared for at home). Waves three through ten will involve data collection for the full-scale study. The Head Start Impact Study is a longitudinal study that will involve approximately 5,000–6,000 first time enrolled three- and four-year old preschool children across an estimated 75 nationally representative grantee/delegate agencies (in communities where there are more eligible children and families than can be served by the program). Data collection for the full-scale study will begin in fall 2002 and extend through spring 2006 with child assessments, conducted in the fall and spring of the Head Start years and in the spring of the kindergarten and first grade years and parent interviews conducted in the fall and spring of each year. Interviews/surveys with program staff/care providers, and quality of care assessments will be conducted in the spring of each year. This schedule of data collection is necessitated by the mandate in Head Start's 1998 reauthorization (Coates Human Services Amendments of 1998, PL 05–285) that DHHS conduct research to determine, on a national level, the impact of Head Start on the children it serves.

Respondents: Individuals or households, Head Start Agencies, school districts, and other child care providers.

Annual Burden Estimates: Estimated Response Burden for Respondents to the Head Start Impact Study—fall 2001, spring 2002, fall 2002, spring 2003, fall 2003, spring 2004, fall 2004, spring 2005, fall 2005, and spring 2006.

Instrument	Number of respondents	Number of responses per respondent	Avergae burden hours per response	Total burden hours
Year 1 (fall 2001):				
Parent Interviews	600	1	1.00	600
Child Assessments	600	1	0.66	400
Year 1 (spring 2002):				
Parent Interviews	540	1	1.00	540
Child Assessments	540	1	0.66	360
Teacher Ratings	108	5	0.25	27
Family Services Coordinators	50	1	0.75	38
Education Coordinators	50	1	0.75	38
Center Directors/Principals	50	1	1.00	50
Classroom Teachers/Care Providers	108	1	0.50	54
Year 2 (fall 2002):				
Parent Interviews	5,111	1	1.00	5,111
Child Assessments	5,111	1	0.66	3,407
Year 2 (spring 2003):				
Parent Interviews	4,599	1	1.00	4,599
Child Assessments	4,599	1	0.66	3,066
Teacher Ratings	920	5	0.25	230
Family Services Coordinators	500	1	0.75	375
Education Coordinators	500	1	0.75	375
Center Directors/Principals	500	1	1.00	500
Classroom Teachers/Care Providers	920	1	0.50	460
Year 3 (fall 2003):				
Parent Interviews	4,139	1	1.00	4,139
Child Assessments	2,287	1	0.66	1,525
Year 3 (spring 2004):				
Parent Interviews	3,910	1	1.00	3,910

Instrument	Number of respondents	Number of responses per respondent	Avergae burden hours per response	Total burden hours
Child Assessments	3,910	1	0.66	2,607
Teacher Ratings	782	5	0.25	196
Family Services Coordinators	450	1	0.75	338
Education Coordinators	450	1	0.75	338
Center Directors/Principals	450	1	1.00	450
Classroom Teachers/Care Providers	782	1	0.50	391
Year 4 (fall 2004):				
Parent Interviews	3,519	1	1.00	3,519
Year 4 (spring 2005):				
Parent Interviews	3,519	1	1.00	3,519
Child Assessments	3,519	1	0.66	2,346
Teacher Ratings	704	5	0.25	176
Family Services Coordinators	405	1	0.75	304
Education Coordinators	405	1	0.75	304
Center Directors/Principals	405	1	1.00	405
Classroom Teachers/Care Providers	704	1	0.50	352
Year 5 (fall 2005):				
Parent Interviews	1,667	1	1.00	1,667
Year 5 (spring 2006):				
Parent Interviews	1,667	1	1.00	1,667
Child Assessments	1,667	1	0.66	1,111
Teacher Ratings	333	5	0.25	83
Family Services Coordinators	300	1	0.75	225
Education Coordinators	300	1	0.75	225
Center Directors/Principals	300	1	1.00	300
Classroom Teachers/Care Providers	333	1	0.50	167
Estimated Total Annual Burden Hours:				10,099

Note: The 10,099 Total Annual Burden Hours is based on an average of 2001–02, 2002–03, 2003–04, 2004–05, and 2005–06 estimated burden hours.

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: July 11, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–17838 Filed 7–16–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Subcommittee for the Center for Devices and Radiological Health Science Review of the Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a subcommittee of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Subcommittee for the Center for Devices and Radiological Health Science Review of the Science Board to the Food and Drug Administration.

General Function of the Subcommittee: To provide advice and recommendations to the agency's Science Board for full public discussion at a future meeting of the Board.

Date and Time: See table 1 in the *''Location''* section of this document.

Location: See table 1 below.

TABLE 1.

Meeting Address	Date and Local Time	FDA Contact Person
Twinbrook Bldg., rm. 100, 12725 Twinbrook Pkwy., Rockville, MD	Tuesday, July 24, 2001, from 8:30 a.m. to 5 p.m.	Hany W. Demian
Corporate Bldg., rm. 020B, 9200 Corporate Blvd., Rockville, MD	Wednesday, July 25, 2001, from 8:30 a.m. to 5 p.m.	Do
Piccard Bldg., rm. 100, 1350 Piccard Dr., Rockville, MD	Thursday, July 26, 2001, from 8:30 a.m. to 5 p.m.	Do

Contact: Hany W. Demian, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12522. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 25, 2001, the subcommittee will hear public comments related to the Center's science review. Information is available on the Internet at http://www.fda.gov/cdrh/strategic/.

Procedure: On July 25, 2001, from 1 p.m. to 2 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, regarding the Center's science review. Written submissions may be made to the contact person by July 20, 2001. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by July 20, 2001, 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.

Closed Subcommittee Deliberations: On July 24, 2001, from 8:30 a.m. to 5 p.m.; on July 25, 2001, from 8:30 a.m. to 1 p.m., and from 2 p.m. to 5 p.m.; and on July 26, 2001, from 8:30 a.m. to 3 p.m., the meeting will be closed to the public. The meeting will be closed to permit discussion and review of trade secret and/or confidential information.

FDA regrets that it was unable to publish this notice 15 days prior to the July 24, 25, and 26, 2001, Subcommittee for the Center for Devices and Radiological Health Science Review of the Science Board to the Food and Drug Administration meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Subcommittee for the Center for Devices and Radiological Health Science Review of the Science Board to the Food and Drug Administration were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Dated: July 12, 2001.

Bonnie H. Malkin,

Special Assistant to the Senior Associate Commissioner.

[FR Doc. 01–17917 Filed 7–13–01; 12:20 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4652–N–13]

Announcement of OMB Approval Number for the Requirements for the Designated Housing Projects Plan

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the requirements for a designated housing projects plan.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3642 Extension 4128. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to requirements for a designated housing projects plan. The approval number for this information collection is 2577–0192, which expires on 6/30/2004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: July 3, 2001.

Paula O. Blunt,

Acting General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 01–17760 Filed 7–16–01; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Barbara Dicely, Occidental, CA, PRT–045171

The applicant requests a permit to acquire through interstate commerce a captive born snow leopard (*Uncia uncia*) from Oakhill Center for Rare and Endangered Species, Luther, OK, for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Alden B. Glidden, Klamath Falls, OR, PRT–045252

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: David A. Dykstra, Naples, FL, PRT–043614

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Applicant: Benny F. Cummings, Shreveport, LA, PRT–045251

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be

submitted to the Director (address below) and must be received within 30 days of the date of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Gilbert E. Orr, San Martin, CA, PRT–045254

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: July 10, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Office of Management Authority.

[FR Doc. 01–17846 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Special Resource Study/ Environmental Assessment for Carter G. Woodson Home, Washington, DC; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service is preparing an environmental assessment for the Special Study of the Carter G. Woodson Home.

The National Park Service has been directed, by an act of Congress, to conduct a special resource study to evaluate the potential for the future management and operation of the Carter G. Woodson Home and to determine what role or roles the Federal Government might assume here in the future.

Public Review: A 45-day public review period for comment on the draft document will begin after publication of this notice. In order to facilitate the review process, public reading copies of the document will be available at the following locations:

Watha T. Daniel Public Library, 1701 8th Street, NW., Washington, D.C. 20001–3111, 202–727–1228

National Capital Parks-East, 1900 Anacostia Drive, SE., Washington, D.C. 20020

National Park Service, National Capital Region, Office of Lands, Resources and Planning, Attention: Gail Cain, 1100 Ohio Drive, SW., Washington, D.C. 20242

A limited number of printed copies will be available on request by calling Ms. Gail Cain at 202–619–7025. The public may also obtain access to the document over the Internet at the following site: *www.nps.gov/woodson.*

A public meeting on the Special Resource Study of the Carter G. Woodson Home will be held July 25 at 6:30 at the Watha T. Daniel Public Library, 1701 8th Street, NW., Washington, DC, phone 202–727–1228. Those unable to attend may contact the National Park Service for further information and be put on our mailing list.

Written comments may be submitted to: Mr. John Parsons, Associate Regional Director, Lands, Resources and Planning, National Capital Region, National Park Service, 1100 Ohio Dr., SW., Washington, DC 20242 or e-mailed to *john_parsons@nps.gov.*

Decision Process: Notice of the availability of the Finding of No Significant Impact will be published in the **Federal Register**. The official responsible for the decision is the Regional Director, National Capital Region, National Park Service.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 01–17827 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the National Coal Heritage Area, Management Action Plan

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the National Coal Heritage Area (NCHA) Management Action Plan.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement (EIS) for the Management Action Plan for the National Coal Heritage Area. The National Coal Heritage Area Act of 1996 requires the NCHA, with guidance from the National Park Service, to prepare a management plan for the heritage area. The purpose of the Management Action Plan is to (1) set forth the integrated cultural, historical, and land resource management policies and programs in order to retain, enhance, and interpret the significant values of the lands, water, and structures of the Area; (2) describe the guidelines and standards for projects that involve preservation, restoration, maintenance, operations, interpretation, and promotion of buildings, structures, facilities, and sites; and (3) set forth the responsibilities of the State of West Virginia, units of local government, nonprofit entities, in order to further historic preservation and compatible economic revitalization.

The study area, designated as the National Coal Heritage Area, includes the following eleven counties in the southern region of West Virginia: Boone, Cabell, Fayette, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne, and Wyoming.

The National Park Service (NPS) maintains three park sites within the region: New River Gorge National River, The Bluestone National Scenic River and the Gauley National Recreation Area. Otherwise the majority of land is non-federal and the NPS assumes a management role only within their park units. Instead, conservation, interpretation and other activities are managed by partnerships among federal, state, and local governments and private nonprofit organizations. The national heritage area is managed by the State of West Virginia Division of Culture and History and Division of Tourism. The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period to the state (up to 10 years from the time of the designation in 1996).

The EIS will address a range of alternatives—they include a no-action alternative and two action alternatives. The first action alternative involves a phased action plan that follows development of transportation access through the region. The basic premise involves: (1) Building interpretive

centers where existing transportation access and visitor services are relatively unconstrained and adequate, and (2) building capacity throughout the rest of the region to prepare for development when access improves. The second action alternative emphasizes one focal point in the region—the crossroads of the NCHA—for capturing, informing and dispersing visitors. In addition, this alternative would provide for dispersed, but less extensive, financial sport for community-based initiatives to construct interpretive displays or centers.

The EIS will assess the impacts of the alternatives. A scoping meeting will be scheduled and notice will be made of the meeting through a broad public mailing and publication in the local newspapers.

FOR FURTHER INFORMATION CONTACT: Peter Samuel, Project Leader, Philadelphia Support Office, National Park Service, US Custom House, 200 Chestnut Street, Philadelphia, PA 19106, *peter__samuel@nps.gov*, 215–597–1848.

If you correspond using the internet, please include your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for the public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 20, 2001.

Marie Rust,

Regional Director, Northeast Region.

[FR Doc. 01–17823 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park of American Samoa; Federal Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the National Park of American Samoa Federal Advisory Commission will be held from 10 a.m. to 5 p.m., Saturday, July 28, 2001, at the National Tropical Botanical Garden, 3530 Papalina Rd., Kalaheo on the Island of Kauai, Hawaii. The agenda for the meeting will include:

Roll Call, Welcome and introductions
Superintendents report and discussion
Other Board issues
Public comments

The meeting is open to the public and opportunity will be provided for public comments prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after they have been approved by the full Advisory Commission. For copies of the minutes, contact the National Park of American Samoa Superintendent at 011 (684) 633–7082 or email *NPSA__Superintendent@nps.gov.*

Dated: June 21, 2001.

Charles Cranfield,

Superintendent, National Park of American Samoa.

[FR Doc. 01–17829 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Thursday, October 11, 2001 at 7:00 p.m.

Address: Bushkill Visitor Center, U.S. Route 209, Bushkill, PA 18324.

The agenda will include reports from Citizen Advisory Commission committees. Superintendent Bill Laitner will give a report on various park issues. The meeting will be open to the public and there will be an opportunity for public comment on these issues.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION: Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: June 29, 2001.

William G. Laitner,

Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Jon Corzine, United States Senate, Washington, DC 20510
Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001
Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, D.C. 20510
Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, D.C. 20510–3802
Honorable Pat Toomey, U.S. House of Representatives, Cannon House Office Bldg., Washington, D.C. 20515
Honorable Don Sherwood, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, D.C. 20515–3810
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Donald DiFrancesco, State House, Trenton, NJ 08625

[FR Doc. 01–17828 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 7, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register

criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 1, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

GEORGIA

Chatham County

New Ogeechee Missionary Baptist Church, 751 Chevis Rd., Savannah, 01000854

IDAHO

Bingham County

Eastern Idaho District Fair Historic District, 97 Park Dr., Blackfoot, 01000864

Bonner County

Sandpoint Federal Building, 419 N. Second Ave., Sandpoint, 01000836

Kootenai County

Kootenai County Jail, 802 Second St., Rathdrum, 01000834

ILLINOIS

Coles County

Sixth, Seventh, and Tenth Street Stone Arch Bridges, 700 blks of Sixth, Seventh and Tenth Sts., Charleston, 01000869

Cook County

Berwyn Municipal Building, 6700 26th St., Berwyn, 01000865
Building at 5510 North Sheridan, 5510 N. Sheridan Rd., Chicago, 01000870
United States Post Office—Chicago, 433 W. Van Buren St., Chicago, 01000868

Lake County

Cook Memorial Library, 413 N. Milwaukee Ave., Libertyville, 01000867

McDonough County

King, Moses, Brick and Tile Works, 738 N. Coal St., Colchester, 01000866

IOWA

Lee County

McGreer, John, Barn and Crib, 2056 150th Ave., Donnellson, 01000859

Marion County

Vander Wilt, Dirk and Cornelia J., Cottage, 925 Broadway St., Pella, 01000856

Plymouth County

Le Mars Municipal Park and Golf Course Historic District (Conservation Movement in Iowa MPS),Jct. of Le Mars, 4th Ave., NE or IA 3, Le Mars, 01000858

Polk County

Henshie—Briggs Row House, 1106 High St., Des Moines, 01000855

Pottawattamie County

Bennett Building, 405 West Broadway, Council Bluffs, 01000861

Story County

Budd, Prof, J.L., Sarah M., and Etta Budd, House, 804 Kellogg Ave., Ames, 01000860

Winneshiek County

Burr Oak Savings Bank, 3608 236th Ave., Burr Oak, 01000857

MASSACHUSETTS

Suffolk County

Peabody, The, 195–197 Ashmont St., Boston, 01000872

Worcester County

West Sutton Historic District, Central Tpk., Douglas, Town Farm, West Sutton Rds., Sutton, 01000871

MINNESOTA

Renville County

Heins Block, 102–104 N. 9th St., Olivia, 01000842

MISSOURI

Buchanan County

South Fourth Street Commercial Historic District (St. Joseph, Missouri MPS) roughly bounded by S. 3rd, S. 5th, Charles and Messanie Sts., St. Joseph, 01000838

Jackson County

Waltower Building, 823 Walnut St., Kansas City, 01000837

Jasper County

Colonial Apartments, 406 Walnut St., Cathage, 01000835

St. Louis Independent City

Ford Motor Company Building, 4100 Forest Park Blvd., St. Louis (Independent City), 01000840

Stoddard County

Dexter Gymnasium, jct. of Park Lane and Fannetta St., Dexter, 01000839

NEVADA

Clark County

Spanish Trail, Old,—Mormon Road Historic District, from California border to Arizona across southern Nevada, through Las Vegas, Las Vegas, 01000863

NEW JERSEY

Monmouth County

Old Scots Burying Ground, Gordon's Corner Rd., Marlboro, 01000841

NEW YORK

Montgomery County

Glen Historic District, NY 30A, NY 161 and Logtown Rd., Glen, 01000844

Orange County

Belknap Stone House, NY 17K, Newburgh, 01000843
Boulders, The, 99 Shore Ave., Warwick, 01000848

Schoharie County

Best, Dr. Christopher S., House and Office, 34 Clauverwie St., Middleburgh, 01000849

Suffolk County

Bay Shore Hose Company No. 1 Firehouse, Second Ave., Bay Shore, 01000851
Bay Shore Methodist Episcopal Church, E. Main St., jct. Second Ave., Bay Shore, 01000847
Davis Town Meeting House, jct. of Middle Country Rd. and Coram-Mt. Sinai Rd., Coram, 01000850

Ulster County

Dutch Church, Old, Parsonage, 109 Pearl St., Kingston, 01000845

Westchester County

Nelson, Thomas, House, 1231 Seymour Ln., Peekskill, 01000846

TENNESSEE

Washington County

Thankful Baptist Church, 104 Water St., Johnson City, 01000852

TEXAS

Hemphill County

Battle of Lyman's Wagon Train (Battle Sites of the Red River War in the Texas Panhandle MPS), Address Restricted, Canadian, 01000875

Smith County

St. Louis Southwestern Railway (Cotton Belt) Passenger Depot (Tyler, Texas MPS), 100 blk. E. Oakwood St., at N. Spring St., Tyler, 01000873

Travis County

Perry Estate—St. Mary's Academy, 701 E. 41st St., Austin, 01000874

Wheeler County

Battle of Sweetwater Creek (Battle Sites of the Red River War in the Texas Panhandle MPS), Address Restricted, Mobeetie, 01000876

VIRGINIA

Lynchburg Independent City

Court House Hill—Downtown, Church, Clay, Court, Main Sts., roughly bounded by 5th through 13th Sts., Lynchburg (Independent City), 01000853

[FR Doc. 01–17824 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 30, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park

Service, 1849 C St., NW., NC400, Washington, DC 20240. Written comments should be submitted by August 1, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Apache County

Rattlesnake Point Pueblo, Lyman Lake State Park, St. Johns, 01000792

CALIFORNIA

Alameda County

10th Street Market, 901–921 Washington St., Oakland, 01000826

KENTUCKY

Allen County

Graves, Dr. Pellie G., House, 301 N 4th St., Scottsville, 01000798
Scottsville Downtown Commercial Historic District, Public Square and extending roughly one block N and S on Court St., and one block E and W on Main, Scottsville, 01000797
Scottsville Freight Depot, E. Main St. at 8th St., Scottsville, 01000799
Scottsville Public Spring, Jct. of First and Locust Sts., Scottsville, 01000801
Tabernacle, The, 829 Holland Rd., Scottsville, 01000800

Caldwell County

Halleck's Chapel and Halleck's School, 0.5 mi. N of jct. of KY 293 and Caldwell Chapel Rd., Princeton, 01000802

Hart County

Horse Cave Historic District, KY 218, roughly bet. US 31W and Edwards Ave., Horse Cave, 01000796

Monroe County

Baxter, Barlow, House, (Monroe County, Kentucky MPS) Celina Rd., KY 163, Hestand, 01000795
Fowler, Clark C., House, (Monroe County, Kentucky MPS) KY 214, Turkey Neck Bend Rd., Tompkinsville, 01000794
Proffitt, George W., Jr., House, (Monroe County, Kentucky MPS) 1945 County House Rd., Tompkinsville, 01000793

Union County

Camp Breckinridge Non-Commissioned Officers' Club, 1116 N. Village Rd., Morganfield, 01000804

Warren County

Mitchell, Carrie Burks, House, Address Restricted, Bowling Green, 01000803

LOUISIANA

Livingston Parish

Hungarian Settlement School, LA 43 and Presbyterian Church Rd., Albany, 01000805

Rapides Parish

Rugg Elementary School, 1319 Bush Ave., Alexandria, 01000807

Vermilion Parish

Villien, Dr. Joseph Angel, House, 200 W. Joseph St., Maurice, 01000806

Winn Parish

Brister School House, Parish Rd. 240 and Brister School Rd., Sikes, 01000808

MAINE

Androscoggin County

Union Church, 744 Royalsborough Rd., Durham, 01000810

Cumberland County

Proprietors Meeting House and Parish House, Jct. of ME 22 and Old County Rd., S. Buxton, 01000813

Hancock County

Beth Eden Chapel, Naskeag Point Rd., .05 mi. N of jct. with Naskeag Loop Rd., Brooklin, 01000818
First Baptist Church, 362 Lamoine Beach Rd., E. Lamoine, 01000817

Kennebec County

Maine Insane Hospital (Boundary Increase), Roughly bounded by Hospital St. and Hospital Ave., Augusta, 01000811
Winthrop Street Historic District, Roughly bounded by State, Bridge, North and South Chestnut, and Green Sts. Augusta, 01000815

Washington County

Governors Point, Address Restricted, Grand Lake Stream Plantation, 01000812
Grace Episcopal Church, US 1, 0.5 mi. NW of jct. with Third Rd., Robbinston, 01000816
Maine Archeological Survey site 62.46, Address Restricted, Machiasport, 01000814
Ntolonapemk, Eastern Surplus Superfund Site, Address Restricted, Meddybemps, 01000819

MARYLAND

Anne Arundel County

Oakwood, 4566 Solomons Island Rd., Harwood, 01000820

Baltimore Independent city

Grace—Hampden Methodist Episcopal Church, 1014 W. 36th St., Baltimore (Independent City), 01000809

Washington County

Nicodemus Mill Complex, 20019 Nicodemus Mill Rd., Keedyville, 01000821

MISSISSIPPI

Jackson County

Orange Avenue Historic District, (Pascagoula MPS) Roughly bounded by Live Oak and Orange Aves. and Frederic and Magnolia Sts., Pascagoula, 01000827

NEVADA

Churchill County

Douglass, Robert L., House, 10 S. Carson St., Fallon, 01000822

OREGON

Columbia County

Woodbine Cemetery, 75900 Larson Rd., Rainier, 01000829

Jackson County

Skidmore Academy Historic District, Roughly bounded by the RR R–O–W, Granite, Scenic, and Maple Sts., Ashland, 01000832

Multnomah County

Nelson, Otto W. and Ida L., House, 203 SE 15th Ave., Portlant, 01000831
Nicolai—Cake—Olson House, 1903 NE Hancock St., Portland, 01000828

Umatilla County

Meacham Hotel, Main St., Meacham, 01000830

UTAH

Salt Lake County

Central City Historic District (Boundary Increase), Roughly bounded by S. Temple, 400 South, 700 East and 1100 East, Salt Lake City, 01000823

VERMONT

Orleans County

District Number Four School, (Educational Resources of Vermont MPS) 116 N. Craftsbury Rd., Craftsbury, 01000825

Windsor County

Taftsville Historic District, Portions of US 4, Upper River Rd., Quechee Main St., all Butternut Ln., Happy Valley Rd., Sugar Hill Rd., Hartford, 01000824

A request for removal has been made for the following resource:

OREGON

Clackamas County

Moralla High School 413 S. Molalla Ave., Molalla, 96000622

Lane County

Spores, Jacob C., House N of Eugene at 90311, Coburg Rd. Eugene, 77001107

[FR Doc. 01–17825 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 23, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400,

Washington, DC 20240. Written comments should be submitted by August 1, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

San Bernardino County

Kelso Depot, Restaurant and Employees Hotel, Kelbaker Rd., jct. of Kelbaker and Cima Rds. at Union Pacific Railroad crossing, Kelso, 01000760

FLORIDA

Broward County

Croissant Park Administration Building, 1421 S. Andrews Ave., Ft. Lauderdale, 01000761

GEORGIA

Douglas County

Carnes, John Thomas, Family Log House, Clinton Nature Preservem 8270 Ephesus Church Rd., Winston, 01000762

LOUISIANA

Ouachita Parish

Milner Motors, 212 Walnut St., Monroe, 01000764

Washington Parish

Varnado, D.A. and Son Store, 936 Pearl St., Franklinton, 01000763

West Feliciana Parish

Rosedown Plantation, US 61 and LA 10, St. Francisville, 01000765

MINNESOTA

Cass County

Minnesota State Sanatorium for Consumptives, 7232 Ah-Gwah-Ching Rd. NW, Walker, 01000766

MISSOURI

Jackson County

Kirkwood Building, 1737–41 McGee St., Kansas City, 01000767

NEW JERSEY

Gloucester County

Green's, G.G., Block, 108 S. Broad St., Woodbury, 01000769

Mount Zion African Methodist Episcopal Church and Mount Zion Cemetery, 172 Garwin Rd., Woolwich, 01000768

NEW MEXICO

Bernalillo County

Monte Vista and College View Historic District, Roughly bounded by Girard and Lomas Blvds, Morningside Dr., Copper Ave., Campus and Monte Vista Blvds., Albuquerque, 01000770

Santa Fe County

El Puente de Los Hidalgos, Grant Ave. approx. 50 yds N of jct. with Paseo de Peralta, Santa Fe, 01000771

NEW YORK

Dutchess County

First Baptist Church (Poughkeepsie MRA), 260 Mill St., Poughkeepsie, 01000774

TENNESSEE

Monroe County

First Presbyterian Church, 601 Church St., Sweetwater, 01000772

WEST VIRGINIA

Doddridge County

Smith, Silas P., Opera, House, 117 Court St., West Union, 01000788

Jefferson County

Bolivar Heights—School House Ridge Skirmish Site (Harpers Ferry National Historical Park MPS), Bloomery Rd., Harpers Ferry, 01000786

Charles Town Mining, Manufacturing, and Improvement Company Building, 312 S. Mildred St., Ranson, 01000779

Grand View School (Harpers Ferry National Historical Park MPS), Putnam St., Harpers Ferry, 01000782

Hydroelectric Power Plant (Harpers Ferry National Historical Park MPS), Potomac Street extended, along Potomac R, Harpers Ferry, 01000787

Nash, Bradley, Farm (Harpers Ferry National Historical Park MPS), Old Furnace Rd., Harpers Ferry, 01000784

Niswarner Tract (Harpers Ferry National Historical Park MPS), Chestnust Hill Rd., Harpers Ferry, 01000785

Shipley School (Harpers Ferry National Historical Park MPS), 847 Washington St., Harpers Ferry, 01000783

Storer College (Harpers Ferry National Historical Park MPS), Fillmore St., Harpers Ferry, 01000781

Tattersal Property (Harpers Ferry National Historical Park MPS), Union St., Bolivar, 01000780

Mercer County

McNutt, Dr. Robert B., House, 1522 N. Walker St., Princeton, 01000777

Nicholas County

Beaver Mill, West Webster Rd., Craigsville, 01000776

Carden, James B., House, 1082 Country Rd., Summersville, 01000773

Downtown Richwood Historic District, Roughly including portions of Main St. Oakford Ave. and Commercial St., Richwood, 01000778

Summers County

Cooper's Mill, Off Ellison Ridge Rd.—Cty Rd. 27, Jumping Branch, 01000775

WYOMING

Natrona County

Casper Army Air Base, 8500 Fuller St., Casper, 01000789

Ohio Oil Company Building, 159 N. Wolcott St., Casper, 01000791

Teton County

Queen's Laundry Bath House, Sentinel Meadows, Lower Geyser Basin, Yellowstone National Park, 01000790

A request for removal has been made for the following resource:

COLORADO

La Plata County

La Plata County Fairgrounds, 2500 Main St., Durango, 91001031

[FR Doc. 01–17826 Filed 7–16–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collections; Comment Request

ACTION: Notice of information collection under review; revision of a currently approved collection; Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

The Department of Justice, Office of Justice Programs has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 21, 2001, Volume 66, page 15899, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until August 16, 2001. 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 Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The OJP Administration form number is 7390/6. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State government. *Other:* None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 53 respondents to complete an annual report in 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 106 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1200, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: June 29, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–17772 Filed 7–16–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Revision of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review; revision of a currently approved collection; Firearms Addendum to the Arrestee Drug Abuse Monitoring (ADAM) Program Instrument.

The Department of Justice, Office of Justice Programs, National Institute of Justice, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 9, 2001, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until August 16, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer,, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection*: Firearms Addendum to the Arrestee Drug Abuse Monitoring (ADAM) Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection*: The form number for the addendum is AD–1; there is no form number for the main ADAM questionnaire.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary*: Misdemeanor and felony arrestees in city and county jails. The ADAM program monitors the extent and types of drug use among arrestees. Currently the program operates in 38 counties. Data are collected in each county every three months from a new, county-based representative sample of arrestees. Participation is voluntary and confidential and data collected include a personal interview and urine specimen.

In the next 6 months, OJP proposes to introduce a supplemental instrument to the currently approved ADAM instrument (OMB No. 1121–0137). This supplemental instrument is termed the Firearms Addendum and is intended to collect information from ADAM program arrestees about their participation in legal and illegal firearms markets. The respondents to the firearms questionnaire will be arrestees selected for the ADAM study, who are asked to participate in a supplemental interview immediately following the ADAM interview.

The firearms instrument initially will be implemented in 2 ADAM sites for testing, and subsequently finalized and made available to all ADAM sites for their use.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The total number of respondents is estimated to be a maximum of 70,000 (revised from current inventory of 100,000 respondents). Each response for the core instrument averages 30 minutes. The Firearms Addendum questionnaire will be administered to a maximum of 52,550 respondents at full implementation, taking 10 minutes a response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 43,750 hours (for core questionnaire and Firearms Addendum together).

If additional information is required contact: Ms. Brenda E. Dyer, Deputy

Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: July 11, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–17773 Filed 7–16–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; extension of a currently approved information collection; National Evaluation of the Safe Schools/Healthy Students Initiative.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 14, 2001, Volume 65, page 78191, allowing for a 60-day comment period from the public and affected agencies.

The purpose of this notice is to allow an additional 30 days for public comment until August 16, 2001. 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 Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile at (202) 395–7285. Comments may also be submitted to the Department of Justice, Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Office, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(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

(1) *Type of information collection:* Application for new collection effort.

(2) *The title of the form/collection:* The National Evaluation of the Safe Schools/Healthy Students Initiative has several information collection forms, which are: District Personnel Survey, School Personnel Surveys, Classroom Teacher Survey, Teacher Rating Scale, Coalition/Partnership Survey, Key Partners Survey, Student Survey, Project Director Survey, Archival Data Collection, Economic Data Collection, Focus Group Discussion Questions for Parents and Community, Focus Group Discussion Questions for Students.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None; Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* School personnel, which includes superintendents, principals, counselors, and violence prevention and drug coordinators; 1st, 3rd, 5th, 7th, 9th and 11th grade teachers; Coalition Members; Students in grades 7, 9, and 11 (15 sites only); Project directors; Parents (15 sites only); Community members (15 sites only); and Chief Financial Officers (15 sites only). 42 U.S.C. 5633 authorizes the Office of Juvenile Justice and Delinquency Prevention to collect information on all aspects of the Safe Schools/Healthy Students Initiative programs. The purposes of the surveys, coalition discussion guides, focus groups, etc., are to obtain information from the respondents that will assist in evaluating the effectiveness of the Safe Schools/Healthy Students Initiative and contribute to the development of policies and programs that reduce violence, crime, substance use, and other risk-related behaviors, and that support healthy childhood development. The survey instruments focus on the nature and scope of alcohol, tobacco, and other drug use among youth, and perceptions about school safety; crime and violence; educational climate; school policies and programs; and mental health development.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:*

ANNUAL BURDEN ESTIMATES [1]

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
District Personnel Survey	308	1	1.0	308
School Personnel Surveys:				
Principal	1,335	1	1.0	1335
Mental Health Coord	1,335	1	.50	667.5
Substance Use Prevention Coord	1,335	1	.50	667.5
Violence Prevention Coord	1,335	1	.50	667.5
School-level Total	5,340	.....	2.5	3,337.5
Classroom Teacher Survey	4,252	1	.50	2,126
Teacher Rating Scale	1,397	5	.42	2,933.7

ANNUAL BURDEN ESTIMATES [1]—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Student Survey	10,184	1	.75	7,638
Archival Data Collection (None)	378	1	([2])	
Coalition Survey	1,540	1	.50	770
Key Partners Survey	231	1	.50	115.5
Project Director Survey	77	1	.75	57.75
Economic Data Collection	15	1	4.0	60
Focus Groups Questions: Parents and Community Members	150	1	2.0	300
Focus Groups Questions: Students	150	1	1.0	150

[1] All estimates are based on 77 sites except for student surveys, teacher rating scales, economic and focus groups which are drawn from the 15 Sentinel sites only.

[2] Data to be collected for personnel responsible for providing publicly available agency-level data; thus SS/HS data collection burden is not expected to exceed general practice.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,796.45 hours.

If additional information is required, contact Mrs. Brenda E. Dyer, Deputy Clearance Officer, Department of Justice, Information Management and Security Staff, Justice Management Division, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: July 11, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–17774 Filed 7–16–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Solicitation for Grant Applications (SGA) 01–05; HIV/AIDS Global Workplace Prevention and Education Program; Correction and Due Date Extension

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of corrections and extension of due date for receipt of proposal.

SUMMARY: In the **Federal Register**, Vol. 66, No. 124, page 34244, Wednesday, June 27, 2001 the competition was announced and the SGA printed in its entirety. Section V. B. (1)(c), instructs applicants to create a model workplan and budget based on Ethiopia. Applicants may now select, at their discretion, any country to develop the model workplan and budget required for the Technical Sample. Due to this correction, the due date for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 pm EDT, August 3, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Department of Labor, Telephone (202) 219–9355, e-mail: harvey-lisa@dol.gov.

Signed at Washington, DC, this 9th day of July, 2001.

Daniel P. Murphy,

Director, Procurement Services Center.

[FR Doc. 01–17783 Filed 7–16–01; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Preservation

This notice is published in accordance with the provisions of Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Preservation for a two-year period. In accordance with the Office of Management and Budget (OMB) Circular A–135, OMB has approved the inclusion of the Advisory Committee on Preservation in NARA's ceiling of discretionary advisory committees.

The Archivist of the United States has determined that the renewal of the Advisory Committee on Preservation is in the public interest due to the expertise and valuable advice the committee members provide on technical preservation issues affecting Federal records of all types of media. NARA uses the Committee's recommendations in NARA's implementation of strategies for preserving the permanently valuable records of the Federal Government.

Dated: July 6, 2001.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 01–17790 Filed 7–16–01; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 16, 2001. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the ''Agreed Measures, developed by the

Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.''

The applications received are as follows: 1. *Applicant,* Permit Application No. 2002–001, Jerry, Mullins, U.S. Geological Survey, MS–521, Reston, VA 20192.

Activity for Which Permit is Requested

Enter Antarctic Specially Protected Area. The McMurdo Dry Valleys are a primary site for calibration and validation of NASA's ICESat satellite data, set for launch in the coming year. The applicant plans to use a scanning laser altimeter from a Twin Otter to measure very precisely the surface elevation and topography of the valleys within the 70-meter footprint of the laser. Due to the relatively confined region of the Dry Valleys, it is necessary to survey all of the ice-free portions for the satellite calibration data set, including the Barwick Valley (ASPA #123). For optimal data, the survey will require that flights be conducted over the region at a minimum altitude of 1500 feet above ground level. All ground support activities will be provide this data set, without new aerial photography and intensive ground-based activities in the Valley.

Location

ASPA 123—Barwick Valley, Victoria Land, and other McMurdo Dry Valleys

Dates

December 1, 2001 to February 20, 2003

2. *Applicant, Permit Application No. 2002–002, Robert L. Pitman, Southwest Fisheries Science Center, NOAA/NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92037.*

Activity for Which Permit is Requested

Take and Import into the U.S. The applicant proposes to collect biopsy samples (tiny bits of skin) from up to 50 Killer whales (*Orcinus orca*) in the Ross Sea to determine the status of the resident stock. Killer whales were described as a separate species years ago but molecular genetic analysis is needed to confirm or deny the allegation. Samples will be returned to the Southwest Fisheries Science Center DNA tissue bank.

Location

Ross Sea, Antarctica

Dates

December 20, 2001 to March 31, 2003

3. *Applicant, Permit Application No. 2002–003, Randall Davis, Department of Marine Biology, Texas A&M University, 5007 Avenue U, Galveston, TX 77551*

Activity for Which Permit is Requested

Take and Import into the U.S. The applicant proposes to enter White Island (ASPA #137) to conduct a census and assess Weddell seal abundance, distribution and habitat. Access to the site for one day will be by helicopter or surface vehicle.

Location

Northwest White Island, McMurdo Sound—ASPA #137

Dates

October 1, 2001 to December 20, 2001

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 01–17854 Filed 7–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a remote field support and emergency provisions for the Expedition Vessel, Kapitan Khlebnikov for the 2001–2002 season and four following austral summers. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before August 16, 2001. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko or Nadene Kennedy at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of up to three expeditious per year to Antarctica. During each trip, passengers are taken ashore at selected sites by Zodiac (rubber raft) or helicopter for approximately two to four hours at a time. On each helicopter landing, emergency gear would be taken ashore in case weather deteriorates and passengers are required to camp on shore. Anything taken ashore will be removed from Antarctica and disposed of in Hobart, Australia, Lyttleton, New Zealand, or a substitute port of disembarkation. No hazardous domestic products or wastes (aerosol cans, paints, solvents, etc.) will be brought ashore. Cooking stoves/fuel will be used only in an emergency were passengers are forced to spend night on shore. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Application for the permit is made by: Lars Wikander, Quark Expeditions, Inc., 980 Post Road, Darien, CT 06820.

Location: Ross Sea region.

Dates: November 25, 2001 to March 31, 2006.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 01–17855 Filed 7–16–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, July 24, 2001.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20494.

STATUS: The first two items are open to the public and the last two items are closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

7377—Marine Accident Report—Fire On Board the Netherlands Registered Passenger Ship Nieuw Amsterdam at Glacier Bay, Alaska on May 23, 2000,

the Related Safety Recommnedations (DCA–00–MM–027)

7159A—Railroad Accident Report—Derailment of Amtrak Train 21 on the Union Pacific Railroad at Arlington, Texas on December 20, 1998 (DCA–99–MR–001).

7336A—Opinion & Order: Administrator v. Shrader, Docket SE–15472; Disposition of Administrator's Appeal.

7367—Opinion & Order: Administrator v. Ramaprakash, Docket SE–15534; Disposition of Respondent's Appeal.

News Media Contact): Telephone: (202) 314–6100. Individuals requesting specific accommodation should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, July 20, 2001.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: July 13, 2001.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 01–17956 Filed 7–13–01; 2:14 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Sequoyah Nuclear Plant, Units 1 and 2, Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–77 and DPR–79, issued to the Tennessee Valley Authority (TVA or the licensee), for operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, located in Soddy-Daisy, Tennessee.

The proposed amendments would change Technical Specification (TS) 3.7.5.c to allow an increase in the average essential raw cooling water (ERCW) supply header temperature from 84.5 °F to 87 °F until September 30, 2002.

The circumstance that makes this amendment necessary, strictly as a contingency measure, is significant increases in the average water temperature of the Tennessee River (Chickamauga Reservoir), which serves as the ultimate heat sink for the SQN, Units 1 and 2. This temperature, as measured at SQN's ERCW header, has increased as the result of drought-induced low flow conditions and is expected to closely approach the current TS limit of 84.5 °F, which applies when the Chickamauga Reservoir water level is above elevation 680 feet mean sea level. This change to the TS would be temporary, pending additional heat load analyses by TVA to justify the higher temperature limit on a permanent basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The Proposed Amendment Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The probability of occurrence or the consequences of an accident are not increased as presently analyzed in the safety analysis since the objective of the event mitigation is not changed. No changes in event classification as discussed in Final Safety Analysis Report Chapter 15 will occur due to the increased river water temperature (with respect to both containment integrity and safety-system heat removal). Therefore, the probability of an accident or malfunction of equipment presently evaluated in the safety analyses will not be increased. The containment design pressure is not challenged by allowing an increase in the river water temperature above that allowed by the TS, thereby ensuring that the potential for increasing offsite dose limits above those presently analyzed at the containment design pressure of 12.0 pounds per square inch is not a concern. In addition, SQN's essential raw cooling water (ERCW) and component cooling system (CCS) piping, pipe supports remain qualified to the design basis and code allowables. Therefore, the proposed variance to TS 3.7.5.c will not significantly increase the probability or consequences of an accident previously evaluated.

B. The Proposed Amendment Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The possibility of a new or different accident situation occurring as a result of this condition is not created. The ERCW system is not an initiator of any accident and only serves as a heat sink for normal and upset plant conditions. By allowing this change in operating temperatures, only the assumptions in the containment pressure analysis are changed. The variance in the ERCW temperature results in minimal increase in peak containment accident pressure. As for the net positive suction head requirements relative to the essential core cooling system and containment spray system, it has been demonstrated that this operational variance will not challenge the present design requirements. In addition, increased river temperatures will not significantly affect the design basis analysis of ERCW or CCS piping, pipe supports, and components. Therefore, the potential for creating a new or unanalyzed condition is not created.

C. The Proposed Amendment Does Not Involve a Significant Reduction in a Margin of Safety

The margin of safety as reported in the basis for the TS is also not reduced. The design pressure for the containment and all supporting equipment and components for worse-case accident condition is 12.0 pounds per square inch gauge (psig). This variance in river water temperature will not challenge the design condition of containment. Further, 12.0 psig design limit is not the failure point of containment, which would lead to the loss of containment integrity. In addition, analysis of the margins associated with ERCW and CCS piping, pipe supports, and components indicate these remain enveloped by the proposed increase in river temperature. Therefore, a significant reduction in the margin to safety is not created by this variance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should

the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 16, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Council, Tennessee Valley Authority, ET 11H, 400 West Summit Hill Drive, Knoxville, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 10, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* 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 Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of July 2001.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–17834 Filed 7–16–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 16, 23, 30, August 6, 13, 20, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 16, 2001

Thursday, July 19, 2001

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on Results of Agency Action Review Meeting—Reactors (Public Meeting) (Contact: Ron Frahm, 301–425–2986)

1:30 p.m.—Briefing on Readiness for New Plant Applications and Construction (Public Meeting) (Contact: Nanette Gilles, 301–415–1180)

Friday, July 20, 2001

9:30 a.m.—Briefing on Results of Reactor Oversight Process Initial Implementation (Public Meeting) (Contact: Tim Frye, 301–415–1287)

1:00 p.m.—Briefing on Risk-Informing Special Treatment Requirements (Public Meeting) (Contact: John Nakoski, 301–415–1278)

Week of July 23, 2001—Tentative

There are no meetings scheduled for the Week of July 23, 2001.

Week of July 30, 2001—Tentative

Tuesday, July 31, 2001

1:25 a.m.—Affirmation Session (Public Meeting) (If needed)

Week of August 6, 2001—Tentative

There are no meetings scheduled for the Week of August 6, 2001.

Week of August 13, 2001—Tentative

Tuesday, August 14, 2001

9:30 a.m.—Briefing on NRC International Activities (Public Meeting) (Contact: Elizabeth Doroshuk, 301–415–2775)

Wednesday, August 15, 2001

9:30 a.m.—Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

1:25 p.m.—Affirmation Session (Public Meeting) (If needed)

1:30 p.m.—Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–1277)

Week of August 20, 2001—Tentative

There are no meetings scheduled for the Week of August 20, 2001.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet: *http://www.nrc.gov/SECY/smi/schedule.htm*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: July 12, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–17943 Filed 7–13–01; 12:58 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

[Extension: Rule 17f–1(g), SEC File No. 270–30, OMB Control No. 3235–0290]

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17f–1(g) Requirements for reporting and inquiry with respect to missing, lost, counterfeit, or stolen securities.

Rule 17f–1(g), under the Securities Exchange Act of 1934 (''Act''), requires that all reporting institutions (*i.e.,* every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program (''Program'') under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) Copies of all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee: (2) all agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f–1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are 25,824 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (33 minutes or .55 hours). The total estimated annual burden is 14,203.2 hours (25,824 × .55 hours = 14,203.2). Assuming an average hourly cost for clerical work of $18.75, the average total yearly record retention cost for each respondent would be $10.30. Based on these estimates, the total annual cost for the estimated 25,824 reporting institutions would be approximately $265,987.

Rule 17f–1(g) does not require periodic collection, but does require retention of records generated as a result

of compliance with Rule 17f–1. Under Section 17(b) and (f) of the Act, the information required by Rule 17f–1(g) is available to the Commission and Federal bank regulators for examinations or collection purposes. Rule 0–4 of the Act deems such information to be confidential. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General Comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 10, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17765 Filed 7–16–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc.; (Amwest Insurance Group, Inc., Common Stock, $.01 Par Value, and Preferred Stock Purchase Rights) File No. 1–9580

July 11, 2001.

Amwest Insurance Group, Inc. Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value, and Preferred Stock Purchase Rights (''Securities''), from listing and registration on the Pacific Exchange, Inc. (''PCX'').

The Issuer states in its application that it has met the requirements of the PCX by complying with all applicable laws in effect in the state of Delaware, in which it was incorporated, and with the PCX's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

In making the decision to withdraw the Securities from listing on the Exchange, the Issuer considered (i) the Issuer's non-compliance with the PCX maintenance standards concerning the price per share of the Issuer's common stock; and (ii) the Issuer's net tangible assets, which are substantially below the minimum qualification of the Exchange.

In addition, the Issuer states that the Insurance Director of the State of Nebraska has placed the Issuer's principal asset, Amwest Surety Insurance Company, in liquidation. The Issuer has no independent operations and no source of funds other than those provided by its subsidiary. The Issuer has not filed with the Commission all of its required periodic reports, including its Form 10–K for the year ending December 31, 2000, due to its inability to complete its audited financial statements. The Issuer does not expect to obtain audited financial statements in the future.

Any interested person may, on or before August 1, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz

Secretary.

[FR Doc. 01–17794 Filed 7–16–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC; (Amwest Insurance Group, Inc., Common Stock, $.01 Par Value, and Preferred Stock Purchase Rights) File No. 1–9580

July 11, 2001.

Amwest Insurance Group, Inc., a Delaware Corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value, and Preferred Stock Purchase Rights (''Securities''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Issuer has stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it was incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

In making the decision to withdraw the Securities from listing on the Exchange, the Issuer considered (i) the Issurer's non-compliance with the Amex maintenance standards concerning the Issuer's net tangible assets; and (ii) the Issuer has sustained substantial losses in relation to its overall operations and its existing financial resources.

In addition, the Issuer states that the Insurance Director of the State of Nebraska placed the Issuer's principal asset, Amwest Surety Insurance Company, in liquidation. The Issuer has no independent operations and no source of funds other than those provided by its subsidiary. The Issuer has not filed with the Commission all of its required periodic reports, including its Form 10–K for the year ending December 31, 2000, due to its inability to complete its audited financial statements. The Issuers does not expect to obtain audited financial statements in the future.

Any interested person may, on or before August 1, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the commission for the protection investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 18*l(d).*

[2] 17 CFR 240.12d2–2(d).

[3] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17795 Filed 7–16–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44535; File No. SR–CHX–2001–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated to Extend Pilot Rule Interpretation Relating to Trading of Nasdaq/NM Securities in Subpenny Increments

July 10, 2001.

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 July 6, 2001, the Chicago Stock Exchange, Incorporated (''CHX'' 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)[4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through November 5, 2001 the pilot rule interpretation relating to the trading of Nasdaq/NM securities in subpenny increments. The pilot is due to expire on July 9, 2001. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through November 5, 2001. The text of the proposed rule change is available at the Commission and at the CHX.

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 CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a proposed rule change (CHX Article XXX, Rule 2, Interpretation and Policy .06 ''Trading in Nasdaq/NM Securities in Subpenny Increments'')[6] that requires a CHX specialist (including a market maker who holds customer limits orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer (''NBBO'') by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot, which was approved in conjunction with exemptive relief granted by the Commission to allow for trading in Nasdaq/NM securities in subpenny increments, is due to expire on July 9, 2001.

The Exchange is not proposing any substantive or typographical changes in the pilot; rather, the Exchange merely proposes that the pilot remain in effect through November 5, 2001.[7]

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] 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.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause

[3] 17 CFR 200.30–3(a)(1).

[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] The Exchange has asked the Commission to waive the 5-day pre-filing requirement and the 30-day operative delay to allow the proposal to be effective upon filing with the Commission. The Commission has agreed to do both. *See* Rule 19b–4(f)(6). 17 CFR 250.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 11, 2001) (SR–CHX–2001–07).

[7] In February, 2001, the Commission extended the effective date of the Exchange's decimal-related pilot rules through July 9, 2001, the date by which national securities exchanges and the National Association of Securities Dealers, Inc. were required to submit their rule filings to establish minimum price variations for the quoting of equity securities or options. *See* Securities Exchange Act Release Nos. 43974 (February 16, 2001), 66 FR 11621 (February 26, 2001) (SR–CHX–2001–03) and 42914 (June 8, 2000), 65 FR 38010 (June 19, 2001). These July 9th rule filings were scheduled to follow the submission of studies by each market that describe the impact of decimalization of trading behavior, capacity and liquidity and that likely would offer insights into any other rule changes that would be necessary to maintain fair and orderly markets. In a recent order, the Commission extended the dates by which both these studies and related rule filings must be submitted. *See* Securities Exchange Act Review Release No. 44336 (May 22, 2001), 66 FR 29368 (May 30, 2001). The Exchange is now requesting that its decimalization-related pilot rule interpretation relating to trading of Nasdaq/NM securities in subpenny increments be extended through November 5, 2001, the new date for filing of exchange proposed rule changes.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through November 5, 2001, the deadline for which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[12]

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2001–15 and should be submitted by August 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17766 Filed 7–16–01; 8:45 am]

BILLING CODE 8010–01–M

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3350]

State of Pennsylvania, Amendment #1

In accordance with notices received from the Federal Emergency Management Agency, dated July 6, 2001, the above-numbered Declaration is hereby amended to include Berks County as a disaster area caused by Tropical Storm Allison occurring on June 15, 2001. In addition, the Declaration is also amended to establish the incident period as occurring June 15 through June 23, 2001.

In addition, applications for economic injury loans from small businesses located in Lancaster, Lebanon and Schuylkill Counties in the State of Pennsylvania may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 20, 2001 and for economic injury the deadline is March 20, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 11, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–17788 Filed 7–16–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3345]

State of West Virginia; Amendment #4

In accordance with a notice received from the Federal Emergency Management Agency, dated June 11, 2001, the above numbered declaration is hereby amended to establish the incident period as beginning on May 15, 2001 and continuing through June 11, 2001.

In accordance with notices received from the Federal Emergency Management Agency, dated July 10, 2001, the Declaration is also amended to reestablish the incident period for this disaster as beginning on May 15, 2001 and continuing. This notice also includes Doddridge and Fayette Counties in the State of West Virginia as disaster areas caused by flooding, severe storms, and landslides beginning on May 15, 2001 and continuing.

In addition, applications for economic injury loans from small businesses located in Harrison, Lewis, Tyler and Wetzel Counties in the State of West Virginia may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 2, 2001, and for loans for economic injury is March 4, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 10, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–17787 Filed 7–16–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3339]

State of Wisconsin; Amendment #6

In accordance with a notice received from the Federal Emergency Management Agency, dated July 6, 2001, the above-numbered Declaration is hereby amended to include Barron County as a disaster area caused by flooding, severe storms and tornadoes occurring between April 10, 2001 and continuing.

Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 10, 2001 and for economic injury the deadline is February 11, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 11, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–17789 Filed 7–16–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Opportunity for Public Comment on Surplus Property Release at Gastonia Municipal Airport, Gastonia, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the City of Gastonia to waive the requirement that a 19.9 acre parcel of surplus property, located at the

Gastonia Municipal Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before August 16, 2001.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Larry W. Wood, Assistant City Manager of the City of Gastonia at the following address: Post Office Box 1748, Gastonia, NC 28053–1748.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the City of Gastonia to release 19.9 acres of surplus property at the Gastonia Municipal Airport. The property will be purchased by Gaston Day School, Inc. The school plans to use this property to expand its athletic venues. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Gastonia Municipal Airport.

Issued in Atlanta, Georgia on July 9, 2001.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 01–17863 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–1999–6583]

Request for Comments and Notice of Public Workshop; NCAP Consumer Braking Initiative

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

ACTION: Request for comments; notice of public workshop.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is holding a public workshop and soliciting comments on a draft test protocol to expand the New Car Assessment Program (NCAP) to provide brake performance information on new light vehicles to consumers. Since 1979, NHTSA has been providing consumers with useful information on the frontal crash performance of motor vehicles through the NCAP. The NCAP program has been expanded over the past few years to include side impact crash performance and rollover resistance ratings. Focus groups have indicated that motor vehicle brake performance is a prime area for consumer information. To date, brake testing variability has been NHTSA's primary concern in the development of an effective brake system rating. Based on new findings from vehicle research, the agency believes that testing variability can be sufficiently minimized to make a NCAP braking program viable when vehicles equipped with 4-wheel antilock braking systems are tested.

DATES: *Written comments:* Written comments may be submitted to this agency and must be received on or before October 15, 2001.

Public workshop: The public workshop will be held on September 26, 2001, from 9 a.m. to 4 p.m. Those wishing to participate should contact Mr. Jeff Woods by September 24, 2001.

ADDRESSES: *Written comments:* Comments must refer to the Docket and Notice numbers cited at the beginning of this Notice and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Alternatively, you may submit your comments electronically by logging onto Docket Management System web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

Public workshop: The public workshop will be held at the Nassif Building, 400 Seventh St., SW., Washington, DC 20590; room number to be provided to participants prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Woods, Office of Safety Performance Standards, NPS–22, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–6206; Fax: (202) 366–4329.

SUPPLEMENTARY INFORMATION:

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I. Background

Since 1979, NHTSA has been providing consumers with valuable safety information on frontal crash performance of motor vehicles through the New Car Assessment Program (NCAP). NCAP is perhaps one of the most recognized motor vehicle consumer information programs in the U.S. and has been expanded to provide data on motor vehicle side impact performance. Other countries have joined in NHTSA's effort to give the public meaningful comparative information about the safety of different vehicles. At this time, Australia, Japan, and Europe have NCAP programs in place.

However, no crash avoidance performance information has ever been made available from the U.S. NCAP vehicles. As a result, NHTSA has explored the possibility of providing crash avoidance consumer information through non-destructive testing of NCAP vehicles before they are crash tested. The agency believes that providing brake performance information to consumers would give consumers important and meaningful safety information and help motivate vehicle manufacturers to continue to improve the brake performance of light vehicles. Good braking performance can be a key factor in crash avoidance.

Japan initiated its NCAP braking program in 1995 and has been providing braking performance information to its consumers since that time. The Japanese NCAP braking program provides stopping distances on dry and wet road surfaces from a vehicle speed of 100 km/h (62 mph) and indicates whether the vehicle remained in the test lane throughout the stop. This information is provided to the public together with the NCAP crash testing information.

In August 1996, NHTSA released the results of a 4000-person national survey conducted in 1995 under the National Performance Review. Among the key findings was that 75.7% of drivers ranked safety as very important in affecting their purchase of a new vehicle.

In the 1980's, NHTSA considered publishing comparative vehicle stopping distance data provided by manufacturers under the subsequently-rescinded consumer regulation on that subject. However, one of the drawbacks with those data was that many manufacturers, including Chrysler, Ford, and General Motors, were simply providing the stopping distance required for all of their models under FMVSS No. 105, rather than the actual stopping distance. This factor contributed to the agency's decision to rescind that consumer information regulation in 1985.

NHTSA's chief technical concerns with developing a brake system performance rating have focused primarily on issues of variability. The three primary sources of variability are: vehicle-to-vehicle variability, test driver variability, and test conditions (test surface, etc.). In 1997, the agency initiated a vehicle research program to evaluate how best to minimize test driver and test surface variability expected from NCAP brake testing. We did not address the issue of vehicle-to-vehicle variability since it is a function of the vehicle manufacturing process and therefore would not be minimized by the test methodology. The two reports from the vehicle research conducted in 1998 and 1999 are summarized below and can be accessed through the Docket Management System web site at *http://dms.dot.gov* in Docket Nos. NHTSA–1999–6583–1 and NHTSA–1999–6583–2.

II. Vehicle Research

The agency has conducted light vehicle brake testing in a variety of research programs, including the Light Vehicle ABS Research Program that is evaluating the effectiveness of ABS in reducing crashes. We believe that of the brake system performance measures evaluated during testing, the easiest for consumers to understand and use is probably stopping distance. Other measures of brake performance evaluated during research, such as brake efficiency, ABS efficiency and brake pedal gain, showed higher levels of variability, and are less intuitive concepts to communicate to consumers.

Based on the agency's findings from prior light vehicle brake research, we have tentatively concluded that (a) stopping distance is the best measure of brake performance for consumer use; (b) variability exists between vehicles of the same model; (c) ABS generally improves stopping distance performance; (d) and low coefficient of friction surfaces, such as wet jennite, produce the most variability and would not be useful for consumer information.

Aberdeen Test Center

The agency initiated additional testing at Aberdeen Test Center (Aberdeen) in 1998 to evaluate a simplified test protocol and the magnitude of driver and surface variability. The ten ABS-equipped vehicles selected for testing included 5 passenger cars, 2 minivans, 1 full-size van, 1 Sport Utility Vehicle (SUV) and 1 pickup truck with rear-wheel-only ABS. One of the passenger cars was used as a control vehicle, and was tested throughout the duration of the testing period. Ten straight line stops were conducted on each test surface condition, including dry and wet asphalt, from a vehicle speed of 100 km/h (62 mph), with the vehicle in the loaded and unloaded conditions. The agency used ten stops to ensure that any variability in brake performance from stop to stop could be well identified.

The results of the stopping distance tests showed that the five passenger cars were the best performers with an average stopping distance of 46.3 m (152 ft) on the dry asphalt and 51.2 m (168 ft) on the wet asphalt road surface. The three vans were mid-performers with dry road stops averaging 50.3 m (165 ft) and wet road stops averaging 52.7 m (173 ft). The average stopping distance of the SUV and the pickup truck was 56.4 m (185 ft) on the dry asphalt surface and 62.2 m (204 ft) on the wet asphalt surface, although the pickup truck had longer stops and more variability since it was equipped with rear-wheel-only ABS. The test results were also analyzed to provide a standard deviation and a 95th percentile stopping distance value for the ten stops. The 95th percentile stopping distance provides a measure of brake performance based on the average stopping distance and the variability of the data set, and represents the distance within which the vehicle would stop 95 percent of the time. Vehicles with high variability will have 95th percentile stopping distances significantly longer than the reported average.

A comparison of the standard deviation for the ten stops for each test vehicle shows the low variability that was achieved by each vehicle grouping. The standard deviation, which is a measure of the variability of the data set, indicates a low variability for the stops conducted on the passenger cars and vans, and a somewhat higher variability for the sport utility vehicle on the dry road surface. The pickup truck had a higher degree of variability as well. The standard deviation for the passenger cars tested on the dry surface in a lightly loaded condition had a range of 0.43–0.98 m (1.4–3.2 ft), and on the wet surface in a lightly loaded condition ranged from 0.55–1.88 m (1.8–6.0 ft). Similarly, for the vans tested, the standard deviation for the dry, lightly loaded condition, and for the wet, lightly loaded condition ranged from 0.40–0.95 m (1.3–3.1 ft) and 0.27–1.01 m (0.9–3.3 ft), respectively. The SUV had a standard deviation of 2.47 m (8.1 ft) on the dry test surface and 0.82 m (2.7 ft) on the wet test surface, both in the lightly loaded condition. The pickup truck, which was equipped with a rear-wheel-only ABS had a larger standard deviation mainly because of the driver modulation that was required to prevent front wheel lockup and achieve the best stop.

The brake pedal application force for the stopping distance tests was targeted at 500 Newtons (112 pounds). However, even though the peak pedal forces were up to three times higher than target forces, this did not affect the stopping distance results. Since the vehicles were all ABS-equipped, once the ABS activated the stopping distance performance seemed impervious to brake pedal force, except for the pickup truck, which required test driver brake pedal modulation to prevent front wheel lockup. An analysis of the test data showed that even though the test drivers were able to achieve pedal forces as high as 1730 N (390 lbs) in some of the test runs, such high pedal forces did not improve the stopping distance performance of the vehicle. For example, on the Pontiac Grand Am, which was used as the control vehicle, the shortest stop (42.4 m [139 ft]) was achieved with 1050 N (237 lbs) of pedal force, whereas the longest stop (45.7 m [150 ft]) was achieved with a higher pedal force of 1370 N (309 lbs). The parameter that seemed the most relevant to consistent and shorter stops was the brake application rate. The results show that consistency could be achieved using a brake application rate of greater than 445 N (100 lbs) of pedal force in 0.2 seconds or less.

The test surfaces used for this testing were dry asphalt and wet asphalt. These are typical of the road surfaces that most drivers experience and would therefore provide useful information for consumers. The peak friction coefficient (PFC) measurement for the dry asphalt test surface ranged from 0.89 to 0.95 during the testing period, and for the wet asphalt surface 0.85 to 0.88. The ambient temperatures during the testing period ranged from 7 °C to 22 °C (45 °F to 71 °F). Although these moderate temperatures did not show any

correlation with the stopping distance performance of the vehicles tested, the agency believes that testing in moderate ambient temperatures in the Fall and Spring might yield more consistent results for testing conducted in northerly parts of the U.S.

The conclusions we tentatively reached from the Aberdeen research were that driver and surface variability can be minimized to make the NCAP brake performance program a viable one. Driver variability could be minimized by testing only ABS-equipped vehicles, by using straight line stops, and by specifying a minimum application rate for the brake pedal force. Surface variability could be minimized by specifying high coefficient of friction dry and wet test surfaces, and by specifying an ambient temperature or surface temperature range for testing.

Round-Robin Testing

The agency initiated a round-robin test in September 1999 to further evaluate the effects of surface variability on braking performance. The objective was to determine the impact that surface variability has on stopping distance performance by analyzing and comparing the stopping distance performance of the same vehicles tested at different facilities using the same test protocol. The agency also wanted to determine if different test drivers could obtain similar results. Four vehicles (a passenger car, a SUV, a minivan, and a pickup truck) were tested at three different test sites and again at the first test site. The PFC of the test surface was measured at each test facility during the vehicle testing.

As was the case for the earlier testing (with the exception of the pickup truck) all of the vehicles were equipped with four-wheel antilock braking systems. By using only ABS-equipped vehicles, the driver is able to make a rapid, hard brake pedal application resulting in ABS activation and control of the brake forces at the wheels to prevent wheel lockup and optimize stopping distance performance.

Four rounds of testing were conducted at three test facilities—at Aberdeen, MGA Research in Madison, Wisconsin, and the Transportation Research Center (TRC) in East Liberty, Ohio. The first and fourth rounds of testing were both conducted at Aberdeen. Pavement friction was measured at each facility using a skid trailer, and meteorological measurements including air and road surface temperatures and wind speed were monitored during the testing. Test surface slope and grade measurements were recorded.

PFC measurements taken at Aberdeen indicated that during the first round of testing, the dry PFC was 0.94 and the wet PFC was 0.93. PFC measurements during the fourth round of testing at Aberdeen were higher for the dry pavement, at 0.95 and 1.00 for pre- and post-test measurements, respectively. PFC measurements for the wet surface at Aberdeen for the fourth round were 0.91 and 0.90 for pre- and post-test measurements, respectively.

The PFC measurements from TRC for the dry surface were 0.91 and 0.94 for the pre- and post-test measurements, respectively, and for the wet surface were 0.84 and 0.83 for pre- and post-test, respectively. The difference in PFC between Aberdeen (higher PFC) and TRC (lower PFC) resulted in stopping distances of 6 to 15 feet longer at TRC than the fourth round Aberdeen stopping distances. The PFC measurements at MGA were 0.99 and 0.95 for pre- and post-test dry pavement, respectively, and 0.97 and 0.96 for pre- and post-test wet pavement, respectively. The MGA test surface had several pavement repair strips, which affected the vehicle stopping results with larger standard deviations for each series of stops on each vehicle, compared to the results at Aberdeen and TRC.

The results of this Round Robin testing indicate that specifying the test surface in terms of PFC will be of primary importance for the NCAP braking program since the PFC value does affect the stopping distance results. The results also indicate that conducting the brake testing for all NCAP vehicles at the same test facility would reduce the surface variability and result in more consistent stopping distances for all tested vehicles.

III. Agency Plan

1. ABS-Equipped Vehicles

The test vehicles used during the research program were all ABS-equipped so as to minimize the effects of driver variability due to driver skill. A vehicle's ABS senses impending wheel lockup and automatically modulates the brake to provide the shortest stop for the given road surface condition. This automatic modulation performed by the ABS maintains the braking force close to the level just short of wheel lockup. For the Phase I testing conducted at Aberdeen, the control vehicle tested using different brake application rates showed very little change in its stopping distance performance even though the brake pedal application force ranged from 472 N to 1721 N (106 lbs to 387 lbs). In essence, once the ABS activates, increasing the brake pedal force has no impact on the stopping distance performance.

The agency has no immediate plans to conduct brake testing on vehicles not equipped with 4-wheel ABS for the NCAP program. The concern associated with testing vehicles with rear-wheel-only systems or without ABS is that it would increase the influence of driver variability since a driver would be required to modulate the brakes manually to achieve the no-wheel-lock requirement. Driver brake pedal modulation introduces more variability from stop to stop and results in larger deviations between test runs. The agency notes that in recent NCAP braking tests conducted in Japan, all vehicles were equipped with ABS although the information provided does not indicate if these were all vehicles with 4-wheel ABS.

2. Transmission Selector Control

The agency's draft test protocol includes testing each vehicle with its transmission selector control in gear. Federal motor vehicle safety standards require most stopping distance tests to be conducted with the transmission selector control in neutral so that the stopping distance performance of the vehicle would not be affected by engine braking. We believe that stopping distance data with vehicles tested in gear would produce more relevant consumer information since this condition is more representative of what a driver encounters during an emergency braking situation. Even though engine braking may help to shorten vehicle stopping distance, we believe that its relevance for consumer use outweighs any small adverse impact on establishing a valid comparison of the performance of service brake systems on light vehicles.

3. Brake Application Rate

The test data indicate that the rate of brake pedal application is more important for consistent and short stopping distances, than the magnitude of the brake pedal force. An analysis of the results showed that data sets including stops where the pedal application rate was at least 222 N (50 lbs) in 0.2 seconds generally had a higher variability in stopping distance than the same data sets with the stops having an application rate of below 445 N (100 lbs) in 0.2 seconds removed. We concluded that slow pedal force rates may have delayed the activation of the ABS system and consequently,

increased the stopping distance variability of the data set. These results independently correlate closely to the Japan NCAP braking test procedure which specifies that the brake pedal force shall reach 500 N (112 lbs) in 0.25 seconds. Therefore, in the interest of harmonizing to a certain extent with the Japanese program, the agency proposes that the brake pedal application force of 500 N (112 lbs) be achieved within 0.25 seconds. This brake pedal application rate is important for minimizing the variability caused by differences in the initial pedal force input and will ensure repeatable ABS activation.

In addition to the initial application rate, we believe that it is important to specify a steady state pedal force for the remainder of the stop. After the initial ramp up in the brake force to achieve the 445 N (100 lbs) in 0.25 seconds, test drivers achieved pedal forces as high as 1735 N (390 lbs) to ensure that the ABS remained activated for the duration of the stop. An analysis of the data showed that such high pedal forces are not necessary to ensure ABS activation throughout the stop, and that a steady-state pedal force of about 670 N (151 lbs) would be appropriate. We also have considered establishing an upper limit for the brake pedal force peak after the initial application rate is satisfied. However, since that upper limit value could vary based on the vehicle and test driver performance, we believe that it would be better to establish a time frame within which the steady state pedal force condition should be achieved. This would ensure a consistent time frame for achieving the steady state braking force applied by the test driver, and therefore, enhance the repeatability of the test protocol.

As mentioned above, the Japanese NCAP brake test procedure specifies an initial application rate of 500 Newtons in 0.25 seconds. In addition, their procedure specifies a steady state application force of 500 ± 30 Newtons, without specifying a time frame within which this force should be achieved. The difficulty in using this protocol is that our tests indicate that a peak pedal force in the 670 to 900 N (150 to 202 lbs) range always occurs in order to achieve the rapid brake pedal application rate. The agency believes that to achieve the rapid application rate without exceeding a 530 N (119 lbs) limit, a special brake application device may be required in lieu of using a test driver.

The agency, therefore, contemplates specifying that a steady state pedal force of 670 ± 70 N (151 ± 15.7 lbs), and that this pedal force be attained within the initial 0.75 seconds of the brake pedal application.

4. Test Surface Variability

The coefficient of friction of the test surface plays a major role in the braking performance of a vehicle. The PFC is currently used as the measure of the surface friction in the agency's light vehicle brake standard and has a nominal value of 0.90 for dry pavement. Vehicle compliance testing on dry pavement by the agency is conducted on a surface 0.90 or higher. Dry and wet asphalt surfaces were used for the NCAP brake testing because they represent the type of road surfaces on which consumers typically drive. The PFC measurements recorded during the Phase I testing at Aberdeen ranged for 0.89 to 0.95 for the dry asphalt surface, and 0.85 to 0.88 for the wet asphalt surface. For the Phase II round robin testing, the PFC recorded at the three test sites ranged from 0.91 to 1.00 for the dry surfaces and 0.83 to 0.97 for the wet test surfaces. The stopping distance results for the test vehicles in both Phase I and Phase II show no correlation between small changes in PFC and corresponding changes in vehicle stopping distance. Therefore, we believe that for the NCAP brake program, a test surface friction range should be specified to accommodate small daily variances in PFC.

Based on the agency's experience with PFC values and given the PFC values obtained during the NCAP brake testing, we contemplate that the PFC specification for the dry surface would be 0.90 to 0.95, and for the wet surface 0.80 to 0.85.

5. Surface Temperature

The agency believes that ambient and test surface temperatures have an impact on vehicle stopping distance performance. However, an analysis of the temperature effects was not possible since the temperature changes were not sufficiently large to draw any conclusions or establish any correlation between ambient and/or surface temperature and stopping distance. The vehicle testing in both Phase I and Phase II was conducted in the Fall with the ambient temperatures ranging from 2°C to 24°C (35°F to 76°F) and within the ambient temperature range specified in FMVSS No. 135 (0°C and 40°C).

We believe that conducting vehicle testing in moderate ambient temperatures, as those experienced in the northern continental U.S. during the Fall or Spring, would provide more repeatable stopping distance results, compared with testing at ambient temperature extremes during the Winter or Summer. The Japanese NCAP brake test procedure specifies a surface temperature range and makes no reference to ambient temperature. The surface temperature they specify include 25 °C – 45 °C (77 °F – 113 °F) for the dry surface and 22 °C – 32 °C (72 °F – 90 °F) for the wet surface. In the interest of developing a test procedure that is similar to the Japanese procedure, we are contemplating specifying a surface temperature range, instead of an ambient temperature range. We believe that variances in the surface temperature would have a more direct impact on the PFC and stopping distance performance of tested vehicles, and by specifying surface temperatures for NCAP brake testing the surface variability would be minimized.

6. Number of Stops

The stopping distance performance requirements specified in the agency's brake standards generally require the best of six stops for specific test conditions, which considers that the test driver needs several attempts in order to achieve his best stop. However, the agency believes that ten stops would allow for a better determination of the stopping distance value we convey to consumers. Since the NCAP braking program is for consumer information, as opposed to for vehicle compliance, and since it is necessary to convey a stopping distance value that the consumer is likely to achieve in an emergency braking situation, the agency believes that ten stops would be more appropriate than six stops for the NCAP braking test procedure. Furthermore, even though ABS-equipped vehicles reduce driver variability compared with non-ABS vehicles, there still exists some small variability in the performance of ABS that could be minimized by requiring more stops.

7. Presentation of Data

The goal of the NCAP braking program is to provide accurate, unbiased brake performance information that is useful and informative to the consumer. Two measures of stopping distance performance that could be used to inform the consumer of a vehicle's braking performance are average stopping distance and the 95th percentile stopping distance. The average stopping distance represents a mean of the vehicle's brake performance over the ten stops performed during the testing, with all stops included in the calculated average. The 95th percentile stopping distance provides a measure of brake performance based on the average stopping distance and the variability of the data set, and informs the consumer of the distance within which the vehicle

should stop 95 percent of the time. For the Aberdeen testing, the 95th percentile stopping distance is equal to: (10-stop average) + (1.645 × Standard Deviation). Vehicles with high stop-to-stop variability will have 95th percentile stopping distances significantly higher than the reported average, while those with small deviations between individual stopping distances will have values closer to the reported average.

The agency believes that presenting the information in the form of the 95th percentile stopping distance would be more beneficial to consumers since this stopping distance value is based on the average stopping distance and the variability experienced in the ten stops. We believe that providing the average stopping distance value would not, by itself, indicate the variability from stop to stop; hence a comparison of two vehicles with similar averages but with different stop-to-stop variability could be misleading to the consumer in conveying the performance that he is most likely to achieve for that vehicle. Given that a consumer has one opportunity to obtain a best stop in an emergency braking situation, the 95th percentile stopping distance represents the stopping distance that he/she is likely to achieve in such a situation, provided that the brake pedal application rate and force, the road surface friction and load conditions are similar to those used during the NCAP braking test. The agency, therefore, contemplates that the 95th percentile stopping distance value would be presented as the brake performance measure for the NCAP brake program.

The test lane width is specified at 3.5 meters (11.5 ft) for the NCAP brake testing and is the same as specified in Standard No. 135. NHTSA believes that vehicle stability and stopping distance are both important for achieving good braking performance, and that we should indicate, along with the stopping distance data, whether the vehicle stayed within the lane throughout the stop. Japan currently indicates in their data whether the vehicle deviated from the test lane during the stopping distance test, and a review of results reported in their consumer information shows that none of the vehicles tested that were equipped with 4-wheel ABS deviated from the lane during the braking test.

IV. Proposed Test Protocol

The test conditions that the agency included in the draft test protocol are based on the conditions specified in FMVSS No. 135, Light vehicle brake systems, with a few modifications.

Definitions

Gross vehicle weight rating or GVWR means the value specified by the manufacturer as the loaded weight of a single vehicle.

Initial brake temperature or IBT means the average temperature of the service brakes on the hottest axle of the vehicle 0.32 km (0.2 miles) before any brake application.

Lightly loaded vehicle weight or LLVW means unloaded vehicle weight plus the weight of a mass of 180 kg (396 pounds), including driver and instrumentation. The unloaded vehicle weight includes all fluid reservoirs filled to maximum capacity, but without cargo and accessories that are ordinarily removed from the vehicle when they are not in use.

Peak friction coefficient or PFC means the ratio of the maximum value of braking test wheel longitudinal force to the simultaneous vertical force occurring prior to wheel lockup, as the braking torque is progressively increased.

Stopping distance means the distance traveled by a vehicle from the point of application of force to the brake control to the point at which the vehicle reaches a full stop.

General Conditions

Pavement friction dry. The road test surface produces a peak friction coefficient (PFC) of 0.90–0.95 when measured using an American Society for Testing and Materials (ASTM) E1136 standard reference test tire, in accordance with ASTM Method E1337–90, at a speed of 64.4 km/h (40 mph), without water delivery.

Pavement friction wet. The road test surface produces a peak friction coefficient (PFC) of 0.80–0.85 when measured using an American Society for Testing and Materials (ASTM) E1136 standard reference test tire, in accordance with ASTM Method E1337–90, at a speed of 64.4 km/h (40 mph), with water delivery.

Pavement temperature dry. The test temperature for the dry pavement is 35 °C ± 10 °C (95 °F ± 18 °F).

Pavement temperature wet. The test temperature for the wet pavement is 27 °C ± 5 °C (81 °F ± 9 °F).

Wet pavement condition. For wet surface testing, the test area shall be fully wet with standing water not deeper than 3 mm (⅛ inch). Water shall be applied to the test surface prior to each brake stop.

Gradient. The test surface has no more than a 0.5% gradient in the direction of testing and no more than 1.5% gradient perpendicular to the direction of testing.

Lane width. Tests are conducted on a test lane 3.5 m (11.5 ft) wide.

Vehicle Conditions

Vehicle weight. The vehicle shall be tested at lightly loaded vehicle weight (LLVW).

Tire inflation pressure. Tires are inflated to the pressure recommended by the vehicle manufacturer for the LLVW of the vehicle.

Instrumentation

Brake temperature measurement. The brake temperature is measured by plug-type thermocouples installed in the approximate center of the facing length and width of the most heavily loaded shoe or disc pad, one per brake. A second thermocouple may be installed at the beginning of the test sequence if the lining wear is expected to reach a point causing the first thermocouple to contact the metal rubbing surface of a drum or rotor. For center-grooved shoes or pads, thermocouples are installed within 3 mm (0.12 in) to 6 mm (0.24 in) of the groove and as close to the center as possible.

Vehicle speed and stopping distance measurement. The vehicle speed measurement is performed using a calibrated rolling fifth-wheel transducer with quadrature capability. Prior to testing, fifth-wheel calibration shall be performed with maximum error not exceeding 0.5 percent of measured value as verified on a pre-measured 60-m (200-ft) test lane.

Brake pedal effort measurement. The pedal effort measurement is performed with a calibrated transducer on the brake pedal. This transducer should not interfere with normal brake application.

Brake pedal force indicator. An indication of the pedal force is to be located in view of the driver.

Ambient temperature. The ambient temperature shall be measured continuously during stopping distance testing, using a calibrated thermometer.

Anemometer. The wind speed and wind direction shall be measured continuously during stopping distance testing, using a calibrated anemometer located at the test site.

Surface temperature. The road surface is measured at the test lane with a calibrated hand-held pyrometer, prior to each test run.

Procedural Conditions

Brake control. All vehicle brake stops must be met solely by use of the service brake control.

Test speed. The vehicle is tested at a speed of 100 km/h (62.1 mph).

Stopping distance. The braking performance of a vehicle is determined

by measuring the stopping distance from a given initial speed. The stop is initiated when the stop lamp circuit is closed.

Vehicle position and attitude. (a) The vehicle is aligned in the center of the lane at the start of each brake application. Steering corrections are permitted during each stop.

(b) Stops are made without any part of the vehicle leaving the lane and without rotation of the vehicle about its vertical axis of more than ± 15° from the center line of the test lane at any time during any stop.

Transmission selector control. All vehicle brake stops are made with the transmission selector in a control position recommended by the manufacturer for driving on a level surface at the applicable test speed. In initiating each test run, (a) Exceed the test speed by 6 to 12 km/h (3.7 to 7.5 mph); (b) close the throttle and coast in gear; and (c) when the test speed is reached, apply the brakes; (d) to avoid engine stall, a manual transmission may be shifted to neutral (or the clutch disengaged) when the vehicle speed is below 30 km/h (18.6 mph).

Initial brake temperature (IBT). If the lower limit of the IBT for the first stop in the test has not been reached, the brakes are heated to the IBT by making one or more brake applications from a speed of 50 km/h (31.1 mph), at a deceleration not greater than 3 m/s^2 (9.8 fps^2).

Required Test Data

Test data to be collected includes:

- Vehicle speed.
- Stopping distance.
- Brake pedal application force.
- Brake lining temperatures.
- Road Surface temperature.
- Ambient temperature.
- Tire pressure.

Road Test Procedures

1. Burnish

Vehicle conditions.

- Vehicle load is at GVWR.
- Transmission position. In gear.

Test conditions.

- IBT: 65 °C to 100 °C (149 °F to 212 °F).
- Test speed: 80 km/h (49.7 mph).
- Pedal force: Adjust as necessary to maintain specified constant deceleration.
- Deceleration: Maintain a constant deceleration of 3.0 m/s^2 (9.8 fps^2).
- Number of runs: 200 stops.
- Interval between runs: The interval from the start of one service brake application to the start of the next is either the time necessary to reduce the IBT to 100 °C (212 °F) or less, or the distance of 2 km (1.24 miles), whichever occurs first.
- Accelerate to 80 km/h (49.7 mph) after each stop and maintain that speed until making the next stop.
- After burnishing, adjust the brakes according to the manufacturers' recommendation.

2. Stopping distance test

Vehicle conditions.

- Vehicle load is at LLVW.
- Transmission position. In gear.

Environmental conditions.

- Wind speed not greater than 5 m/s.

Test conditions.

- IBT: 65 °C to 100 °C (149 °F to 212 °F)
- Test speed: 100 km/h (62.1 mph).
- Pedal force: The brake pedal is to be applied so that the pedal force is at least 500 N (112 lbs.) in 0.25 seconds or less, and a steady state application force 670 N ± 70 N (151 ± 15.7 lbs.) achieved within 0.75 seconds. The steady state application force is to be held constant until the vehicle comes to a complete stop.
- Number of runs: 10 stops.
- Test surface—dry: PFC of 0.90 to 0.95.
- Surface temperature—dry: 35 °C ± 10 °C.
- Test surface—wet: PFC of 0.80 to 0.85.
- Water depth of 3 mm (⅛ inch) or less.
- Surface temperature—wet: 27 °C ± 5 °C
- For each stop, bring the vehicle to test speed and then stop the vehicle using the pedal force application method described in Pedal force section above.

3. Water Application Procedure

For wet surface testing, water shall be applied using a water tanker truck that is equipped to distribute water evenly across the width of the test lane. Prior to wet surface testing, three passes shall be made with the water tanker truck traveling longitudinally along the test lane. The total length of the wetted area shall be at least 100 m (330 ft). Prior to each brake stop event, an additional pass shall be made with the water tanker truck along the test lane where the brake stops are to be performed. Water shall be distributed to fully wet the asphalt surface while keeping the water depth in any area of the test lane below 3 mm (⅛ inch).

4. Stopping Distance Normalization

All stopping distance measurements shall be normalized in accordance with SAE J299 SEP93, Stopping Distance Test Procedure. Stopping distance corrections for initial speed errors greater than ±3.2 km/h (±2 mph) are invalid due to inaccuracy.

$$S_c = S_m V_d^2 / V_a^2$$

where:

V_d = desired initial vehicle stopping speed, km/h (mph)
V_a = actual initial vehicle stopping speed, km/h (mph)
S_m = measured stopping distance, m (ft)
S_c = calculated stopping distance from V_d, m (ft)

V. Implementation

The agency hopes to gather data to support the NCAP brake testing program beginning with model year 2001 vehicles. The data obtained from testing these MY 2001 vehicles would not be published as consumer information, but would be used to make any refinements to the test procedure and/or data presentation. Assuming no major issues are identified in the comments on this Notice or the data gathered from the 2001 vehicles, the agency hopes to fully implement the NCAP brake program, in MY 2002, by testing and releasing the stopping distance information for the vehicles tested.

VI. Request for Comments—Questions

The agency seeks comments about topics relating to the NCAP braking program and the draft test procedure that has been developed from vehicle research. For ease of reference, the questions posed are numbered consecutively. The agency requests that commenters identify each answer they give by the number of each question being answered.

1. Based on the agency's existing brake performance requirements in the Federal motor vehicle safety standards and its experience with brake testing of light vehicles, stopping distance appears to be one of the best measures of brake performance. For the NCAP braking program, our desire is to provide consumers with a measure of brake performance that would be useful for comparing the capabilities of new vehicles. The agency requests comments about stopping distance and other measures of braking performance. Are other measures of brake performance more useful for consumer information? If so, please explain why.

2. The agency seeks to minimize driver variability by testing 4-wheel ABS-equipped vehicles only. If we were to expand the program to include non-ABS-equipped vehicles, how could we best minimize driver variability in testing non-ABS vehicles?

3. During vehicle research, the agency found that the brake pedal application rate is an important parameter in achieving consistent and short stopping distances because it reduces the driver variability for the brake application. Based on the agency's independent research, an application rate of 445 Newtons (100 lbs.) in 0.2 seconds was derived, which is almost identical to the brake application rate of 500 Newtons (112 lbs.) in 0.25 seconds specified by the Japanese for their NCAP brake testing and that we are now considering to use as well. Are these brake pedal application rates achievable for all light vehicles, including full-size sport utility vehicles, pickup trucks and vans? Are there any concerns about NHTSA using the same brake application rate specified by Japan?

4. After the initial brake application rate is achieved, the agency believes that it is important to establish additional criteria for the steady state brake application force and the time to attain that force. We have specified in the draft test protocol 670 ± 70 Newtons (151 ± 15.7 lbs.) in 0.75 seconds as the steady state force. How appropriate is this force and the specified time frame for achieving consistent stopping distance performance? Should a peak value be established in addition to the steady state force or as an alternative?

5. Straight line stops are specified for the draft NCAP procedure so as to minimize braking performance variability due to driver skill. We have also considered braking-in-a-curve, lane-change and other maneuvers where a steering maneuver is combined with braking, and concluded that straight line stops might be the most useful for consumer information. What are your views on the various maneuvers that could be used for NCAP braking? Which maneuvers do you consider to be best for consumer information, and why?

6. The agency seeks to minimize surface variability by specifying high coefficient of friction dry and wet surfaces. We specify in the draft test protocol a dry surface with a PFC of 0.90–0.95 and a wet surface with a PFC of 0.80–0.85. Are these PFC ranges appropriate for dry and wet asphalt surfaces? Would a smaller range ensure less variability in vehicle braking performance? Is such a range realistic given the variability in PFC readings from day to day and from week to week? What range would you recommend given your experience with test surface variability? How often should the PFC for the surface be measured during NCAP brake testing?

7. The agency believes that stopping distance testing in extreme ambient temperatures is likely to produce greater performance variability than testing in milder ambient temperatures, primarily because the surface temperature impact on the PFC of the surface. Japan specifies a surface temperature range for its NCAP brake testing, with the dry surface temperature between 25°C and 45°C and for the wet surface and the wet surface temperature between 22°C and 32°C. The agency seeks comments on whether such a surface temperature range is appropriate for brake testing on a dry surface and on a wet surface, and whether the range should be changed? Would specifying an ambient similar to the range specified in FMVSS No. 135, Light vehicle brake systems, 0°C–40°C, be adequate for NCAP brake testing? Would the PFC specification without any temperature requirements be adequate? Please support any recommendations for a different surface temperature range with data showing its impact on vehicle braking performance.

8. The agency has specifies in the draft test protocol that ten (10) stops be made for each test condition. Given that test driver and surface variability can be minimized but not eliminated during brake testing, we believe that 10 stops would provide a large enough sample with which to calculate an average or a 95th percentile value. The agency seeks comments on the number of stops that would be considered sufficient for providing an average or 95th percentile stopping distance value to consumers.

9. Given that the 95th percentile stopping distance is based on a calculated average and the standard deviation among the number of stops, would it be considered more appropriate for consumer use? What are the pro's and con's of providing the 95th percentile stopping distance? Is it important to convey the variability between stops as part of the stopping distance information? Why or why not?

10. The agency contemplates testing the vehicles in the lightly loaded condition only since most consumers seek braking performance information in that condition. The lightly loaded condition is defined as the unloaded vehicle weight plus 180 kg. for driver and instrumentation. For the research program, we also tested the vehicles at their gross vehicle weight rating (GVWR) and found that, as expected, stopping distances were longer than for the lightly loaded condition. Do you believe that stopping distance tests should also be conducted at GVWR? Why would this information be useful to consumers? We note that data shows that the vast majority of consumers operate their vehicles lightly loaded.

11. The agency specifies in the draft test protocol testing vehicles with the transmission selector in gear since this is the transmission position that most consumers' vehicles are in when faced with an emergency braking situation. Testing with the transmission in neutral provides a stopping distance performance that does not include the effects due to engine braking and is more appropriate for vehicle compliance testing. Which method do you believe would provide relevant or useful information to consumers? Should the stopping distance value exclude the effects of engine braking? Why or why not?

12. The water depth specified is 3mm or less for the wet pavement test. What alternative method can be used to describe a wetted surface while ensuring that no puddles or excessive standing water is present? What measurement method should be specified for measuring water depth?

VII. Public Workshop

All interested persons and organizations are invited to attend the workshop. To assist interested parties in preparing for the September 26, 2001 workshop, this agency has developed a preliminary agenda, shown below, of introductory presentations and of topics for discussion at the meeting. Requests for this agency to consider additional topics should be addressed to Mr. Jeff Woods at the address or numbers given above.

A. Purpose

NHTSA is holding a workshop to facilitate an exchange of ideas among all participants. The purpose of the workshop is to present and discuss the test protocol that has been developed for the NCAP braking program. The agency hopes that this workshop will provide opportunities for improving and refining the test protocol and other areas of the program. We plan to consider the information and the views presented at the workshop and in the subsequent written comments in developing the final braking test protocol.

B. Procedures

The agency intends to conduct the workshop informally. The Associate Administrator for Safety Performance Standards will preside at the workshop. Any person planning to participate in the workshop should contact Mr. Jeff Woods at the address and telephone number provided at the beginning of this notice, no later than September 24. 2001.

C. Agenda

i. Opening remarks
ii. NHTSA Presentation—NCAP braking program
iii. Presentations by organizations and the public
iv. Open discussion

Issued on: July 12, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–17801 Filed 7–16–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration, Federal Motor Carrier Safety Administration

[Docket No. RSPA–00–7021 (PD–23(RF))]

Morrisville, PA Requirements for Transportation of ''Dangerous Waste''

AGENCY: Research and Special Programs Administration (RSPA) and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of administrative determination of preemption.

APPLICANT: Med/Waste, Inc. and Sanford Motors, Inc.

LOCAL LAWS AFFECTED: Morrisville, Pennsylvania Ordinance No. 902.

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

MODES AFFECTED: Highway.

SUMMARY: Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. The definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Section 01 and the use of the term ''dangerous waste'' throughout the ordinance.

2. The designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02.

3. The requirement that each truck transporting dangerous waste carry and have available ''the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act,'' in Section 05(a).

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), or Joseph Solomey, Office of the Chief Counsel, Federal Motor Carrier Safety Administration (Tel. No. 202–366–1374), U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

A. Application for Preemption Determination

This proceeding is based on the December 30, 1999 application of Med/Waste, Inc. and its subsidiary, Sanford Motors, Inc. (collectively ''Med/Waste'') for a determination that Federal hazardous material transportation law preempts requirements contained in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania (the Borough). The copy of Ordinance No. 902 attached to Med/Waste's application indicates that this ordinance was adopted on September 20, 1999, and it regulates ''the movement of infectious and chemotherapeutic wastes (hereinafter dangerous waste) by motor vehicle truck in the Borough of Morrisville.''

In its application, Med/Waste challenged (1) the definition and use of the term ''dangerous waste'' and the definitions of ''infectious waste'' and ''hospital waste''; (2) the limitation of trucks transporting dangerous waste within the Borough to Route 1; and (3) the requirement to carry the uniform manifest required for hazardous wastes. The text of Med/Waste's application and a March 1, 2000 letter from the Borough of Morrisville in response were published in the **Federal Register** on April 14, 2000, and interested parties were invited to submit comments. 65 FR 20258. Comments were submitted by Med/Waste, Sanitec, the Medical Waste Institute (the Institute), Biosystems, and American Waste Industries, Inc. (American). The Borough did not submit any further comments.

In comments submitted in response to the April 14, 2000 notice, Med/Waste stated that several of its drivers have received tickets for violating Ordinance No. 902, and it provided documents on citations issued on September 29 and October 8, 1999. On the summons, the fine is specified at $300, plus costs, for violations of Ordinance No. 902. Because the ''location'' is shown as Pennsylvania Avenue on each of the citations, where Med/Waste's facility is located, it is assumed that the citations were issued for departing from Route 1.[1]

In its comments, Med/Waste also stated that Ordinance No. 902 ''must be preempted in its entirety in order to preserve the integrity of the national, uniform scheme of hazardous material transportation.'' Med/Waste and others discussed additional provisions in Ordinance No. 902 concerning speed limits, accident reporting, time limits on storage of dangerous waste, and the posting of a $50,000,000 indemnity bond with the Borough Secretary. These additional requirements are discussed generally at the end of Part III, below. However, no determination is made whether Federal hazardous material transportation law preempts these additional requirements because Med/Waste's application did not specifically challenge or address them, and the April 14, 2000 notice in the **Federal Register** did not clearly indicate that RSPA and FMCSA would consider these other requirements or the ordinance as a whole.

B. Federal Regulation of Medical Waste Transportation

In a March 1993 notice in its rulemaking proceeding under docket No. HM–181G, RSPA discussed the Federal regulation of medical waste transportation. 58 FR 12207, 12208 (March 3, 1993). As explained there, DOT has listed and regulated ''etiologic agents'' as hazardous materials since 1972. In a 1991 final rule, RSPA accepted an industry proposal ''that medical waste should be treated differently than other infectious substances.'' *Id.* at 12209, referring to RSPA's final rule, 56 FR 66124 (Dec. 20, 1991). At that time, RSPA concluded that medical waste should remain regulated as a hazardous material:

> Since the majority of these wastes are untreated and, thus, may potentially contain infectious substances, RSPA strongly believes that the public and transport personnel [should] be protected from the hazards of these materials during transportation.

56 FR 66142. Accordingly, RSPA has provided ''less rigorous requirements'' for regulated medical wastes than for other infectious substances. 56 FR 66131.

In the March 1993 notice, RSPA also referred to a two-year demonstration program that the U.S. Environmental Protection Agency (EPA) had

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[1] In a November 29, 2000 letter, Med/Waste asked RSPA for ''some indication of the estimated time of decision'' in this matter, because dates for court hearings on these citations (which had previously been continued) were coming due. This letter and a copy of RSPA's December 11, 2000 response have been placed in the docket.

established under the Medical Waste Tracking Act of 1988, but observed that ''EPA's regulations on medical waste in 40 CFR part 259 applied in only five States and had expired on June 22, 1991.'' 58 FR at 12209. RSPA explained that—

> To provide less rigorous requirements for medical waste containing infectious substances, RSPA turned to the expired EPA regulations as a model that could be adapted, with some modifications, to the HMR.

Id. at 12209–10.

Accordingly, RSPA acted consistently with the expired EPA regulations when it ''created a subcategory of infectious substances—infectious substances that are contained in or constitute medical waste.'' *Id.* at 12210. *See also* RSPA's final rules, 59 FR 48762 (Sept. 22, 1994), 59 FR 53116 (Oct. 21, 1994), and a further notice, 59 FR 65860 (Dec. 21, 1994), and final rule, 60 FR 48780 (Sept. 20, 1995), all in docket No. HM–181G. The Medical Waste Tracking Act of 1988 (Pub. L. 100–582, 102 Stat. 2950) and EPA's demonstration program for tracking and managing medical waste are also described in EPA's interim final rule establishing the two-year demonstration program, 54 FR 12326 (Mar. 24, 1989), and its final rule removing obsolete rules, 60 FR 33912 (June 29, 1995).

The HMR define and provide exceptions applicable to ''regulated medical waste'' in 49 CFR 173.134 (which also covers infectious substances and etiologic agents), and specific packaging requirements are set forth in § 173.196 (for infectious substances) and § 173.197 (for regulated medical waste).[2] Thus, regulated medical wastes must be distinguished from (and are not within the category of) ''hazardous wastes.'' In its March 24, 1989 final rule, 54 FR at 12330, EPA stated that it ''did not list infectious waste in the final rule'' listing hazardous wastes under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.* The HMR specifically state that ''A hazardous waste is not subject to regulation as a regulated medical waste.'' 49 CFR 173.134(b)(2).

[2] In a Notice of Proposed Rulemaking in Docket No. RSPA–98–3971 (HM–226), published in the **Federal Register** on January 22, 2001 (66 FR 6942), RSPA has proposed to adopt the ''risk groups'' developed by the World Health Organization; modify definitions of Division 6.2 materials (infectious substances), biological products, diagnostic specimens, and regulated medical waste; add additional definitions or cultures and stocks, sharps, and toxins; and include provisions on used health care products. However, these proposed changes would not change the overall scheme of designation and classification of infectious substances in the HMR.

In its regulations at 67 PA Code 403.4, the Pennsylvania Department of Transportation has adopted as State law those parts of the HMR in 49 CFR parts 171–173 and 178–180 and those parts of FMCSA's Federal Motor Carrier Safety Regulations in 49 CFR parts 388 and 397.

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to Med/Waste's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

> (1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or
>
> (2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not ''substantively the same as'' a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

> (A) The designation, description, and classification of hazardous material.
>
> (B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.
>
> (C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.
>
> (D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.
>
> (E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.'' 49 CFR 107.202(d).

Subsection (c)(1) of 49 U.S.C. 5125 provides that, beginning two years after DOT prescribes regulations on standards to be applied by States and Indian tribes in establishing requirements on highway routing of hazardous materials,

> a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).[3]

[3] Section 5112(b)(1) provides that the highway routing standards shall include:

> (A) A requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall enhance public safety in the area subject to the jurisdiction of the State or tribe and in areas of the United States not subject to the jurisdiction of the State or tribe and directly affected by the designation, limitation, or requirement;
>
> (B) Minimum procedural requirements to ensure public participation when the State or Indian tribe is establishing a highway routing designation, limitation, or requirement;
>
> (C) A requirement that, in establishing a highway routing designation, limitation, or requirement, a State or Indian tribe consult with appropriate State, local, and tribal officials having jurisdiction over areas of the United States not subject to the jurisdiction of the State of tribe establishing the designation, limitation, or requirement and with affected industries;
>
> (D) A requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall ensure through highway routing for the transportation of hazardous material between adjacent areas;
>
> (E) A requirement that a highway routing designation, limitation, or requirement of one State or Indian tribe affecting the transportation of hazardous material in another State or tribe may be established, maintained, and enforced by the State or tribe establishing the designation, limitation, or requirement only if—
>
> (i) The designation, limitation, or requirement is agreed to by the other State or tribe within a reasonable period or is approved by the Secretary under subsection (d) of this section; and
>
> (ii) the designation, limitation, or requirement is not an unreasonable burden on commerce;
>
> (F) a requirement that establishing a highway routing designation, limitation, or requirement of a State or Indian tribe be completed in a timely manner;
>
> (G) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe provide reasonable routes for motor vehicles transporting hazardous material to reach terminals, facilities for food, fuel, repairs, and rest, and places to load and unload hazardous material;
>
> (H) a requirement that the State be responsible—
>
> (i) for ensuring that political subdivisions of the State comply with standards prescribed under this subsection in establishing, maintaining, and

Continued

FMCSA's standards that a State or Indian tribe must follow in establishing highway routing requirements for nonradioactive materials are set forth in 49 CFR part 397, subpart C, and apply to any designations that are established or modified on or after November 14, 1994. 49 CFR 397.69(a).

The preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2, 104 Stat. 3244.

A Federal Court of Appeals has found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.) To achieve safety through consistent Federal and State requirements, Congress has also authorized DOT to make grants to States ''for the development or implementation of programs for the enforcement of regulations, standards, and orders'' that are ''compatible'' with the highway-related portions of the HMR. 49 U.S.C. 31102(a). In this fiscal year, $155 million is available for grants to States under the Federal Motor Carrier Safety Assistance Program. *See* 49 CFR Parts 350 & 355 and the preamble to FMCSA's March 21, 2000 final rule, 65 FR 15092, 15095–96.

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. This administrative determination replaced RSPA's process for issuing advisory inconsistency rulings (IRs) under the ''dual compliance'' and ''obstacle'' criteria now explicitly set forth in section 5125(a).

The Secretary of Transportation has delegated to FMCSA the authority to make determinations of preemption that concern highway routing and to RSPA the authority to make such determinations concerning all other hazardous materials transportation issues. 49 CFR 1.53(b)(2), 1.73(d)(2). In this determination, FMCSA's Administrator has addressed the highway routing issues, and RSPA's Associate Administrator for Hazardous Materials Safety has addressed the non-highway routing issues. 49 CFR 107.209(a), 397.211(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA and FMCSA publish their determination in the **Federal Register**. *See* 49 CFR 107.209(c), 397.211(d). A short period of time is allowed for filing petitions for reconsideration. 49 CFR 107.211, 397.223. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA and FMCSA are guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA and FMCSA have implemented through their regulations.

III. Discussion

A. Authority To Set ''More Stringent'' Requirements

In its March 1, 2000 letter (published as Appendix B to the April 14, 2000 **Federal Register** notice), the Borough argued that Federal environmental statutes set only ''minimum standards,'' and that ''local governments [may] enact more stringent regulations.'' It cited *City of Philadelphia* v. *New Jersey,* 437 U.S. 617 (1978), as support for the position that RCRA allows state, regional, and local authorities ''to control the collection and disposal of solid waste as one of their primary functions,'' and quoted from that case that there was ''no clear and manifest purpose of Congress to preempt the entire field of interstate waste management.'' 437 U.S. at 620. The Borough also cited *Ensco, Inc.* v. *Dumas,* 807 F.2d 743 (8th Cir. 1986), as holding that—

states and local municipalities are permitted to establish waste management standards more stringent than those imposed by federal law and that only local regulations which totally prohibit storage, transportation or treatment should be preempted.

The Borough's arguments fail for two reasons. First, as discussed in Section I.B., above, EPA's two-year demonstration program for tracking and managing medical wastes ended in 1991, and the types of wastes regulated by Ordinance No. 902 are not within the category of hazardous wastes regulated by EPA under RCRA. The ''more stringent'' language in 42 U.S.C. 6929

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enforcing a highway routing designation, limitation, or requirement; and

(ii) for resolving a dispute between political subdivisions; and

(I) a requirement that in [establishing, maintaining, and enforcing a highway routing designation, limitation, or requirement], a State or Indian tribe shall consider—

(i) population density;

(ii) the types of highways;

(iii) the types and amounts of hazardous materials;

(iv) emergency response capabilities;

(v) the results of consulting with affected persons;

(vi) exposure and other risk factors;

(vii) terrain consideration;

(viii) the continuity of routes;

(ix) alternate routes;

(x) the effects on commerce;

(xi) delays in transportation; and

(xii) other factors that the Secretary considers appropriate.

does not apply to ''dangerous waste'' and other categories of wastes covered by Ordinance No. 902.

Second, in enacting RCRA, Congress provided that EPA's regulations on the transportation of hazardous waste must be ''consistent with'' the HMR. 42 U.S.C. 6923(b). Also, a State program must be ''equivalent to'' and ''consistent with'' EPA's regulations in order to be approved by EPA. 42 U.S.C. 6926(b). RCRA and EPA's regulations do not authorize a State or locality to impose requirements on the transportation of hazardous waste that fail to satisfy the preemption criteria in 49 U.S.C. 5125, as discussed in more detail in PD–12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Wastes, etc., 60 FR 62527, 62533–34 (Dec. 6, 1995), decision on petition for reconsideration, 62 FR 15970 (Apr. 3, 1997), petition for judicial review dismissed, *New York* v. *U.S. Dep't of Transportation,* 37 F. Supp. 2d 152, 158 (N.D.N.Y. 1999) (''EPA's authorization of a state RCRA program is not the equivalent of 'authoriz[ation] by another law of the United States.' '').

B. Designation, Description and Classification of Hazardous Material

Ordinance No. 902 added a new part entitled ''Dangerous Waste'' to the Borough's Motor Vehicles and Traffic Code. The term ''dangerous waste'' is defined in Section 01(f) as ''infectious wastes, or chemotherapeutic wastes, or hazardous wastes, or any combination thereof.'' In addition, ''all Hospital Waste will be presumed to be DANGEROUS WASTE,'' according to Section 07.

''Infectious waste'' is defined in Section 01(c) as ''waste that contains or may contain any disease-producing microorganism or material,'' including but not limited to 12 examples such as ''cultures and stocks of etiologic agents,'' ''waste blood and blood products,'' and ''[t]issues, organs, body parts, blood and body fluids that are removed during surgery and autopsy.'' The term ''hospital waste'' is defined in Section 01(g) as:

> waste of any sort generated by nursing homes, hospitals, clinics for the treatment of disease, or like institutions or businesses. The term shall also include paper products, bedding, towels, containers, or cleaning implements that have been exposed to infectious, chemotherapeutic, pathological wastes, solid wastes and/or hazardous wastes generated by nursing homes, hospitals, clinics for the treatment of disease, or like institutions or businesses.[4]

In its application, Med/Waste stated that the terms ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' conflict with the category of ''regulated medical waste'' in the HMR. Med/Waste also stated that the use of ''dangerous'' in the ordinance is not consistent with the HMR's category of materials that are ''Dangerous when wet.'' Both Sanitec and American commented that Ordinance No. 902 contains ''confusing and conflicting'' definitions that create confusion about the HMR and regulations of the State of Pennsylvania.

The Institute stated that the term ''dangerous waste'' differs substantively from the HMR by classifying as hazardous, and regulating, materials that are not covered in the HMR. As examples, the Institute referred to the definition of ''infectious waste'' in Section 01(c) as including (1) tissues, organs, body parts, blood and body fluids that are removed during surgery and autopsy (but which does not take into account the exception in 49 CFR 173.134(b)(1) for ceremonial interment or cremation), and (2) animal bedding and other wastes that have been ''in contact with'' laboratory research animals but may have not been used in ''diagnosis, treatment or immunization'' of animals as covered in the HMR's definition of ''regulated medical waste'' in 49 CFR 173.134(a)(4). The Institute also asserted that materials defined in the HMR as ''regulated medical waste'' are categorized or classified differently in Ordinance No. 902, because the Borough imposes on infectious waste ''the requirements for hazardous waste under RCRA,'' despite the fact that hazardous waste under RCRA ''does not include infectious substances.''

The Borough stated that the definitions in Ordinance No. 902 ''address essentially the same types of materials'' as the HMR. It compared the definition of ''infectious waste'' in the ordinance, including several of the examples, to wording in 49 CFR 173.134(a). However, the Borough did not address its definitions for ''dangerous waste'' and ''hospital waste'' or attempt to show that these terms are substantively the same as definitions and classifications of hazardous materials in the HMR.

The scheme in Ordinance No. 902 for describing and classifying ''dangerous waste'' differs markedly from that in the HMR. In the HMR, among the ''infectious substances'' in Division 6.2 are diagnostic specimens, biological agents, and regulated medical waste. 49 CFR 173.134(a). The Borough's comments attempt to explain that the examples listed in the definition of ''infectious waste'' in Ordinance No. 902 cover diagnostic specimens, biological agents, and regulated medical waste. However, these subcategories of infectious waste (and the manner in which they are regulated) overlap; they are not separated as they are in the HMR. Moreover, the language in Section 01(g) of Ordinance No. 902, ''waste of any sort generated by nursing homes, hospitals, clinics for the treatment of disease, or like institutions or businesses'' appears to include ordinary trash from administrative offices, which is not within the scope of an ''infectious substance'' regulated by the HMR. Thus, ''hospital waste'' in Ordinance No. 902 encompasses both (1) items that are within the definition of ''regulated medical waste'' in the HMR and (2) other items that may not contain any infectious substance and, therefore, are not regulated under the HMR.

The term ''dangerous waste'' in Ordinance No. 902 is also used in a manner that differs from the designation and classification scheme in the HMR. While the HMR do not define the word ''dangerous'' by itself or as modifying the word ''waste,'' in the overall context of the HMR, ''dangerous'' is a synonym for the word ''hazardous.'' The HMR use the term ''hazardous materials'' in the same manner as the term ''dangerous goods'' is used in international regulations. *See* the UN Recommendations on the Transport of Dangerous Goods, the Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the International Maritime Dangerous Goods Code, each of which deals with those materials regulated as ''hazardous'' under the HMR. In the same manner, when used in the HMR to describe materials that are ''dangerous when wet,'' the word ''dangerous'' means the same as ''hazardous.''

In Ordinance No. 902, however, the term ''dangerous waste'' does not correspond to the category of ''hazardous waste'' in the HMR. It appears to include (1) types of waste infectious materials that are regulated by DOT as infectious substances, rather than ''hazardous waste'' and (2) other types of waste that present no hazards at all, such as ''hospital waste.'' In this manner, the term ''dangerous waste'' in Ordinance No. 902 is not substantively the same as any definition, description or classification of hazardous material in the HMR.

[4] Section 01 of Ordinance No. 902 also defines the terms ''waste,'' ''hazardous waste,'' and ''chemotherapeutic waste.''

As discussed in Part II above, 49 U.S.C. 5125(b)(1)(A) provides that (in the absence of a waiver or specific authorization in another Federal law), a local requirement on ''the designation, description, and classification of hazardous material'' is preempted when it is not ''substantively the same as'' the HMR. Under this standard, the overall scheme of designation and classification of hazardous materials must be substantively the same as in the HMR. It is not sufficient that one particular definition is similar to a definition of a category of hazardous materials, or that the local ordinance covers ''essentially the same types of materials'' as the Borough stated, if the scheme of designation and classification are markedly different.

In this case, the definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Ordinance No. 902 are preempted by 49 U.S.C. 5125(b)(1)(A) because these terms are used to create a scheme for designating and classifying hazardous material that is not substantively the same as in the HMR. In addition, the word ''dangerous'' in the term ''dangerous waste'' is preempted under 49 U.S.C. 5125(b)(1)(A) because it is used and defined in Ordinance No. 902 in a manner that is substantively different from the use of the word ''dangerous'' in the HMR.

C. Prohibition Against Using Streets Other Than Route 1

Section 02 of Ordinance No. 902 provides that ''at this time'' the only street on which trucks may transport dangerous waste within the Borough is Route 1.[5] Because this limitation was established after November 14, 1994, it must comply with FMCSA's standards in 49 CFR part 397, subpart C. 49 CFR 397.69(a). These standards, issued pursuant to 49 U.S.C. 5112(b), specify that there must be:

—A finding by the State that the highway routing designation ''enhances public safety in the areas subject to its jurisdiction and in other areas which are directly affected by such highway routing designation.'' 49 CFR 397.71(b)(1).

—Notice to the public of the proposed routing designation, a 30-day period for the public to submit comments, and consideration of whether to hold a public hearing (with advance notice to the public). 49 CFR 397.71(b)(2).

—Notice to and consultation with ''officials of affected political subdivisions, States and Indian tribes, and any other affected parties,'' and completion of the routing designation process within 18 months of the notice to the public or notice to other affected jurisdictions. 49 CFR 397.71(b)(3), (6).

—Assurance of ''through highway routing * * * between adjacent areas.'' 49 CFR 397.71(b)(4).

—No unreasonable burden on commerce and agreement by any other affected State. 49 CFR 397.71(b)(5).

—Reasonable access for vehicles to terminals; pickup and delivery points and loading and unloading locations; and facilities for food, fuel, repairs, rest, and safe havens. 49 CFR 397.71(b)(7).

—Consideration of specific factors, including population density, emergency response capabilities, continuity of routes, alternative routes, effects on commerce, potential delays in transportation, and congestion and accident history. 49 CFR 397.71(b)(9).

In addition, the State must (1) ensure that its political subdivisions comply with FMCSA's standards and procedures (49 CFR 397.71(b)(8)); (2) make information on highway routing designations available to the public ''in the form of maps, lists, road signs or some combination thereof'' (49 CFR 397.73(a)); and (3) report highway routing designations to FMCSA for publication in the **Federal Register** (49 CFR 397.73(b)).[6]

Med/Waste stated that the Borough failed to follow FMCSA's standards and procedures when it designated Route 1 as the only street on which trucks may transport dangerous waste within the Borough; ''there was no notification that the Borough was even considering the Ordinance * * * and there is still no signage in the Borough regarding the restrictions of this Ordinance.''

Med/Waste also stated that the designation of Route 1 as the only street on which trucks may transport dangerous waste within the Borough cuts off access to its permitted facility at 1307 South Pennsylvania Avenue, which it has operated for more than five years. That address appears to be approximately three-quarters of a mile from Route 1 and, on the citations Med/Waste provided, the location of the violation is shown as Pennsylvania Avenue.

Sanitec, American and the Institute agreed that the Borough's routing limitation in Section 02 is invalid because the procedures in 49 CFR 397.71(b) were not followed. The Institute also stated that there was no notice of an opportunity to comment on ''the impacts of the routing restrictions,'' which prevents Med/Waste from access to its facility and also ''restricts intra and interstate transporters from servicing the many health care facilities located in and around the Borough.'' The Institute noted that the stated basis in Ordinance No. 902 for limiting trucks transporting dangerous waste to Route 1 cannot be valid because ''the Borough is not regulating other industries whose heavy trucks traverse roads located within the Borough.''

The Borough stated that the State of Pennsylvania has delegated to counties and municipalities ''the right to designate specific highway routes over which hazardous material may and may not be transported by motor vehicle.'' In response to Med/Waste's reference to 49 U.S.C. 31114, the Borough stated that there was no restriction ''on access to the interstate highway system'' because ''no interstate highways traverse the Borough of Morrisville.'' However, the Borough did not discuss the provisions in 49 U.S.C. 31114(a)(2) and 49 CFR 397.71(b)(7) that any routing designation may not prevent ''reasonable access'' to a motor carrier's terminals or points of pickup and delivery. Nor did the Borough dispute the assertions by Med/Waste and other commenters that this routing limitation was adopted without notice to the public and an opportunity to comment, as required by 49 CFR 397.71(b)(2).

It is clear that the Borough failed to comply with FMCSA's standards in 49 CFR part 397 when it adopted Section 02 of Ordinance No. 902, limiting trucks transporting dangerous waste to Route 1. Among other failures, the Borough did not follow the required notice and comment procedure, and its limitation prevents reasonable access to terminals and points of pickup and delivery. Section 02 of Ordinance No. 902 is preempted by 49 U.S.C. 5125(c)(1), because the Borough failed to comply with FMCSA's standards for establishing highway routing designations issued pursuant to 49 U.S.C. 5112(b).

[5] Section 02 states that because the Borough's streets ''are generally narrow, winding, and in places congested, and not generally designed to accommodate heavy or constant truck traffic,'' the Borough may ''designate certain routes and/or particular streets for use by motor vehicle trucks hauling DANGEROUS WASTE.'' There is no indication that the Borough has designated any streets other than Route 1.

[6] The routing designations and restrictions reported to FMCSA have been published in the **Federal Register**, 63 FR 31549 (June 9, 1998), 65 FR 75771 (Dec. 4, 2000), and they are also posted on FMCSA's internet web site at <http://hazmat.fmcsa.dot.gov>.

D. Requirement To Carry Uniform Manifest

Section 05(a) of Ordinance No. 902 requires that—

> Each truck hauling DANGEROUS WASTE shall carry and have available for inspection the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act. Such manifest shall be presented upon request of any Morrisville Borough police officer.

In doing so, the Borough has extended the requirement to use a hazardous waste manifest, in 49 CFR 172.205, to materials that are not hazardous wastes. The HMR do not require the use of a specific form except for hazardous wastes. *See* 49 CFR 171.8 (definition of ''shipping papers'' as including ''a shipping order, bill of lading, manifest or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203 and 172.204'') and RSPA's final rule in Docket No. HM–145D, ''Hazardous Waste Manifest; Shipping Papers,'' 49 FR 10507 (Mar. 20, 1984) (there is no ''requirement for the use of a specific form'').

In its application, Med/Waste stated that, because ''Regulated medical waste as defined by the HMR is not a hazardous waste as defined in 40 CFR part 262,'' the Borough's manifest requirement conflicts with 49 CFR 172.205(a). Sanitec and American stated that the requirement to transport medical waste under a uniform hazardous waste manifest ''is in direct conflict with the current regulatory scheme.'' The Institute stated that EPA's ''manifesting requirements apply to hazardous wastes, which do not include infectious substances'' and that ''DOT adopted RCRA's hazardous waste manifesting regulations under the shipping paper requirements, but only for those wastes defined as a hazardous waste under federal rules.''

EPA has stated that the uniform manifest form *may* be used for ''wastes defined as hazardous by either the generator's State or the consignment State, but not defined as hazardous by EPA or DOT.'' EPA's final rule adopting the uniform manifest, 49 FR 10490, 10495 (Mar. 20, 1984). However, RSPA found that additional requirements by States (or localities) for the use of a specific form beyond what is required in Federal regulations create ''a substantial burden for both generators and transporters.'' 45 FR at 10507. Moreover, EPA regulations specifically provide that a State may not ''impose enforcement sanctions on a transporter during transportation of the shipment for failure of the form to include * * * optional State information items.'' 40 CFR 271.10(h)(3).

Congress amended the HMTA in 1990 to provide that (in the absence of a waiver or specific authorization in another Federal law), a local requirement on ''the preparation, execution, and use of shipping documents related to hazardous material'' is preempted when it is not ''substantively the same as'' the HMR. 49 U.S.C. 5125(b)(1)(C). In adding this provision, Congress specifically found that ''consistency in all aspects of [shipping] documents will promote more precise and easier identification of any hazardous material, improve systems for handling hazardous materials, and enhance capabilities for dealing with emergencies associated with the transportation of hazardous materials.'' H. Rep. 101–444, Part 1, 101st Cong, 2nd Sess., p. 34.

Because the HMR does not require the use of any specific form for shipments of regulated medical waste (or other hazardous materials that are not hazardous wastes), the requirement in Section 05 of Ordinance No. 902 that a uniform hazardous waste manifest be carried on any truck transporting dangerous waste within the Borough is not substantively the same as requirements in the HMR for the ''preparation, execution, and use of shipping papers.'' Accordingly, Section 05 of Ordinance No. 902 is preempted by 49 U.S.C. 5125(b)(1)(C).

E. Discussion of Other Requirements

In its comments submitted in response to the April 14, 2000 notice, Med/Waste referred to additional provisions in Ordinance No. 902 on speed limits, accident reporting, time limits on storage of dangerous waste, and the posting of a $50,000,000 indemnity bond with the Borough Secretary as part of a separate regulatory scheme that should be found to be preempted. Other commenters addressed the storage time limits and the bond. American also referred to requirements of the Pennsylvania Department of Environmental Protection (DEP) for marking and labeling containers and vehicles used to transport infectious waste and chemotherapeutic waste and requested DOT to find that ''the conflicting parts of the Pennsylvania Code should also be preempted.'' No determination is being made whether Federal hazardous material transportation law preempts these additional requirements because the April 14, 2000 notice in the **Federal Register** did not clearly indicate that RSPA and FMCSA would consider these other requirements or regulations of Pennsylvania DEP. However, the following general discussion is provided with respect to other provisions in Ordinance No. 902.

1. *Speed limits.* Section 03 of Ordinance No. 902 states that:

> Trucks carrying DANGEROUS WASTE within the Borough of Morrisville are hereby limited to the designated speed limit on Route 1, and the posted speed limit on any other state or Borough road within the Borough of Morrisville that may eventually be approved for use by such trucks bearing DANGEROUS WASTE.

Med/Waste seems to read this section as authorizing the Borough to set specific speed limits for trucks carrying ''dangerous waste'' that are different from the speed limits applicable to other vehicles traveling on the same roads. However, no other comments addressed this section or provided any information on whether and how the Borough is implementing this provision.

Speed limits are a form of local traffic controls that are not specifically addressed in the HMR, and they are ''presumed to be valid.'' IR–32, City of Montevallo, Alabama Ordinance on Hazardous Waste Transportation, 55 FR 36736, 36744 (Sept. 6, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992). It is possible that a substantially lower speed limit applicable only to trucks carrying one or more hazardous materials, as compared to other trucks of similar size and weight, could cause congestion and create an obstacle to the safe transportation of hazardous materials. However, in the absence of ''significant relevant evidence,'' including the speed limit for other vehicles, RSPA has not found that a local speed limit is preempted. *Id.*

2. *Accident reporting.* Section 05(c) of Ordinance No. 902 states that ''Each driver of any such truck [carrying dangerous waste] shall immediately report any accident or collision involving his truck to the Borough of Morrisville police.'' The Institute stated that this requirement is substantively different than the requirement in 49 CFR 171.15 for a carrier to immediately report certain incidents in transportation to the National Response Center, Federal Aviation Administration, or Centers for Disease Control.

In PD–18(R), Broward County, Florida Requirements on Transportation of Certain Hazardous Materials, 65 FR 81950 (Dec. 27, 2000), petition for reconsideration pending, RSPA recently explained that only *written* incident reporting requirements are preempted when those requirements are not

substantively the same as provisions in the HMR. Rather, Congress did not intend the ''substantively the same as'' standard to apply to oral incident reporting, and ''RSPA and the courts have consistently held that requirements for immediate, oral accident/incident reports for emergency response purpose generally are consistent with Federal law and regulations and, thus, not preempted.'' *Id.* at 81955.

3. *Time limits on storage.* Section 06 of Ordinance No. 902 provides that, ''[e]xcept as provided for by DEP regulations,'' dangerous waste may not be stored ''in one place'' within the Borough for more than 24 hours, and ''in separate places'' for a total of more than 48 hours.

The Institute stated that this time limit on storage creates an obstacle to the handling requirements in the HMR if this restriction is applied to storage that is a part of transportation (such as at a transfer station). It referred to PD–9(R), California and Los Angeles County Requirements Applicable to the On-site Handling and Transportation of Hazardous Materials, 60 FR 8774, 8783 (Feb. 15, 1995), petition for reconsideration pending.

In PD–9(R), RSPA found that Federal hazardous material transportation law preempts a local prohibition against a rail tank car being connected for transfer (unloading) operations at a consignee's facility for more than 24 hours, unless otherwise approved by the Fire Chief, because the local regulation was not substantively the same as requirements in the HMR on tank car unloading procedures (which contained no time limit). *Id.* at 8788. In IR–19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24409–10 (June 30, 1987), decision on appeal, 53 FR 11600, 11603 (April 7, 1988), upheld in *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352, 358 (9th Cir. 1990), RSPA also found that a prohibition against storage or retention of hazardous materials for more than 48 hours without a permit was inconsistent with the ''comprehensive series of regulations [in the HMR] relating to the storage of hazardous materials incidental to transportation by rail.''

The decisions in PD–9(R) and IR–19 may not be directly on point, because the HMR do not contain the same comprehensive procedures on interim storage during highway transportation (other than the separation and segregation requirements in 49 CFR 177.848). While the HMR prohibit any ''unnecessary delay'' in the highway transportation of hazardous materials, ''from and including the time of commencement of the loading of the hazardous material until its final unloading at destination,'' 49 CFR 177.800(d), specific time limits on interim storage of hazardous materials apply only to rail shipments. *See* 49 CFR 174.14 (shipments of hazardous materials by rail must be forwarded ''promptly and within 48 hours (Saturdays, Sundays, and holidays excluded),'' or on the first available train when only biweekly or weekly service is performed).

The 10-day period during which a transporter may store hazardous wastes at a transfer station without obtaining a permit, in EPA's regulations at 40 CFR 263.12, also does not apply to ''dangerous wastes'' as defined in Ordinance No. 902, because these are not hazardous wastes, as discussed above. Rather, the absence of a more specific time limitation in the HMR on interim storage of hazardous materials in highway transportation reflects RSPA's view that this type of limitation is not necessary or appropriate for hazardous materials that are not hazardous wastes. The Supreme Court has found that local requirements on transportation may be preempted when the DOT ''has decided that no such requirement should be imposed at all.'' *Ray* v. *Atlantic Richfield Co.*, 435 U.S. at 171–72.

4. *Indemnity bond.* Under Section 05(d) of Ordinance No. 902, a truck carrying dangerous waste may not enter the Borough unless the truck driver or owner or consignor of the dangerous waste has deposited with the Borough Secretary—

> an indemnity bond with limits of not less than $50,000,000 per occurrence * * * conditioned to pay all or part of such sum as damages or restitution to the Borough of Morrisville unless the responsible party shall reimburse any person, firm, partnership, trust or corporation, including the Borough itself, for any damages to person, property or natural resources resulting from the hauling of such DANGEROUS WASTE, or accidents or spills incident thereto, in the Borough of Morrisville.

Med/Waste stated that the requirement for a $50,000,000 indemnity bond ''is so excessive that it actually makes the Ordinance prohibitive.'' Sanitec and American stated that this requirement creates a ''separate regulatory scheme'' that conflicts with the HMR and is an obstacle to accomplishing and carrying out the HMR. Biosystems stated that the indemnity bond requirement ''is an extreme impediment to interstate commerce'' that seems to apply to through traffic as well as that ''originating or destined within the borough.'' Biosystems also stated that the amount of the bond ''is patently unreasonable on its face'' and compared it to ''State environmental'' requirements for liability insurance of $1 million to $2 million (for those who transport regulated medical waste) or $5 million (for those who operate a medical waste treatment facility).

The Institute stated that the requirement for an indemnity bond is actually a ''back door approach to creating routing restrictions,'' because it ''is clearly intended to prevent any vehicle transporting infectious waste from ever entering the Borough.'' It states that $50,000,000 ''far exceeds the worst case scenario for a single vehicle transporting infectious waste,'' and echoes the statement of Biosystems that closure bonds required by some States for an entire infectious waste facility are a small fraction of the amount required by Ordinance No. 902.

Under FMCSA's regulations, transporters of regulated medical waste must maintain at least $1,000,000 in insurance, surety bonds, or evidence of self-insurance. 49 CFR 387.9 (with exceptions in 387.3(c) for intrastate carriers transporting non-bulk packagings and all carriers using smaller vehicles, less than 10,000 pounds gross vehicle weight rating). Under the required endorsement form, this financial responsibility covers bodily injury, property damage, and environmental restoration. 49 CFR 387.15.

In several inconsistency rulings, RSPA found that non-Federal requirements for indemnity bonds (or other forms of financial responsibility) specifically applicable to hazardous materials, beyond those prescribed in 49 CFR part 387, are in conflict with the purposes and objectives of the HMTA and the HMR. IR–25, Maryland Heights, Missouri Ordinance Requiring Bond for Vehicles, 54 FR 16308, 16311 (Apr. 21, 1989); IR–18, Prince Georges County, Maryland Code Section Governing Transportation of Radioactive Materials, 52 FR 200, 204 (Jan. 2, 1987); IR–10 (New York State Thruway Authority), IR–11 (Ogdensburg Bridge and Port Authority), and IR–15 (Vermont), 49 FR 46632, 46645, 46647, 46660 (Nov. 27, 1984). In IR–25, 54 FR at 16311, RSPA stated that:

> The existence in the U.S. of more than 30,000 local jurisdictions, each having the potential to impose such [bonding] requirements demonstrates the havoc which could be created if even a small percentage of them were to impose such requirements (with their inevitable differences). It would

be extremely difficult for carriers to learn about, let alone comply with, such local requirements.

In PD–1(R), Maryland, Massachusetts, and Pennsylvania Bonding Requirements for Vehicles Carrying Hazardous Wastes, 57 FR 58848, 58854 (Dec. 11, 1992), decision on petitions for reconsideration, 58 FR 32418 (June 9, 1993), RSPA also found that State requirements to post a bond in order to pick up or deliver hazardous waste within the State were preempted because of ''the potential for expense and delay associated with meeting these requirements, as well as the diversion of traffic to other States when the hazardous waste transporter cannot or does not post the required bond.'' RSPA's determination as to Massachusetts' requirement was overturned by a Federal Court of Appeals in *Commonwealth of Massachusetts* v. *United States Dep't of Transp.*, 93 F.3d 890, 892 (D.C. Cir. 1996), where the Court found that Massachusetts required a performance bond to assure that the transporter ''shall faithfully perform all the requirements'' of the State. The Court stated that the bond required by Massachusetts was ''distinct from other forms of liability insurance requirements'' because it did not create ''a general fund against which other parties may seek indemnity for their claims against the transporter.'' *Id.*

The performance bond in the *Massachusetts* case is distinguishable from the indemnity bond required under Ordinance No. 902. In addition, as discussed in PD–20(R), Cleveland, Ohio Requirements for Transportation of Hazardous Materials, 66 FR 29867, 29870 (June 1, 2001), RSPA and FMCSA disagree with the conclusion of the Court of Appeals in the *Massachusetts* case that the ''obstacle'' test for preemption in 49 U.S.C. 5125(a)(2) only applies to non-Federal requirements ''with which a party cannot comply if it complies with the HMTA, or [non-Federal] rules that otherwise pose an obstacle to fulfilling explicit provisions, not general policies, of HMTA.'' 93 F.3d at 895.

IV. Ruling

Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. The definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Section 01 and the use of the term ''dangerous waste'' throughout the ordinance.

2. The designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02.

3. The requirement that each truck transporting dangerous waste carry and have available ''the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act,'' in Section 05(a).

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a) and 397.223(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register.** Any party to this proceeding may seek review of RSPA's decision ''in an appropriate district court of the United States * * * not later than 60 days after the decision becomes final.'' 49 U.S.C. 5125(f).

This decision will become the final decision of RSPA and FMCSA 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA and FMCSA on the petition for reconsideration will be the final decision. 49 CFR 107.211(d), 397.223(d).

Issued in Washington, DC, on July 9, 2001.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety Research and Special Programs Administration.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development, Federal Motor Carrier Safety Administration.

[FR Doc. 01–17572 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting describing the results of the nineteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) held from 2 to 6 July 2001 in Geneva, Switzerland.

DATES: August 7, 2001 9:30 AM–12:30 PM, Room 8236–8238.

ADDRESSES: The meeting will be held at DOT Headquarters, Nassif Building, Room 8236–8238, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bob Richard, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting will be to describe the results of the nineteenth session of the UNSCOE. Topics to be covered during the public meeting will include (1) Global harmonization of classification criteria, (2) Criteria for Environmentally Hazardous Substances, (3) Intermodal requirements for the transport of solids in bulk containers, (4) Harmonized requirements for compressed gas cylinders, (5) Classification of individual substances, (6) Requirements for packagings used to transport hazardous materials, (7) Requirements for infectious substances, and (8) Hazard communication requirements.

The public is invited to attend without prior notification.

Documents

Copies of documents for the UNSCOE meeting may be obtained by downloading them from the United Nations Transport Division's web site at *http://www.unece.org/trans/main/dgdb/dgsubc/c3doc.html.* Information concerning UNSCOE meetings, including agendas, can be downloaded at *http://www.unece.org/trans/main/dgdb/dgsubc/c3.html.* These sites may also be accessed through RSPA's Hazardous Materials Safety Homepage at *http://hazmat.dot.gov/intsandards.htm.*

Issued in Washington, DC, on July 11, 2001.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 01–17799 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–97–2426]

Pipeline Safety: National Pipeline Mapping System

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice; availability of operator and repository standards for National Pipeline Mapping System.

SUMMARY: The Office of Pipeline Safety (OPS) finalized ''Standards for Pipeline and Liquefied Natural Gas Operator Submissions'' and ''Standards for the NPMS National and State Repositories'' in March 1999. Copies of the National Pipeline Mapping System (NPMS) operator and repository standards are available for viewing and downloading from the NPMS Web site at www.npms.rspa.dot.gov/submissions/standards.htm and from the Docket Management System's home page at *http://dms.dot.gov.* from the NPMS National Repository at (703) 317–6205.

ADDRESSES: Paper copies of the NPMS operator and repository standards are available from the NPMS National Repository at (703) 317–6205 or from the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steve Fischer, OPS, (202) 366–6267 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The National Pipeline Mapping System is a voluntary initiative that relies on pipeline operators to submit hard copy or digital pipeline data. The NPMS, when complete, will contain locational information for all natural gas and hazardous liquid transmission pipelines operating in the United States. The Office of Pipeline Safety (OPS) created NPMS standards that describe how an operator should prepare and submit pipeline data and how the NPMS repositories will process and maintain the pipeline data. The ''Standards for Pipeline and Liquefied Natural Gas Operator Submissions'' and ''Standards for the NPMS National and State Repositories'' were finalized in March 1999.

The NPMS consists of a National Repository and fifteen state repositories, including Alabama, California, Connecticut, Illinois, Kansas, Kentucky, Louisiana, Maine, Minnesota, New Jersey, Oklahoma, Pennsylvania, Texas, Virginia, and Washington. The state repositories process state pipeline data. The National Repository processes pipeline data for states without a state repository and integrates national and state data.

The NPMS will serve as a decision support tool to enable OPS to understand the relationship between pipelines and their environments, to plan effective pipeline inspection programs, to effectively respond to gas and hazardous liquid releases, and to quickly and accurately respond to requests for pipeline information. The NPMS will also serve as a community education tool that will enable local officials to make better planning and emergency response decisions.

Issued in Washington, DC on July 11, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 01–17800 Filed 7–16–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34053 (Sub-No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34053[1] to permit the trackage rights to expire on November 30, 2001, in accordance with the agreement of the parties.

DATES: This exemption will be effective on August 16, 2001.

Petitions to reopen must be filed by August 6, 2001.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34053 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioners' representatives (1) Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179, and (2) Yolanda Grimes Brown, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 10, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–17847 Filed 7–16–01; 8:45 am]

BILLING CODE 4915–00–P

[1] On June 8, 2001, the Union Pacific Railroad Company (UP) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF to grant temporary overhead trackage rights to UP over 235 miles of BNSF's rail line between BNSF milepost 885.2 near Bakersfield, CA, and BNSF milepost 1120.54 near Stockton, CA. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 34053 (STB served June 22, 2001). The trackage rights agreement is scheduled to expire November 30, 2001. The trackage rights operations under the exemption were scheduled to be consummated on June 17, 2001.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 5, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. 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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 16, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0458.

Form Number: IRS Form 4852.

Type of Review: Extension.

Title: Substitute for Form W–2, Wage and Tax Statement, or Form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc.

Description: In the absence of Form W–2 or 1099R from the employer or payer, Form 4852 is used by the taxpayer to estimate gross wages, pensions, annuities, retirement or IRA payments received as well as income or FICA tax withheld during the year. It is attached to the return for processing.

Respondents: Individuals or households, Business or other for-profit, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 1,500,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 18 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 450,000 hours.

OMB Number: 1545–0982.

Regulation Project Number: LR–77–86 Temporary (TD 8124).

Type of Review: Extension.

Title: Certain Elections Under the Tax Reform Act of 1986.

Description: These regulations establish various elections with respect to which immediate interim guidance on the time and manner of marking the election is necessary. These regulations enable taxpayers to take advantage of the benefits of various Code provisions.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents: 114,710.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 28,678 hours.

OMB Number: 1545–1287.

Regulation Project Number: FI–3–91 Final.

Type of Review: Extension.

Title: Capitalization of Certain Policy Acquisition Expenses.

Description: Insurance companies that enter into reinsurance agreements must determine the amounts to be capitalized under those agreements consistently. The regulations provide elections to permit companies to shift the burden of capitalization for their mutual benefit.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,070.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,070 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–17761 Filed 7–16–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 6, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. 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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 16, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1043.

Notice Number: Notice 88–30 and Notice 88–132.

Type of Review: Extension.

Title: Diesel Fuel and Aviation Fuels Taxes Imposed at Wholesale Level (88–30); and Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89 (88–132).

Description: Producers of aviation fuel must be registered by the IRS to sell the fuel tax-free. Producers must also obtain certifications from their tax-free buyers.

Respondents: Business or other for-profit, Not-for-profit institutions; Farms, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 3,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 6 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 3,850 hours.

OMB Number: 1545–1613.

Regulation Project Number: REG–209446–82 Final.

Type of Review: Extension.

Title: Passthrough of Items of an S Corporation to its Shareholders.

Description: Section 1366 requires shareholders of an S corporation to take into account their pro rata share of separately stated items of the S corporation and nonseparately computed income or loss. The regulations provide guidance regarding this reporting requirements.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–17762 Filed 7–16–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 10, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. 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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 16, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0191.

Form Number: IRS Form 4952.

Type of Review: Extension.

Title: Investment Interest Expense Deduction.

Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 800,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 min.
Learning about the law or the form—16 min.
Preparing the form—21 min.
Copying, assembling, and sending the form to the IRS—10 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 808,000 hours.

OMB Number: 1545–1056.

Regulation Project Number: REG–209020–86 NPRM & Temporary (formerly INTL–61–86).

Type of Review: Extension.

Title: Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations.

Description: Section 905(c) requires notification and redetermination of a taxpayer's United States tax liability to account for the effect of a foreign tax redetermination, in certain cases. The reporting requirements will enable the Internal Revenue Service to recompute a taxpayer's United States Tax liability.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 10,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–17763 Filed 7–16–01; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 66, No. 137

Tuesday, July 17, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 2001–08]

Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications

Correction

In notice document 01–16447 beginning on page 34996 in the issue of Tuesday, July 2, 2001, make the following corrections:

1. On page 35002, in the table, in the third column, in the second line, 1(2), should read 1(1).

2. On the same page, in the same table, in the same column, in the 15th line, insert ''1''.

[FR Doc. C1–16447 Filed 7–16–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–231–AD; Amendment 39–12313; AD 2001–14–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–30 Series Airplanes Modified by Supplemental Type Certificate ST00054SE

Correction

In rule document 01–17154 beginning on page 36150, in the issue of Wednesday, July 11, 2001, make the following correction:

On page 36150, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C1–17154 Filed 7–16–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 17, 2001

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 107 and 139
Airport Security; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 139

[Docket No. FAA–2001–8724; Formerly Docket No. 28979; Amendment No. 107–13, 139–23]

RIN 2120–AD46

Airport Security

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the existing airport security rules. It revises certain applicability provisions, definitions, and terms; reorganizes these rules into subparts containing related requirements; and incorporates some requirements already implemented in security programs. This revision also incorporates certain new measures to provide for enhanced airport security. Specifically, this final rule more clearly defines the areas of the airport in which security interests are the most critical and where security measures should be the most stringent. The intent of this final rule is to enhance security for the traveling public, aircraft operators, and persons employed by or conducting business at public airports by increasing awareness of and compliance with civil aviation security measures.

EFFECTIVE DATE: November 14, 2001.

FOR FURTHER INFORMATION CONTACT: Robert J. Cammaroto, Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–7723.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/armhome.htm or the **Federal Register**'s web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, http://www.faa.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

Background

The FAA published a proposed rule on airport security on August 1, 1997 (62 FR 41760; Notice No. 97–13). On the same date, the FAA issued Notice 9712 to revise part 108, Aircraft Operator Security (62 FR 41730). The crash of TWA 800 on July 17, 1996 raised concerns about the safety and security of civil aviation, leading the President to create the White House Commission on Aviation Safety and Security, headed by the Vice President. The Commission issued an initial report on September 9, 1996, with 20 specific recommendations for improving aviation security. On February 12, 1997, the Commission issued its Final Report with 57 recommendations, 31 of which deal with improving aviation security for travelers. In addition, the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264) was signed on October 9, 1996, and directs the FAA to amend rules to upgrade civil aviation security.

The FAA has been working to respond to the recommendations of the Commission and to carry out the legislation, and has issued several proposals, in addition to the proposed rule put forth in Notice No. 97–13. On September 24, 1998, the FAA issued a Final Rule on employment history, verification, and criminal records checks. (63 FR 51218; September 24, 1998).

The rules proposed in Notice No. 97–13 were not written in response to the Commission or the Reauthorization Act. Rather, the notice, which proposed to update the overall regulatory structure for airport and aircraft operator security, involved the FAA, other Federal agencies and commissions, airports and aircraft operators, and the Aviation Security Advisory Committee (ASAC). Nevertheless, the extensive proposed revisions were considered to be consistent with the intentions of the mandates, contained proposals industry had identified as necessary or appropriate, and outlined a new organization for the regulations that would assist in developing future changes to the rules. For these reasons, the FAA published the proposed rule for comment. This final rule addresses comments to that proposal.

The revision of part 108, published concurrently with this rule, contains a discussion of the current terrorist threat that also is applicable to concerns under part 107.

The Role of the ASAC

On April 3, 1989, the Secretary of Transportation announced the formation of a national ASAC under the provision of the Federal Advisory Committee Act (Title 5 U.S. Code, Appendix II).

The ASAC was formed to examine all areas of civil aviation security and to ensure a higher degree of safety for the traveling public by recommending improvement of aviation security equipment and procedures. The ASAC is chaired by the FAA's Assistant Administrator for Civil Aviation Security and makes recommendations to the FAA Administrator. Committee membership represents a balance of Federal government, aviation industry, and consumer advocacy groups.

All ASAC meetings are open to the public and are announced in the **Federal Register**. Meetings typically are held three times a year. Members of the public are permitted to attend and appear before the committee, subject to reasonable limitations of space and time.

In December 1993, the FAA sought the ASAC's comments on a ''discussion paper'' that included a broad range of security issues and concerns. A copy of this paper is filed in the FAA public docket for Notice No. 97–13 (Docket No. 28979).

To address the issues raised in the discussion paper, the ASAC formed two subcommittees, and developed recommendations on airport and aircraft operator security issues, which were reported to the FAA on March 15, 1994. Individual ASAC members also provided comments on issues when their respective organizations disagreed with the position of the committee.

Then the ASAC's and individual committee members' comments were forwarded to the FAA with an overall recommendation that security regulations should remain flexible and contain only general security performance standards.

General Discussion of the Rule

The FAA is required to prescribe rules as needed, to protect persons and property on aircraft against acts of criminal violence and aircraft piracy, and to prescribe rules for screening passengers and property for dangerous weapons, explosives, and destructive substances (*See* 49 U.S.C. 44901 through 44904).

To comply with the statute, the FAA has issued rules that require airport operators to perform various duties to ensure the security of civil aviation. Title 14, Code of Federal Regulations, contains part 107 that is directed specifically toward airport operators, and contains general requirements for promoting civil aviation security.

Airport operators are required by new § 107.101 to have a security program, approved by the Administrator that specifies measures they will use to perform their regulatory and statutory responsibilities. The airport security program contains sensitive security information (SSI) and is available only to persons with a need-to-know. Most airport security programs include the following information: descriptions of the air operations area (AOA), each area on or adjacent to the airport that affects the security of the AOA, and air carriers exclusive areas; procedures to control access to the AOA; alternate security procedures for use in emergency and other unusual conditions; and law enforcement support training and record maintenance programs in furtherance of part 107. Programs for some airports include a description of the law enforcement support training program and the system for maintaining records.

Other sources of information and measures are contained in Security Directives and Information Circulars described in new § 107.303. These sources address threats to civil aviation security as well as responsive measures to those threats.

The airport security program is far more detailed than the regulations and, therefore, there will be items specifically addressed in detail that may only be broadly addressed in the regulatory language of part 107. Once approved, the security program has the force of law, and like the part 107 regulations, airport operators must comply with their security program.

This revision of part 107 comprehensively updates airport security regulations to more efficiently and effectively address terrorist and other criminal threats to civil aviation. This action incorporates procedures currently in security programs into part 107, in a manner that is intended to allow regulated entities and individuals to better understand their respective security responsibilities. Concurrent with the issuance of this final rule, the FAA is updating relevant guidance that will help to ensure that airport security programs are consistent with this rule. Lastly, the final rule incorporates certain new measures that will provide for enhanced security. For example, the revisions make individuals directly accountable to the FAA for non-compliance with certain regulations.

Furthermore, local authorities will not be prevented from also taking action against an individual for non-compliance with the regulation, even if the FAA previously has taken action against that individual for the same offense. In fact, the FAA realizes that some local actions may be imposed more quickly and effectively than the agency's actions.

The proposal would have required that an airport's security program include specific local disciplinary actions and penalties for employees who do not comply with security requirements. Initially, this proposal was quite controversial. However, the public's opinion regarding this issue apparently has changed. In response, the FAA reopened the comment period from August 10–September 24, 1999, to receive additional comments from the public on the individual accountability issue [64 FR 43321 (August 10, 1999)]. Therefore, the FAA will not address this issue in this final rule, it will be addressed in a future rulemaking.

Through these changes, the FAA hopes to create a more effective mix of individual and corporate responsibility for complying with security regulations, particularly those relating to access controls and challenge procedures.

General Discussion of the Comments

The NPRM initially requested comments by December 1, 1997. Two public meetings were announced on October 15, 1997, in Washington, DC, and on October 22, 1997, in Fort Worth, TX. On April 14, 1998, the FAA reopened the comment period and announced two public meetings on the NPRM. The public meetings were held on May 21, 1998, in Washington, DC, and June 4, 1998, in Nashville, TN.

As of June 26, 1998, the closing of the second comment period, about 200 comments were received addressing the NPRM. Comments were received from 62 airports, two State and local governments, four law enforcement entities, eight air carriers, and seven industry associations representing these interests. Comments were also received from numerous individuals.

Secured Area, Air Operations Area (AOA), and Security Identification Display Area (SIDA)

Proposal: Notice 97–13 proposed to change the names of the various areas controlled under part 107, and to make some changes in the security measures that apply to each. Under the current rule there are several areas that have been introduced over the years for various security purposes.

Security measures have been required in the AOA since the inception of part 107 in 1972. The definition of AOA in current § 107.1(b)(2) is ''a portion of an airport designed and used for landing, takeoff, or surface maneuvering of airplanes. * * *'' Current § 107.13 provides the security requirements for the AOA. Basically, the airport operator must use the measures in its security program to control access to the AOA and prevent entry of unauthorized persons and ground vehicles; to control movement of persons and ground vehicles, including display of ID when appropriate; and to detect and control each unauthorized penetration.

The secured area was introduced in 1989 in § 107.14. Its location on airports intentionally was not defined to avoid compromising airport operators' security programs. See 54 FR 582 at 584 (January 6, 1989). Section 107.14 requires enhanced access controls for secured areas of the airport mostly using computerized access controls. This area for most airports has evolved to be mainly portions of the AOA near the terminal and in baggage make-up areas, where the highest levels of security are needed. For some airports, the entire AOA is a secured area, because of such factors as the location of the airport and the inability to use adequate security controls to separate general aviation and other areas from air carrier operations.

The SIDA was defined in 1991. The SIDA is defined in current § 107.25(a) as ''any area identified in the airport security program as requiring each person to continuously display on their outermost garment, an airport-approved ID medium unless under airport-approved escort.'' The ID medium is referred to as being used for both access control and controlling the presence and movement of persons. The portions of the airport that must be a SIDA are not set out in current part 107. The

preambles to proposed and final § 107.205, however, indicate that SIDA generally would include secured areas (§ 107.14), air operations areas (§ 107.1(b)(2)), cargo and baggage make-up areas, and other areas specified in individual airport security programs. SIDA would not include the sterile area. There also would be site-specific provisions at those airports where general aviation and other areas are positively separated from air carrier operations [56 FR 13552 at 13553, and 56 FR 41412 at 41413]. Thus, the secured area, part or all of the AOA, and some areas that are neither secured areas nor AOA (such as some cargo makeup areas) could be within a SIDA. The security measures required in the SIDA are in §§ 107.25 and 107.31. These sections require training of persons with unescorted access to the SIDA, and employment history, verification, and criminal history records checks of those persons.

This systematic design of interlocking areas has created some confusion in the past. It has not been clear where the limits of the secured area should be, for instance. Notice 97–13 attempted to propose a design that would be simpler and clearer. It proposed to eliminate overlapping areas, such as where both the AOA rules and the secured area rules apply. It also proposed, based in part on recommendations from the ASAC, to rename the areas so that what is now the secured area would be the critical security area (CSA), and what is now the AOA outside of the secured area would be the restricted operations area (ROA). Definitions of these terms were proposed in § 107.3. Sections 107.201 and 107.203 proposed specific requirements for access systems, ID systems, and other security measures to be applied in the CSA and ROA, respectively. The intent was to more clearly describe those areas of the airport in which the security interests are the most critical and require the most stringent measures, and to enhance the security of other parts of the ROA.

Comments on changing the names of the areas: Many commenters object to changing the names of the secured area, AOA, and SIDA. They state that the industry has become familiar with these names and that changing them now would create confusion. It would also result in very large expenses to change training programs and videos, airport manuals, emergency plans, signs, and many other items. The commenters note that spending a significant amount of time, effort, and funds on retraining, signs, documentation, and security programs for renaming the above noted areas, would not improve security. The commenters strongly urge that the names not be changed.

One commenter suggests that acronyms for defined terms should be included in the definitions. Another commenter says that the FAA should avoid using 3-letter acronyms that replicate an airport's 3-letter designator code.

FAA response: The FAA has decided not to change the names of the areas to CSA and ROA. After further consideration, changing these names would create a burden to change numerous documents, signs, training programs, and the like with insufficient benefit. The industry has become used to these names and there is not the same concern there was several years ago about them.

Regarding the use of acronyms, the FAA will adopt the suggestion to reference commonly used acronyms in the definitions. Also, in response to the comment on acronyms relating to security terms as opposed to 3-letter airport designator codes, the FAA notes that security terms and their acronyms are based on functional descriptions of what they are intended to define. The FAA's system of 3-letter airport designator codes is a separate and distinct program. The agency recognizes that some acronyms and 3-letter airport identifiers may be unintentionally identical, but it is not aware of any conflicts at this time. However, it is expected that the context in which overlapping terms would be used will indicate their intent.

Comments on definitions of critical security area, restricted security area, secured area, AOA, and SIDA: National Air Transport Association (NATA) and Missoula International Airport comment that areas used by general aviation should be excluded from the critical security area and maintained in the AOA, and have less intrusive security requirements. The ATA requests a definition of ''AOA.'' Several commenters including three airports requested a definition of ''SIDA.''

The Port Authority of NY and NJ suggests that ''critical security area'' should be defined as ''where aircraft operators and foreign aircraft operators enplane and deplane passengers and sort and load baggage and any *immediately* adjacent areas that are not separated by security controls, physical or visual barriers, adequate time and distance separation or visual surveillance.''

Atlanta Hartsfield International Airport requests that the FAA add the phrase ''time and distance'' after the phrase ''physical barriers'' in the definition of ''restricted operations area.'' Furthermore, Ft. Wayne Airport suggests the definition should be modified to include *only* areas that are used by aircraft operators for the carriage of passengers. Another commenter says that the restricted operations area should allow the use of ''visual barriers,'' such as lines or words painted on the pavement.

One commenter requests clarification of the phrases ''adjacent areas'' and ''other security measures'' which are used in the definition of ''critical security area.''

The NATA requests a definition of the area of an airport where general aviation activities occur. One suggestion is to define the term ''General Aviation Security Area'' so that the general aviation areas are not included in the critical security area or restricted operations area.

Two airports state that the ROA should be defined and limited to only those areas outside the critical security area and immediately adjacent to facilities needed for aircraft operators to land, depart, taxi, park, and maneuver aircraft. All other areas should be considered non-restricted AOA portions of the airport and a definition for an AOA included in the new part 107. The proposed rule, as written, would require a massive expenditure of critically needed funds to extend and upgrade the systems presently installed.

The Airport Council International-North America (ACI–NA), American Association of American Executives (AAAE), and two airports state that increasing the size of the restricted operations area directly contravenes the recommendations of the ASAC working group.

FAA Response: This rule adds definitions to better describe the limits of the secured area, AOA, and SIDA. These definitions in part are intended to conform part 107 to what has become common practice in determining the limits of these areas at airports. The FAA anticipates that there will be few changes needed in the boundaries of current secured areas, SIDAs, and AOAs based on these rule changes, although nationwide we anticipate a small reduction in the current security areas and corresponding increase in the AOA. These definitions reduce the overlap between the areas by clearly separating the AOA from the secured area. Each will be a distinct area, with different requirements. This assists in accomplishing the goal of providing for the highest levels of security at those places where operations regulated under parts 108 and 129 are conducted.

The secured area is that area where the highest level of security measures

are needed. This includes areas where part 108 operations enplane and deplane passengers and sort and load baggage, and adjacent areas that are not separated by adequate security measures. Unlike the current rule, the term ''secured area'' is not used only to describe the area where enhanced access controls are required. It is used to describe an area where a range of enhanced security measures are required, including identification media, escort, and challenge programs. This is consistent with current practice. For example, those areas in which the enhanced access controls are considered necessary are also SIDAs with ID display required.

The SIDA is essentially not changed from the current rule. It overlays secured area, in that the secured area must be a SIDA. It may overlap an AOA, in that at some airports it may be necessary for part or all of the AOA to be a SIDA. The SIDA may also be in an area outside of either the secured area or AOA, such as a cargo makeup area. The security measures required for the SIDA have not been changed significantly.

The AOA is almost the same concept as used in current part 107, except that it is limited to those areas that are used by parts 108 and 129 operations, and those adjacent areas that are not separated by adequate security measures. Further, the secured area is no longer considered part of the AOA. The security measures required in the AOA include controlling access and presence of unauthorized persons and vehicles. There remains flexibility as to exact measures to be used to accomplish these tasks, because each airport is different and may have different needs in the AOA. For instance, personnel ID systems may or may not be used in the AOA.

The proposal used the phrase ''any adjacent areas that are not separated by security controls or physical barriers.'' The final rule uses the phrase ''adjacent areas that are not separated by adequate security systems, measures, or procedures.'' Physical barriers are one sort of security measure, and may be a critical part of a security system that permits an adjacent area to be excluded from a secured area or an AOA. There are many other provisions that in appropriate combinations may provide adequate security systems, measures, or procedures. They include remoteness from the adjacent operation (''time and distance'') combined with specific measures to detect and respond to unauthorized penetrations, fences, personnel ID systems, closed circuit TV, clear markings, and security patrols. Given the wide variations in airports and the various security systems in use, it is impossible to state specifically in the rule what is needed at each airport. Further, much of the information on the security systems to be used at each airport must be kept non-public to avoid giving unauthorized persons information that could be used to attempt to defeat them.

As to signs, markings, and visual barriers, it must be noted that these are effective mostly for people who are attempting in good faith to comply with the security systems at the airport. Standing alone, they are not very effective at keeping out persons who are intending to defeat the system.

The FAA considered using the term ''immediately adjacent,'' rather than just ''adjacent.'' However, this might be viewed as too limiting. The key is whether the adjacent area can be separated by adequate security measures. Distance alone is not sufficient. For instance, to be effective, distance must be coupled with adequate measures to detect and respond to unauthorized persons attempting to cross that distance. In each case, the airport operator and the FAA must consider not only how close the adjacent area is, but also what security measures are present, what related activity is in the area, and all other factors. It is impossible to state specifically how far an area might extend before it is excluded from the secured area or the AOA. For instance, at airports where general aviation (GA) activity is sufficiently remote from the secured area and there are dedicated measures to detect and challenge persons moving from the GA area to the secured area, that GA area may not need to be included in the secured area. At other locations where the GA activity is close to the terminal, and it is not possible to erect adequate physical barriers, there may be no way to provide adequate security measures to exclude the GA area from the secured area. Removing GA areas from the AOA, this too depends on the airport. GA areas are usually near taxiways and/or runways used by parts 108 and 129 aircraft, and are usually within the perimeter fence of the airport. Even if a GA area is remote from the secured area it may not be possible to have adequate security measures to omit it from the AOA. However, if the GA area is separated from the taxiways and runways by a fence and controlled gate, there may be a basis to exclude it from the AOA. Again, the FAA does not consider the secured area and AOA, as defined in the final rule, to be vastly different than what currently exists at the airports. This final rule to a large extent more clearly reflects the areas as they have evolved from the more general and vague language of the current rule.

The security measures required in each area are discussed more fully in the Section-by-Section Analysis.

The Notice did not propose to retain the term SIDA. As discussed above, the FAA has decided to retain this term, with modifications. As used in current § 107.25, SIDA refers to ''any area identified in the airport security program as requiring each person to continuously display on their outermost garment, an airport-approved identification medium unless under airport-approved escort.'' It was based on the idea that, if the area was of such an importance to security to have a requirement in the security program for the continuous display of identification, it should also have the training requirements in § 107.25 to ensure that airport personnel know their duties to challenge persons without ID, and the employment verification of § 107.31.

This final rule changes the definition of SIDA to ''a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes the secured area and may include other areas of the airport, such as areas where there are activities related to the operations of aircraft operators and foreign air carriers that have security programs under part 108 or § 129.25 of this chapter.'' This definition is intended to capture the original intent of the SIDA. It includes the secured area, in which the highest level of security is required. An airport operator may include in the SIDA other areas, such as cargo makeup areas, fuel farms, and other areas, particularly where activities related to part 108 and part 129 operations are carried out. On some airports the entire AOA may be designated a SIDA. Again, because of the varied configuration of airports it is not possible to describe exactly the limits of the SIDA.

New § 107.205 states the security measures that must be carried out in the SIDA, and is discussed in the Section-by-Section Analysis.

A strict reading of current § § 107.25 and 107.31 would suggest that any area in which continuous display of ID is provided for in the security program also requires the more extensive training in escort and challenge procedures, and employment verification in these sections. It has become evident to the FAA that there are areas of airports outside of the secured area in which, due to local circumstances, the continuous display of ID is required by

local rule, but that do not necessarily warrant the higher security requirements of a SIDA. Examples include areas used exclusively by an aircraft manufacturer or other private corporation, in which continuous display of a corporate ID is required largely for corporate security purposes. Such areas are described in the airport security program because they are part of the overall security situation at the airport. For instance, the airport would make sure that the color and appearance of the corporate ID was not confusingly similar to that of the airport IDs used in the SIDA. The corporate areas, however, need not have all the measures that apply to the SIDA. Nevertheless, the definition as it appears in current part 107 could be read to mean that such areas must be formal SIDA's. New § 107.203(b)(5) acknowledges that such areas may exist in the AOA without them being deemed SIDA's under new § 107.205.

The Notice proposed, in essence, that the CSA (now the secured area) would have all the attributes of the SIDA, with full training and employment verification. The proposed ROA (now AOA) would have ID display required, but not have the same extensive training or employment verification as the SIDA. The final rule represents a middle ground between the current rule and the proposal by requiring the secured area to be a SIDA, and providing the option of less burdensome ID requirements in the AOA.

Time Limits

Proposal: The Notice proposed various time limits for carrying out various tasks, such as approval of a security program, amendments to security programs, and changed conditions affecting security. These tasks were presented with deadlines that were in terms of calendar days and hours.

Comments: A commenter states that compliance timeframes should be adjusted to reflect realistic opportunities. The recommendation was made that the FAA refer to ''business days'' versus a specified number of hours when setting deadlines for compliance.

FAA response: Regarding the use of business days in favor of a specific number of hours, the FAA notes that its regulations usually deal in terms of calendar days or hours (for instance, 30 days or 72 hours). When setting deadlines for compliance the FAA will set reasonable deadlines, based on circumstances, while taking into account holidays and weekends. In emergency situations, it may not be in the interest of security to delay compliance for a weekend or holiday. The agency sees no need to alter its practice. Further, the use of ''business days'' can be confusing. Most airports are open for business every day of the week, including holidays. Further, the observance of holidays is not uniform throughout the country.

Compliance Dates

Proposal: The Notice requested comments regarding compliance dates.

Comments: ACI–NA and AAAE comment that the FAA should provide sufficient time following issuance of a final rule for airports to be in compliance. A minimum phase-in period of 18 months was suggested.

FAA response: The FAA believes this final rule has allowed adequate time for airports to comply. The agency notes that the complexities involved in compliance, as well as anticipated costs, are carefully weighed when deadlines are established. Where difficulties are encountered, airport operators are encouraged to contact their local FAA security field office. The FAA has attempted to ensure a realistic approach to compliance timeframes but recognizes that such timeframes are sometimes not met for good cause. The agency is prepared to extend reasonable consideration when the merits of a situation warrant.

The final rule has far fewer required changes than the NPRM. For instance, the boundaries and names of the secured area, AOA, and SIDA will change little, if at all. Also, some new requirements have intended compliance dates such as for AOA training under § 107.213(c) and (f).

Security Requirements Based on Size of Aircraft Served

Comments: One commenter states that increased airport security thresholds should not be based on the size of the aircraft serving an airport, but on the number of passengers screened annually. One commenter agrees with the statement that experience shows airports served by smaller aircraft need not comply with all of the requirements imposed on larger airports. However, security should be a function of the nature of the service resident at an airport; that is, medium and large hub airports are of more concern, so operations to and from them should be of more concern. The commenter suggests that perhaps the analysis should focus on city pairs instead; and further still, to more highly threatened city pairs. Aircraft sizes and their variations do not, in themselves, create security issues.

FAA response: The agency understands the commenters' concerns about appropriate measures as determined by the size and threat level of particular airports. But, contrary to the comments, the FAA believes that aircraft size and capabilities affect their desirability as targets of terrorism or other criminal acts. Such criteria have historically proven good indicators of where and how to focus limited security resources. There are some requirements that may vary based on the amount of activity at the airport and other factors, which are set out in the individual airport's security programs.

Supplemental Notice of Proposed Rulemaking (SNPRM)

Comments: The ACI–NA and AAAE strongly urge the FAA not to implement the proposed rule until the FAA publishes an SNPRM and reviews the comments. It would be appropriate within this timeframe to examine ways that the ASAC, or a new working group within the ASAC, could be appointed to clarify and streamline this proposal.

Twenty-four airports, an air carrier, a local government, five local departments, and commissions recommend that the FAA publish an SNPRM.

Many commenters state that the FAA states throughout the NPRM that it is an incomplete proposal, and notes that additional language will be supplied at a later, unspecified date.

FAA response: Having received a vast amount of public and industry input to this proposal, and in view of the many changes reflected in the final rule, the FAA is confident that the rule can go forward without the issuance of an SNPRM that covers the entire part 107. This decision is based partly on the fact that the FAA has agreed with many of the issues the commenters felt most strongly about, such as renaming the airport areas. As to another issue of common concern, compliance programs in proposed § 107.103(a)(2) as mentioned under General Discussion of the Rule, the agency reopened the comment period.

The proposal and the final rule, as well as extensive historical experience, make it clear that many specifics of the design and implementation of security programs are not appropriate for the public rulemaking process. The FAA has carefully and diligently indicated the difference between public requirements of the regulation, and specific information that can only appear in the security program. The specific details of security measures, in order to be effective, must often be held closely by those with a ''need to know.''

Since many of the requirements of this final rule have been in place at airports in one form or another for many years, the FAA does not anticipate any regulated parties would be unduly or unnecessarily inconvenienced in complying with them.

Section-by-Section Analysis

The following is a discussion of comments and FAA responses for each proposed section.

Section 107.1 Applicability

The NPRM proposed to extend airport security requirements to airports regularly serving any aircraft operator required to have a security program under parts 108 or 129. This would be a change from the current rule, which covers airport operators regularly serving scheduled operations of aircraft operators required to have a security program. The increase would be those airports that only regularly serve certain public charter operations. The NPRM also proposed to extend the applicability of existing § 107.1 to individuals entering or in critical security areas, restricted operations areas, and sterile areas.

Under proposed § 107.1(b), the term ''Assistant Administrator for Civil Aviation Security'' would be used, rather than the existing ''Director of Civil Aviation Security.'' This position would be defined as the official who oversees civil aviation security operations and approves security programs. In addition, § 107.1(b) would clarify that the Deputy Assistant Administrator for Civil Aviation Security, or any individual formally designated, could act in the capacity of the Assistant Administrator and the duties of this position could be further delegated.

Comments: A commenter states that smaller regional airports do not have staff to perform all requirements in the proposed rule. The FAA would have to fund the salaries of additional personnel so that the facility could comply with the rule.

Another commenter recommends removing the reference to ''sterile area'' in § 107.1(a)(3), as it is controlled by part 108 rules.

Finally, Air Transport Association (ATA) comments that the delegation of the Administrator's authority should be narrowly circumscribed due to the potential for conflicting and overlapping authority.

FAA response: In the past, the FAA generally chose to hold only the airport operator accountable for the actions of persons under its control, with the expectation that corrective actions taken by airport operators would discourage employees and others from repeated non-compliance. The FAA continues to believe that corporate accountability is key to achieving and maintaining compliance. However, the agency also believes that the concept of holding individuals accountable for security violations, in a timely fashion, is a worthy one. The agency remains committed to broadening accountability and the final rule reflects that under new § 107.11.

In response to the comment regarding the lack of staff at smaller regional airports, the FAA refers to the Regulatory Evaluation. Economic analyses are based on estimates which anticipate costs associated with all sizes of airports, and recognizing the costs of the different levels of security measures associated with each.

Regarding removal of the term ''sterile area'' from § 107.1(a)(3), that term originated in part 108, and is used in part 107 to define locations at which a person is subject to individual responsibility for their conduct under this part. The FAA, therefore, has decided to leave the proposed language unchanged while the definition of ''sterile area'' is retained in part 108.

In response to ATA's comment about the delegation of the Administrator's authority, the FAA notes that the proposal reflects the manner in which the FAA's internal chain of command carries out its statutory responsibilities. The FAA agrees that delegations must be carefully evaluated to avoid unnecessary conflicts of authority.

Section 107.3 Definitions

The FAA proposed a new definitions section (§ 107.3) which would include revised definitions from the current part 107. Section 107.3 also would add several new definitions. Existing § 107.3, Security Program, would be incorporated under proposed Subpart B, Airport Security Program. The FAA proposed that the terms defined in part 108, e.g., ''sterile area,'' would apply to this part.

The proposals regarding the secured area, AOA, SIDA, CSA, and ROA are discussed under the General Discussion above. In addition, the FAA proposed the following in § 107.3. The definition of ''exclusive area'' in existing § 107.1 would be revised and grouped with a newly defined ''exclusive area agreement.'' Under the proposal, the definition of ''escort'' was revised to include a reference to the proposed critical security area and restricted operations area. The definition ''sterile area'' was revised in the proposal to clarify the responsibility to conduct inspections of persons and property.

The FAA also proposed adding the following definitions: ''airport security program,'' ''airport tenant,'' ''airport tenant security program,'' ''Assistant Administrator,'' ''exclusive area agreement, ''and ''unescorted access authority.''

Comments on definitions in general: The Regional Airline Association (RAA), Federal Express (FedEx), eight airports, an air carrier, and a local department of aviation request that the FAA define terms more clearly, or continue using the current terms. The commenters also provide detailed suggestions on how to more clearly define some of the terms.

United Parcel Service (UPS), Alaska Airlines, Trans World Airways (TWA), Port Authority of NY and NJ, and Phoenix Aviation Department suggest incorporating the same definitions in parts 107 and 108.

FAA response: Clarity of definitions is a fundamental goal of this rulemaking. In response to RAA, FedEx, and the many other commenters who offered comments on exactly how to go about that task, the FAA wishes to assure them that every effort has been made for clarity and distinctness. The challenge was to develop clarity, while at the same time providing flexibility to allow for local applications and unique circumstances.

As to the requests to repeat the definition of terms used in both parts 107 and 108, the FAA has decided to retain the definitions in the most applicable part. Cross references will indicate that the terms apply to the other part as well. Although it might be more convenient for some users to have the definitions repeated in each part, there is a risk that the definitions would become inconsistent as parts are individually amended from time to time.

Comments on ''escort'': The ATA states that the term ''escort'' should not apply to employees temporarily without aircraft operator identification media.

The UPS and three airports state that the proposed definition of ''escort'' leaves too much room for interpretation. Airport commenters state that the phrase ''sufficient to take action'' is unclear. The FAA should add language that holds individuals accountable for being in direct physical control of persons under escort.

FAA response: In consideration of the comments, the FAA has revised the definition of escort. The term ''escort'' now means ''to accompany or monitor the activities of an individual who does not have unescorted access authority

into or within a secured area or SIDA.'' This emphasizes the primary function of the escorter—to determine whether the escortee is limiting his or her activities to those authorized. If the escortee departs from authorized activities, the escorter would take action in accordance with the security program. This could include verbally challenging the individual, summoning a supervisor, or summoning law enforcement. The minimum requirements for the local design and implementation of escort procedures are set forth in new § § 107.201 and 107.205. Specifics as to where and how this method is to be applied will appear in individual airport security programs. As to the escorter being in ''direct physical control'' of the escortee, this phrase might imply a level of physical control that generally is not needed, such as the level of control a law enforcement officer exerts over a person they have arrested.

Comments on ''exclusive area'': Denver International Airport suggests that the definition of ''exclusive area'' include the concept that now individual access points can be designated as ''exclusive areas.'' The commenter also recommends adding ''located anywhere on the airport'' after the phrase ''access points.''

FAA response: The definition of ''exclusive area'' as proposed was intended to provide the regulated parties with the opportunity to transfer the accountability and responsibilities under part 107 from the airport operator to aircraft operators under parts 108 or 129. The definition as proposed expands the scope of the former definition, which allowed exclusive area agreements only for portions of the AOA. The new definition permits inclusion of portions of an AOA, secured area, and SIDA, which may include access points. For example, a part 108 regulated aircraft operator may now assume specific security responsibilities under part 107 for that portion of the secured area within its leasehold. The aircraft operator may also accept an exclusive area agreement with the airport for part 107 responsibility for any access point (for persons or vehicles) which leads directly into that portion of the secured area. Individual access points may be included in exclusive area agreements in the final rule. Further discussion of exclusive areas appears in response to comments relating to proposed § 107.111.

Comments on ''sterile area'': Several commenters, including three airports, requested that the FAA put the definition of ''sterile area'' in § 107.3 instead of referring the reader to part 108.

FAA response: The definition of sterile area will remain in § 108.3, and will not be repeated in this part. As explained earlier, the FAA has decided to keep the definitions in the most applicable part, with cross-references showing that the terms apply to other parts as well. Section 108.3 states that the term ''sterile area'' means a portion of an airport defined in the security program that provides passengers access to boarding aircraft and to which the access generally is controlled by an aircraft operator or foreign air carrier through the screening of persons and property in accordance with the security program. The use of the term ''sterile area'' in part 107 is for descriptive purposes only.

Comments on ''unescorted access authority'': The Air Line Pilots Association (ALPA) and Juneau International Airport request a definition of ''unescorted access authority.''

Another commenter says that the airport operator should be the only person authorized to grant unescorted access authority.

FAA response: The FAA defines unescorted access authority as the authority granted to individuals to gain entry to, and be present without an escort in secured areas and SIDA's. The FAA disagrees with the comment that only the airport operator should grant unescorted access authority. It has been a longstanding practice for aircraft operators holding security programs under parts 108 or 129 to join with the airport operator in ''exclusive area agreements.'' The intent of such agreements is to transfer certain part 107 requirements to the aircraft operator, as specified in the agreement.

Additionally, it is a common practice for the airport operator to extend or broaden authorization for unescorted access to a class of persons. For example, the acceptance of a particular company's employee identification card, as airport-approved media, effectively extends to such companies the authority to determine who may have such privileges on a case-by-case basis. In each of these cases the airport operator has agreed to extend the privilege to the other party. The FAA believes that as long as a responsible party is empowered to extend that privilege under specific terms, the safety of the flying public can be ensured. Therefore, absent any compelling reasons to the contrary, the FAA will permit parties other than the airport operator to grant unescorted access authority within the constraints of this part.

Comments on clarification of definitions and new definitions: Many commenters request clarification of the following terms: ''media,'' ''vehicle,'' ''person,'' ''physical barriers,'' and ''law enforcement personnel.'' Atlanta Hartsfield International Airport requests clarification of the term ''person.'' A commenter requests a definition of ''physical barriers,'' and recommends including time, distance, or signage in the definition.

The Monterey Peninsula Airport District comments that the FAA should define ''law enforcement personnel'' to consist of state certified police officers. Security guards should supplement, not replace police officers.

FAA response: In response to comments regarding clarification of definitions or the use of new definitions, the FAA notes that it usually does not define terms that are used within their common, everyday meaning. For example, the terms ''media,'' ''ground vehicle,'' and ''physical barriers'' are not used in this rule in unique ways. There is no need to include definitions in the rule.

The term ''media,'' for instance, is used in a conventional sense to identify any means, materials, or techniques that identify an individual or vehicle or convey an individual's access or personnel identification authorization. In common usage, access media can include keys, magnetic cards, or other means to gain entry. In the case of identification media, § 107.211 provides additional standards for such media. The FAA used the term ''physical barriers'' in a conventional sense to include, for example, fences, walls, and buildings. The FAA has not used that term in the final rule, as discussed under Secured Area, AOA, and SIDA, above.

The word ''person'' is already defined in 14 CFR § 1.1. That definition is controlling with regard to part 107 so that there is no reason to repeat that definition in part 107.

Section 107.5 Airport Security Coordinator

The FAA proposed that existing § 107.5, ''Approval of security program,'' would be incorporated into proposed § 107.105, ''Approval and amendments,'' under proposed Subpart B, Airport Security Program. Existing § 107.29, ''Airport Security Coordinator'' would be revised and renumbered as new § 107.5 under new Subpart A, General.

The FAA proposed to further define the functions and responsibilities of the

ASC. The functions of the ASC were discussed in the Employment Standards Rulemaking (56 FR 41412 at 41417–8; August 20, 1991). The FAA also proposed that this section would clarify that an individual serving as an ASC may perform other duties in addition to those required by the FAA, and this need not be the ASC's only duties. It was the FAA's intent to clarify that the ASC requirements did not mandate that airport operators establish additional positions, the duties of which are exclusively security-related. Further, the proposed language was intended to clarify the relationship between the FAA and the ASC.

The FAA also proposed to require training for the ASC every 2 years to ensure that ASC's remain updated on both airport and aircraft operator security regulatory and operational requirements. The FAA requested comments on methods airport operators would use to meet this training requirement.

Lastly, the FAA proposed moving to this section certain provisions of existing § 107.31, recently effective (60 FR 51854; October 3, 1995), regarding the ASC responsibility to review and control results of employment and criminal history checks and to serve as the contact for individuals appealing their results.

Comments on ASC Functions: (Proposed § 107.5(a) and (b)): Cheyenne Airport disagrees with incorporating specific functions and duties of the ASC into the rule. A detailed job description is redundant and unnecessary. Several commenters questioned whether there could be more than one ASC.

FAA response: The FAA's general description of the functions of the ASC reflects the expectation that similar tasks are to be conducted at hundreds of individual airports across the nation. The regulatory framework is considered essential to ensure consistent and reliable understanding of the ASC's duties.

In response to the comments, the final rule clarifies that the airport must have one or more ASC's. This would allow different people to be on call at different times. The FAA anticipates the airport generally will designate a lead ASC, and others who will assist.

Comments on § 107.5(b): One airline commenter says that proposed § 107.5(b)(2) should state that ASC's have contact with Federal Security Managers (FSM), who are FAA special agents, located at certain larger or more complex airports. Another commenter says that the ASC should have contact with the Aircraft Operator Security Coordinator (AOSC) and notes that AOSC's are to be designated at the corporate level.

Atlanta Hartsfield International Airport, Minneapolis Airport, the Port Authority of NY and NJ, Lincoln Airport Authority, and the Phoenix Aviation Department state that the requirement in proposed § 107.5(b)(3) to ''review with sufficient frequency all security related functions'' is vague and leaves a considerable amount of room for interpretation. Denver International Airport states that the phrase ''airport tenant activities'' in this paragraph needs to be defined.

The ACI–NA, AAAE, Atlanta Hartsfield International Airport, Miami International Airport, Tucson Airport, Metropolitan Washington Airports Authority, Capital Region Airport Authority, Lincoln Airport Authority, and Phoenix Aviation Department are under the perception that the ASC would ''perform any duties deemed necessary'' (proposed § 107.5(b)(7)). The commenters believe that this situation would be like leaving a ''blank check'' for the FAA to impose new duties and requirements on the airports; some commenters believe that this paragraph should be deleted and that any additional FAA directed changes should be coordinated and implemented under proposed § 107.107.

FAA response: Regarding the airline comment related to § 107.5(b)(2) that the proposal should state that ASC's should have contact with the FSM, the FAA notes that FSM's are senior FAA civil aviation security specialists whose duties apply specifically to particular airports. Such airports are generally larger and more complex facilities. A FSM is the FAA's designated point of contact for the ASC's at such airports. If there is no FSM for that airport, another contact point from a FAA field office is given to the ASC. Hence, the FAA does not see a need to add or to modify proposed language in this regard.

As to requiring the ASC to contact the AOSC, the AOSC for the aircraft operator is designated at the corporate level, while the ASC is designated at the local airport level. It is not the FAA's intent to require that the ASC communicate with corporate aircraft operator personnel. Generally, the ASC can carry out his or her duties by dealing with their aircraft operator counterpart who is a local Ground Security Coordinator (GSC), as required under part 108. The FAA would prefer to leave the option to contact corporate offices to the airport operator, as it deems necessary.

Regarding § 107.5(b)(3), the FAA disagrees that the proposed language is unduly vague. However, the FAA also recognizes that the scope of airports' security-related functions vary greatly based upon the size and complexity of the markets served by the airport. The proposed language clearly directed the airport operator, through the ASC, to review security functions specified in such documents as the security program, tenant security programs, and applicable Security Directives. These documents are written to a high degree of specificity, and therein lie the details the ASC is expected to review. Hence, the language of the regulation is seen by the FAA to be at the appropriate level of specificity. Consequently, the FAA has chosen to retain in the regulation the broader language with an expectation that more specific requirements will be reflected in or flow from the individual security programs.

In response to Denver International Airport, the FAA notes it has removed the general phrase ''airport tenant activities'' from § 107.5(b)(3). This section has been rewritten to reflect the more specific mandate. The airport operator, through the ASC, must review with sufficient frequency all security-related functions to ensure that all are effective and in compliance with this part and the security program. The agency notes, however, that the security program may include tenant security programs, exclusive area agreements, and other implementing documents. The FAA believes a frequent review of the activities specified in and required by such documents will yield an appropriate level of airport operator oversight and local communications regarding security measures.

The FAA agrees with the many comments about proposed § 107.5(b)(7) that may have implied an unlimited ability of the FAA to add to the duties of the ASC through changes to the security program. Consequently, proposed § 107.5(b)(7) does not appear in this final rule.

Comments on § 107.5(c) Training Schedule and Hours: Anchorage International Airport and Phoenix Aviation Department say that the FAA should host and pay for any ASC training. Port Authority of NY and NJ and Anchorage International Airport say that the FAA should provide initial ASC training and recommends that the AAAE perform recurrent training every 2 years.

The ACI–NA, AAAE, Cheyenne Airport, and Lincoln Airport Authority suggest that biannual training for ASC's at smaller airports is economically burdensome. These commenters add that attendance at training seminars for ASC's at smaller airports is difficult due to tight budgets and limited staff.

Two airports suggest that 180 days after publication of final rule is not sufficient time to be in compliance with such extensive training and recordkeeping and instead recommend a longer compliance date.

FAA response: While the FAA disagrees that it should fund ASC training, it notes that such basic training on the civil aviation security program is available from several sources. For example, the FAA jointly sponsors basic training courses with several industry associations that could provide the ASC with requisite information. Such training, when supplemented with additional information necessary to understand local concerns, would prepare the ASC to carry out the locally defined duties.

The FAA believes that the amount of time necessary for an ASC to receive instruction on the security provisions relevant to their own location would be minimal. Consequently, the FAA does not believe that ASC training comprises an undue burden for any airport.

In response to the last comment above, the FAA accepts that 180 days may be insufficient time for airports to complete training for ASC's. Since training has not been required in the past, it must be developed and budgeted for. The final rule allows for 2 years following the publication date of the rule to achieve compliance with this requirement.

The FAA recognizes the many and valued services currently provided by the nation's ASC's. However, the FAA is also aware that there are inconsistencies in the level of knowledge and experience among ASC's. This variance stems from many factors, such as, tenure in the position, initial training (if any), the individual's current primary duties, and the individual's experience in the performance of ASC duties as well as the individual's background prior to assuming the position. Consequently, the FAA is convinced that baseline training is essential to ensure an adequate level of knowledge of the ASCs.

Therefore, this final rule does not allow for the grandfathering of ASCs as a means to avoid initial training. However, recurrent training is required for only those who have a break in service of 2 years or more during which time the person did not actively perform the duties of a designated ASC. Such persons would have to again take the training to resume ASC duties.

Comments on § 107.5(c) Training Guidance: One airport states that the FAA should formulate guidance materials to clarify airport security issues, and make them available as part of the ASC training. Atlanta International Airport states that ASC training standards should be outlined in an advisory circular (AC) or proposed FAA rule. Lincoln Airport Authority and Port Authority of NY and NJ state that the ASC training curriculum, proficiency standards, and training materials should be developed by the FAA in cooperation with the industry.

Three airports state that the FAA should explain what the ASC training entails.

Two airports suggest that anyone performing in the capacity of the ASC 90 days prior to the effective date of the final rule should be ''grandfathered'' in and not be subject to the basic ASC portions of training. Furthermore, Tucson Airport states that the ASC is the most knowledgeable person at any airport and of the airport's security program and the FAA requirements and, therefore, the retraining of the ASC's basic job skills would be inefficient.

FAA response: The FAA recognizes that the role of the ASC has been expanded. In that context, it is the agency's view that the ASC should be trained to a level of functional familiarity with parts 107, 108, 129, and 191, the airport's relevant operational manuals, the local emergency services support, the process which results in issuances of Security Directives, the security programs (to include contingency plans), and the respective rules and the means to communicate with all airport tenants, the FAA, Federal and local LEO's, and other emergency services.

Section 107.5 of the final rule outlines the duties and functions that the FAA expects the ASC to conduct in this regard. As the performance of those basic duties may vary in detail from airport to airport, the FAA does not anticipate issuance of an AC on this topic. However, the FAA will develop a suggested training curriculum, in coordination with the airport industry. The FAA expects that the training itself would not exceed 24 classroom hours, in most cases, and would average approximately 16 hours.

The FAA would expect the specifics of the training curriculum to be developed locally, in accordance with FAA guidance and local needs. The curriculum should and would be reflected in the security program.

Comments on § 107.5(c) Maintenance of Training Records: A commenter states that where ASC's training records are maintained is a matter of legal guidance and operational preference. As long as those records are available for FAA inspection upon request, there is no need for the FAA to micromanage record maintenance. The Port Authority of NY and NJ recommends removal of language specifying that records are to be maintained in the principal operations office.

Atlanta International Airport says that training records and other documentation requirements will create unnecessary recordkeeping burdens.

FAA response: The FAA has modified the rule so as to permit the airport operator to maintain the ASC training records in a location and manner of its choosing. Further, the FAA believes that the recordkeeping burdens would amount to no more than 30 minutes a year to document the training of each ASC. The FAA anticipates that a simple statement to the record that the ASC has completed training, as specified in the security program, with date and location, is acceptable. The FAA does not believe that this requirement is excessive.

Section 107.7 Inspection Authority

The FAA proposed to move existing § 107.7, ''Changed conditions affecting security'' to proposed Subpart B, § 107.107. In its place, the FAA proposed to insert § 107.7, ''Inspection authority,'' which included current § 107.27, ''Evidence of compliance.'' The proposed section would include the evidence of compliance requirements of existing § 107.27 and additional requirements based on the FAA's statutory authority to conduct inspections, investigations, and tests.

The FAA proposed that § 107.7(a) state the Administrator's authority to conduct inspections and investigations necessary to determine compliance with part 107 and the security program.

The FAA proposed that § 107.7(b) restate the language of existing § 107.27. Also, it was proposed that § 107.7(c) clarify the airport operator's obligation to provide FAA special agents the necessary access and identification media to conduct inspections. Significantly, this proposed requirement did not propose to require airport operators to provide access or identification media to any FAA employee other than special agents.

Comments on § 107.7(a): Miami International Airport suggests referring to special agents as FAA ''Security'' Special Agents.

Atlanta International Airport, Alaska Airlines, and Missoula International Airport state that § 107.7(a)(3) should be removed and placed in part 108 as it relates to carriage of hazardous materials by aircraft operators. Another commenter believes part 139 adequately addresses hazardous materials on airports.

The RAA, UPS, ACI–NA, AAAE, the Port Authority of NY and NJ, Detroit Metropolitan Airport, Lincoln Airport Authority, Federal Express, Phoenix Aviation Department, Tampa International Airport, and Denver International Airport had concerns regarding the FAA's inspection authority. These commenters state that the phrase ''at any time and place'' is too broad and could subject aircraft operators to unreasonable and frequent intrusions into all aspects of operations by untrained FAA personnel. These commenters, including Atlanta International Airport, recommend adding the word ''reasonable'' at the beginning of the phrase. One commenter states that this section should be amended to limit access by FAA special agents to only those portions related to their duties. Another commenter says that FAA special agents should be allowed to access airport operational areas only after they have received appropriate local training to ensure that safety is not compromised (such as, local rules, vehicle markings, driver's training). The ATA suggests that the FAA modify § 107.7(a) and (c) to state that the FAA provide written notice of an inspection to the airport operator 24 hours prior to commencing it. Atlanta International Airport requests that the FAA inspector be required to inform the airport operator or ASC of the inspection results.

FAA response: In response to the suggestion that the FAA refer to special agents as FAA ''security'' special agents, the agency notes that ''special agent'' is the correct term, and that ''security special agent'' is not a job title used in FAA service.

By statute, the Administrator is empowered to conduct inspections, investigations, tests, and other such duties as may be necessary to ensure the safety and security of the civil aviation system. Since performance of such inspections is not limited to special agents, it is conceivable that other FAA employees, from time to time, may be called upon to assist special agents in the performance of their duties on behalf of the Administrator. Therefore, to avoid confusion, the reference to special agents has been removed from § 107.7(a).

The FAA agrees with the commenters that hazardous materials inspections should be removed from part 107, however, it should not be placed in part 108. The FAA continues to have authority to inspect for violations of hazardous materials regulations, but its authority is based on different statute provisions than those for civil aviation security. Proposed § 107.7(a)(3) referred to determining compliance with 49 CFR part 172, which provides requirements under the Hazardous Materials Transportation Act. This reference has been removed from the final rule. Part 107 is devoted to civil aviation security issues. To avoid misunderstanding, reference to hazardous materials inspections is deleted.

With respect to concerns about the FAA's inspection authority, the Administrator is empowered to conduct such investigations and inspections as necessary to ensure the safety of civil aviation, under the statute. The statute, Title 49 USC Section 40113, does not restrict such activities by time and place, nor should they be restricted if the mission of the FAA is to be accomplished as effectively and efficiently as possible, and in the best interest of the public. Therefore, the FAA will not restrict its security-related activities through the regulation as suggested.

The FAA agrees with the commenters that the FAA is required to conduct its investigations and tests in a reasonable manner, but does not believe that the words ''reasonable'' should be added to the regulation. The wording used is similar to that used in a number of other FAA rules that have existed for years, including § § 119.59 (air carriers and commercial operators), 141.21 (pilot schools), 145.23 (repair stations), and 147.43 (aviation maintenance technician schools). The wording of these rules has not caused significant problems in the past. The FAA does not anticipate any change in its inspection procedures based on this new rule.

The FAA does not agree with the commenters who suggest that the access by special agents be limited in any way. The FAA has authority to conduct inspections and investigations throughout the airport property, wherever regulated activity is conducted. Any limitations placed upon FAA personnel acting on behalf of the Administrator could potentially hinder their ability to most effectively perform their assigned duties. Therefore, the final rule will not impose such limits.

As to the suggestion that the FAA provide advance notice of inspections, the FAA routinely notifies airport operators of scheduled inspections. This notice gives the parties to be inspected the opportunity to gather evidence of compliance and to arrange to have appropriate personnel available to assist the FAA. However, inspections related to a particular incident, or which are intended to be made without notice are necessary. Some inspections can only be effective if they are unannounced. Such considerations fall within the purview of the FAA's internal guidance and will not be addressed in this final rule.

Section 107.7(a) only provides for inspection by the FAA. Unlike the Notice, it does not refer to inspection by other Federal government entities. The FAA has no authority to grant or to deny inspection authority to another agency. The section was changed to avoid any appearance that the FAA was purporting to grant such authority.

Comments on § 107.7(b): Tucson Airport requests guidance to foster consistency when providing ''evidence of compliance with this part and its security program'' as described in § 107.7(b).

FAA response: Since its adoption, this provision has been intended to require airport operators to provide the FAA access to existing records. *See* 56 FR 41412 at 41416 (August 20, 1991). Such records may vary from airport to airport, and are not the subject of standard guidance.

Proposed § 107.5(a) referred to the Administrator making inspections and tests, and § 107.5(b) referred to the airport operator providing evidence of compliance to the Administrator. The final rule adds the clarification that these include the FAA making copies of records or the airport operator providing copies. Obtaining copies of records is an inherent part of the FAA inspecting compliance with safety and security requirements. It is necessary to preserve the records for further review by the FAA. This is true for all FAA inspections, including those by FAA aviation safety inspectors (who look at compliance with operational and airworthiness rules) and FAA special agents. Often, the copying is done at the aircraft operator's or airport operator's office with their permission. Sometimes other arrangements are made, such as the FAA temporarily removing the records to copy them at a FAA office or a commercial service. The FAA has rarely encountered difficulty on this point, but includes these explicit statements in the final rule to avoid misunderstanding in the future.

This section refers to copying of records, not just documents. Records may be kept in a number of forms, such as paper, microfilm, and electronic. The special agent may request copies of any of these forms, usually by having paper copies made of the records. If another form is easily used by the special agent, he/she may accept records in that form.

New § 107.7(c) states that FAA personnel may gain access to the SIDA and other controlled areas without holding access or personnel identification media issued by the airport or aircraft operator, when

necessary to conduct an inspection or investigation. The FAA agrees that in most circumstances FAA personnel should comply with the access and identification requirements in place at the airport, and it has been FAA practice to require that, when practicable, FAA personnel first obtain local media before conducting inspections. However, there are times when the FAA cannot adequately inspect and test compliance if its employees first obtain access and ID media from the airport or aircraft operator. The act of obtaining such media may provide an opportunity for the FAA representative to be recognized by personnel at the airport, thereby reducing or negating the value of the inspection. The FAA sometimes must make unannounced tests by entering the SIDA or other areas without first having obtained such media. The FAA authorizes such tests only under very controlled conditions, using personnel who are trained to avoid creating a safety hazard or an undue security response. For instance, they carry their FAA credentials to display if they are challenged, to immediately establish their authority to conduct such inspections. This technique is intended to be used only when it is not practicable to obtain local media before the inspection, such as when making unannounced tests of the access and identification systems in place. Otherwise, the FAA representatives have the appropriate access and ID media.

Comments on § 107.7(d): Atlanta International Airport states that proposed § 107.7(c) should be amended to delete the reference to ''any FAA special agent.'' The FAA should be required to designate a local point of contact to verify the need for local airport identification media. Commenters suggest it is difficult to maintain control and accountability of media issued to the FAA.

Juneau International Airport requests a description of valid FAA special agent credentials, as this information is currently not available.

The Port Authority of NY and NJ states that the display and wearing of an FAA special agent identification should be sufficient identification for unescorted access to any area of an airport which the agent has an operational inspection need.

The Sacramento County Department of Airports suggests that FAA special agents should have to go through the same identification media requests as an airport tenant. Ft. Wayne Airport suggests the FAA special agents should have to go through SIDA training to become familiar with the security program for which they are inspecting. Further, a commenter suggests the airports should charge reasonable fees associated with issuing airport identification media and providing SIDA training to FAA special agents.

Tucson Airport says that the Administrator should develop part 107 testing protocols that meet the FAA's needs without needlessly diverting resources to a ''cry of wolf.'' In a related comment, ALEAN states that it is unsafe for armed law enforcement officers (LEO's) to be running through airport terminals, believing that they are responding to an actual threat at the checkpoint when it is just a test. Such tests should be administered in the same manner that part 139 timed response drills are run.

FAA response: In response to the comment about deleting reference to ''any FAA special agent,'' the FAA agrees, in part, with Atlanta International Airport, and others that the proposed language was broad. Any FAA special agent seeking local access and identification media, should have an operational need for the media, and the concurrence of the designated local FAA point of contact. The proposed rule stated that the media would be issued on request of the FAA special agent and presentation of credentials. As some commenters note, not all FAA special agents have duties and training to conduct inspections at the airport, and those agents do not need local media. The Administrator (usually through the local FAA field office) will provide to the airport or aircraft operator the names of special agents who require media.

In response to the request of Juneau International Airport, the commenter is welcome to request and to view the FAA special agent credentials in the possession of any special agent. They may contact the local FAA security office to view those credentials.

In response to the comment by the Port Authority of New York and New Jersey about the display and wearing of special agent identification, the FAA has addressed that under the new § 107.7(c). When exercising such privileges it is anticipated that the FAA employee acting on behalf of the Administrator will be in the possession of, but not necessarily displaying such credentials, as the situation may warrant. The circumstances under which this authority could be exercised include surveillance and unannounced testing or inspections.

Regarding the comment by the Sacramento County Department of Airports, the FAA acknowledges that appropriate safety and security-related training should be provided to FAA special agents before they exercise full access privileges to the secured areas and AOA's of the airport under normal circumstances. The aspects of such training that have common application can be provided at the agent's primary duty location and can be supplemented with local training at other airports requiring such training. This approach is in common use today, throughout the industry for those persons requiring similar access privileges. The revised § 107.7(d) addresses these concerns. However, in emergency situations or other initiatives, the responding agents may not have been provided the training or access media for that particular airport. The exigencies of their duties may require this access media, therefore, the language of the final rule has been modified accordingly. Where appropriate, coordination through the ASC or other local authorities would take place.

In response to the comment about allowing the airport to charge reasonable fees for issuing airport identification media, the FAA notes that nothing in the regulations would preclude the airport operator from imposing reasonable charges for its services. In fact, many already charge for initial identification media and issuance of replacements. Consequently, language permitting the airport to do so is not necessary in the final rule.

Regarding the comment about developing part 107 testing protocols, the FAA appreciates the complexity and sensitivities of the regulated parties' ongoing operations. The agency also understands both the importance and the impacts of its own operations, especially while conducting essential testing. These testing efforts will continue under the FAA's internal guidance. The agency will continue to be mindful of actual safety and security concerns during testing operations and will maintain dialog on this subject with the industry at the local and national levels.

The final rule states that the media must be issued ''promptly.'' The FAA expects that the media will be issued without undue delay, generally within a similar time frame that media are issued to airport, aircraft operator, and contractor employees who need the media. The particular procedures will be worked out at each airport with its FAA field office.

In response to ALEAN's comment, the FAA understands and concurs with the proposition that safety in testing is essential. The FAA also believes that testing of a law enforcement response differs in some aspects from testing

firefighting and other emergency responses. For example, the latter services tend to be more focused on a more specific range of duties and generally operate from a fixed position. Law enforcement response is a resource with numerous missions unrelated to civil aviation security as addressed in this rule, and which can take it away from the immediate vicinity of the passenger screening facilities. As such, the law enforcement response can originate from anywhere, but must arrive at a designated location within a given timeframe. The FAA recognizes that testing of the law enforcement response must be conducted as judiciously and as safely as possible. Often, that can be accomplished with full disclosure in advance to the law enforcement agency. The FAA will continue to share ALEAN's concerns with its special agents but does not believe it appropriate to modify any portion of part 107 in this regard. Instead, such concerns will be addressed through the FAA's internal guidance and in keeping with the missions of both the law enforcement entities involved, the airport operators, and the FAA.

Section 107.9 Falsification

The FAA proposed a new § 107.9, entitled ''Falsification.'' This section is the same as the current § 107.2 adopted on November 27, 1996 (61 FR 64242, December 3, 1996).

Comments: The UPS and Atlanta International Airport request an outline of the enforcement procedures and guidance to the airport operators for falsification findings. The commenters say that the airport operator should be informed of all investigations and be provided a copy of the report of findings.

The UPS, Port Authority of NY and NJ, Detroit Metropolitan Airport, and Lincoln Airport Authority say that it should be stated that persons are directly accountable to the FAA for compliance with this regulation, including federal enforcement procedures and fines.

FAA response: Enforcement procedures are contained in 14 CFR part 13 and in FAA order 2150.3A. There is no need to repeat the procedures in part 107.

Section 107.11 Security Responsibilities of Employees and Other Persons

In this section, the FAA proposed to prohibit persons, as defined in part 1, from tampering or interfering with, compromising, or modifying any security system, or attempting to do so. It also proposed to prohibit carrying a deadly or dangerous weapon, explosive, or destructive substance into sterile areas, critical security areas, or restricted operations areas.

This section proposed the use of civil penalty actions to penalize persons, those employed by the airport operator and those not under the direct authority of the airport operator (such as trespassers), who fail to comply with this section.

The FAA proposed in § 107.11(c), that individuals authorized by the Federal government, airport operator, and aircraft operators would be allowed to conduct tests and inspections of security systems.

The FAA proposed in § 107.11(d) that provisions of this section that apply to firearms and weapons would not be applicable to law enforcement personnel, Federal Air Marshals, and certain individuals authorized in a security program to carry a weapon.

Comments on § 107.11(a): Atlanta International Airport and Roanoke Regional Airport request an outline of the enforcement procedures and guidance to the airport operators for noncompliance by individuals. The enforcement concept requires more explanation. The airport operator should be informed of all investigations and be provided a copy of the report of findings.

Port Authority of NY and NJ is concerned that the majority of enforcement of Federal responsibilities are placed on the airport. The Port Authority holds that the FAA should not be unique among Federal enforcement and oversight agencies in abdicating its enforcement responsibilities.

Burbank Airport Authority suggests that civil penalties should be up to $10,000 on a case by case basis, rather than $1,000 as stated in the preamble.

The UPS, RAA, Federal Express, a local department of aviation, Miami International Airport, and many other commenters support the adoption of proposed regulations which would require individual accountability to the FAA and use of civil penalties and enforcement actions against employees, contractors, and other individuals.

The ACI–NA, AAAE, and an airport suggest language stating that failure to comply by an individual will result in revocation of privileges, application of fines, or other punitive action by the Administrator. They also suggest language stating that this rule would not prohibit State or local governments from adopting similar or more stringent regulations for local enforcement. On the other hand, ALEAN suggests that the NPRM is a superficial and impractical attempt to solve a lack of personal accountability and responsibility.

FAA response: The enforcement procedures are found in part 13, Investigative and Enforcement Procedures, and FAA Order 2150.3, Compliance and Enforcement Program.

In further response to ACI–NA and AAAE, the FAA does not believe there is a need for the agency to insert language stating that the rule would not prohibit State or local governments from adopting similar or more stringent regulations. Many State and local governments are currently permitted to adopt similar or more stringent security rules within the context of their respective jurisdictions. Many have already done so. Airport operators are primarily responsible for the security and safety of their airports, both for civil aviation security and other security issues they encounter. As part of this effort, they adopt rules and procedures to gain compliance of their employees, contractors, tenants, and others with safety and security rules. Absent very unusual circumstances, State or local governments are free to adopt penalty provisions to promote compliance.

In response to UPS and other supporting comments on individual accountability, the agency wishes to emphasize an increased reliance on individual accountability, particularly with regard to a person's interaction with security measures. But, at the same time, the agency also emphasizes that the airport operator and aircraft operator are responsible for ensuring that their employees, contractors, and others comply with security duties. The FAA agrees with ALEAN that this section is not, standing alone, adequate to address all issues of individual compliance with security rules. It is intended to serve as another tool to assist the airport operators, aircraft operators, and others to emphasize the responsibility of individuals and other persons to do their part.

Proposed § 107.11 outlined provisions of the regulation for which individual accountability would attach. However, aside from the merits of this proposal, much attention, as reflected by the comments, seemed to focus not on § 107.11, so much as on the related impact of proposed § 107.103(a)(2). This language would have required the airport operators to establish and carry out an enforcement program to hold persons in violation of the program accountable at the local level. As discussed above, the comment period was reopened for that provision.

Burbank Airport Authority sought an increase in the amount of civil

penalties. The maximum civil penalty is set by statute, however, as to individuals in these circumstances, the amount is $1,100 (adjusted for inflation since Notice 97–13 was issued).

The FAA notes that the circumstances surrounding a single security violation may involve more than one responsible party. For example, if an employee circumvents an access control to a secured area, and gains unauthorized access to an aircraft, that person can be held individually responsible for his/her actions under new § 107.11(a). At the same time, the airport operator may be responsible for failure to control access to the secured area under new § 107.201(b), and the aircraft operator may be responsible under part 108.

This rule will also have the effect of prohibiting some unauthorized testing if it violates § 107.11. The unauthorized testing of security systems may be a form of compromise, circumvention, or interference. An example is a person who is not authorized to be in the secured area without escort, but who deliberately enters the secured area without escort. Many of these actions may serve to distract unnecessarily security or law enforcement resources from their duties, increasing the risks from actual threats. Such unauthorized ''testing'' of security systems can prove dangerous to the ''tester'' (such as if they are not aware of the safety issues in the AOA, with taxiing aircraft and other hazards). The final rule language is consistent with this position, and can be cited in holding accountable persons who conduct such unauthorized activities.

Comments on proposed § 107.11(b): Anchorage International Airport states that § 107.11(b) seems appropriate for what is now known as the ''sterile area'' or ''secured areas'' of the airport, not for areas that are currently known as the ''restricted areas.''

Miami International Airport and TWA state that § 107.11(b) should clarify that compliance with this section rests on the individual and not the airport.

Roanoke Regional Airport states that § 107.11(b) does not recognize that construction contractors may need to bring explosives into secure areas of the airport.

The Port Authority of NY and NJ, Northwest Airlines, and Detroit Metropolitan Airport question the means by which the airport can ensure that no person will have ''any deadly or dangerous weapon, etc.'' without screening all employees. Several commenters request clarification of ''deadly or dangerous weapon'' and ''other destructive substances.''

The ATA, UPS, and Federal Express strongly object to the imposition of screening procedures for employees at access points controlled by proposed § 107.205, and to rescreening of employees who have access clearance from the airport to enter secured areas.

FAA response: In the proposal, the agency sought to provide a means by which unauthorized persons carrying deadly or dangerous weapons, explosives, or incendiaries into the secured area could be held liable under the agency's compliance and enforcement program. The proposed language provided for persons who would have to carry such items into the secured area in the course of their authorized duties. After careful review, the agency has determined that local airport operators, through their local rules and laws, and law enforcement personnel, have the responsibility, authority and the capability to control the presence of weapons and other deadly items on airport property. Hence, there does not appear to be a need to introduce any new rulemaking regarding this issue at this time. The FAA has decided not to adopt proposed § 107.11(b), as well as the related language under § 107.11(c). Over time, the agency will monitor any incidents relating to persons carrying unauthorized weapons or deadly or dangerous items that may be detrimental to the flying public and if warranted, will develop comprehensive security measures.

Section 107.101 General Requirements

The FAA proposed this new section to incorporate related provisions of the existing regulation that require the security program to be current and in writing, and that a copy be kept at the principal operations office. The program's objective was proposed to be modified to include protection against the introduction of a deadly or dangerous weapon, explosive, or incendiary onto aircraft.

In the preamble, the FAA noted its intention to develop a standard airport security program, similar to the air carrier standard security program.

Comments: The ATA and Tucson Airport request that if the use of a standard airport security program is to be a mandatory requirement, then the airports should be given an opportunity to review and comment on its contents and application effects, prior to implementation. The additional time would provide consistency of airport and aircraft operator security programs and benefit the passengers, baggage, and cargo processing. Any policy directives for the model program should also be made available for review and comment.

FAA response: Upon review, the FAA has determined that it will be easier, less disruptive, less expensive, and equally effective to not develop a standard security program, but to modify the language of § 107.101(a)(4) to require that airport security programs include an index, arranged according to the order of subject areas cited in § 107.103. This requirement will preclude the need for major security program modifications. The FAA is also convinced that an index in each security program, arranged in accordance with this standard format, will moderate significantly the FAA's difficulties associated with overseeing the hundreds of vastly different security programs across the nation. The final language has been modified to that end.

Comments on § 107.101(a): Atlanta International Airport states that proposed § 107.101(a) should be written to reflect that airports are responsible for the safety and security of persons and property while at the airport. Roanoke Regional Airport states that the aircraft operator must be responsible for the security of persons and property onboard the aircraft.

Continental Airlines requests that § 107.101(a)(1) be clarified to exempt passenger checkpoint screening responsibilities from the security programs.

FAA response: The FAA believes that the delineation of authorities, for example the screening of passengers or the provision of law enforcement response, are properly assigned based on statute, regulation, reasonable attachment of liability, and the authority possessing the appropriate resources. The term ''on an aircraft operating in air transportation in air commerce'' reflects that the mandated measures in the statute at airports are ultimately in support of the security of person on board aircraft, and are not designed to address other security concerns. The proposed language was included because some of the airport's tasks do include support of the screening function, which prevents the introduction of weapons, explosives, and incendiaries on an aircraft.

Federal law assigns solely to aircraft operators the responsibility for passenger screening. That law cannot be overcome by regulation. Rather the intent of § 107.101(a)(1) is to emphasize the airport operator's role in supporting the screening system in cooperation with aircraft operators.

Comments on § 107.101(b): Atlanta International Airport, Tucson Airport, Minneapolis Airport, Port Authority of

NY and NJ, Detroit Metropolitan Airport, and Lincoln Airport Authority state that the ''principal operations office'' may not be the appropriate area to store the security program. Denver International Airport believes that specifying the storage location of the security program is not necessary and that making the security program available to the FAA for review upon request should be sufficient. However, requests from the FAA to review the security program should be made through the ASC.

FAA response: Upon reflection, the FAA agrees with the commenters. The rule language has been modified to delete reference to the ''principal operations office.'' Instead, the airport operator is required to maintain at least one current and complete copy at the airport and to provide a copy of the security program to the Administrator upon request. In most cases, the ASC required under new § 107.5 would be the primary contact for such requests.

Section 107.103 Content

The FAA proposed this new section to describe the required content of the security program. The proposed rule specifies three different levels of security programs varying in complexity. The most comprehensive security program would continue to be applicable to airports serviced by scheduled passenger operations on aircraft with more than 60 seats.

The type of passenger operations that trigger the two remaining types of security programs have been expanded somewhat, as the result of changes to part 108. The intent is to ensure complete protection of the sterile area and to ensure security of passengers.

Comments on proposed § 107.103(a)(1): Atlanta International Airport, Missoula International Airport, and Phoenix Aviation Department request removal of the requirement to outline the ASC's training. Training requirements should be provided in an advisory circular (AC), not the security program.

Juneau International Airport requested the FAA explain what the training requirements for ASC's and alternates are under § 107.103(a)(1).

FAA response: While ASC training has been addressed in the discussion of § 107.5, it seems appropriate to address the administrative aspect of the ASC training program requirements here. The FAA disagrees with comments submitted by the Atlanta, Missoula, and Phoenix airport authorities that the ASC training requirements should appear in AC's. Rather, the agency believes general training mandates appearing in the regulation must be clearly defined and required under specific language appearing in nonpublic security programs. The agency notes that the guidance in AC's is not mandatory. The proposed language is adopted without change.

Comments on § 107.103(a)(2): Numerous comments were received on the proposal to require each airport to have a security compliance program.

FAA response: As explained above under General Discussion of the Rule, the comment period on this section was reopened. The FAA will respond to all comments in a later action. The comments recounted here are only a representative sampling of the many comments received in response to proposed § 107.103(a)(2). Yet, since the close of the comment period, the FAA has become aware of shifting views by many of the same parties with regard to this and related issues. Therefore, the FAA has reserved decision on proposed § 107.103(a)(2), and reopened the docket for comments on August 10, 1999. The new comment period closed on September 24, 1999. The FAA will consider the comments received and consider what action, if any should be taken on this proposal.

Comments on § 107.103(a)(3)–(20): Five airports suggest that the FAA replace the word ''dimensions'' in § 107.103(a)(3)(i) with ''general description.'' A general description or a map would provide sufficient details of the areas. Information about the dimensions of the map should be delegated to appendices and not subject to FAA approval. Ft. Wayne Airport says that a scale map or diagram has been and should be sufficient to delineate these areas. If the FAA needs more detailed information, it should state the reason behind the requirement and include costs associated with calculating the dimensions of these areas into a cost benefit scenario. Quad City International Airport states that detailed map-making is a costly undertaking.

Denver International Airport and Port Authority of NY and NJ recommend modifying § 107.103(a)(5) to state ''sterile areas with direct access to the critical security area.'' Only those activities with direct access to secured areas in the NPRM from the sterile areas should be listed.

Another commenter recommends deleting any references to ''sterile areas'' in proposed § 107.103(a)(5) and throughout part 107 since the term is not defined.

Tucson Airport states that the following information should be outlined in an appendix, not included in the body of the security program: The system for maintaining records and the schedule for reporting them required by proposed § 107.103(a)(12), the contingency plan required by proposed § 107.103(a)(14), the exclusive area agreements required by proposed 107.103(a)(19) and the tenant security agreements required by proposed § 107.103(a)(20).

One commenter states that the incident and emergency management procedures, required by § 107.103(a)(17) are adequately covered for airports complying with part 139 programs. A reiteration of these procedures would be redundant and a cross-reference to the part 139 emergency plan should be sufficient.

FAA response: The FAA disagrees with the commenters that a ''general description'' rather than ''dimensions'' would suffice in describing various aspects of the airport in the security program. The FAA believes that the exact dimensions and boundaries, as required in the security program, are necessary to clearly establish where various security measures are required at different locations on the airport. With the advent of the tenant security program (new § 107.113), and the possible increased reliance upon exclusive area agreements (new § 107.111), this requirement becomes increasingly important. The detailed descriptions are necessary so that all parties are aware of what security procedures apply in what areas, and which party is responsible for carrying out those procedures. At the same time, the FAA does not expect the airport operators to generate detailed maps drawn specifically for this purpose. Rather, existing maps used for engineering and maintenance at most airports are usually acceptable and are in common use today. The wording remains the same. If an airport has a method of clearly identifying the boundaries of the areas without using dimensions, it may request to use that method.

In considering the comments that stated that only sterile areas leading to critical security areas (now secured area) should be detailed, the FAA notes that while most sterile areas have access points leading directly to secured areas, that condition may not be the case universally. Further, there are other considerations besides access to secured areas that forces the FAA to require that such details appear in the security program. Lastly, the FAA does not accept the suggestion to delete the term ''sterile area,'' since it is not defined in this part. It is defined in the final rule

to part 108, in § 108.3, and is a commonly used and understood term.

A security program may be structured in the manner suggested by the Tucson Airport by incorporating information appearing in program appendices. New § 107.103(d) (and current § 107.3(c)) provides for including information in an appendix.

As to the comments regarding proposed § 107.103(a)(17) regarding incident management (new § 107.103(a)(18)), the FAA wishes to emphasize that the requirement speaks to the evaluation of a threat, rather than to a response to an actual incident as referenced in § 139.325. The level of response to a threat is tied to the evaluation of that threat, which is a different process than responding to an actual highjacking or other event in progress. Evaluating which threats call for what type of response is a security issue, best handled under part 107. It may involve evaluation of non-public security information.

Comments on § 107.103(b) and (c): Minneapolis Metropolitan Airport states that the procedures for public advisories required by § § 107.103(b)(7) and 107.103(c)(6) (i.e., that a foreign airport has, in the judgment of the Secretary of Transportation, failed to maintain and administer effective security measures (new § 107.305)) should rest with the aircraft operators, that should be responsible for informing their passengers. This should not be an airport operator responsibility.

FAA response: The requirement to provide public notification that a foreign airport has been determined to have failed to maintain or carryout effective security measures, is found in the Section 44907(d)(ii), Title 49, United States Code. The FAA believes the requirement to prominently post the identity of such foreign airports at all U.S. airports having regularly scheduled aircraft operator operations is best accomplished at each U.S. airport by a single entity at each location. For consistency's sake, the FAA has determined that the airport operator should be responsible for the posting of this information. The law also requires aircraft operators serving the subject airports to notify their passengers of the foreign airport's status. With this dual requirement, the FAA believes all persons using the airport, and those using the specified carriers, will have ample warning before risking travel to a location that the Secretary of Transportation has determined lacks effective security measures.

Comments on § 107.103(d): Tucson Airport asks whether the FAA would allow inclusion of an airport's part 139 emergency plan in the appendix as sufficient compliance with this rule.

FAA response: Regarding placement of the part 139 emergency plan in the security plan as an appendix, the FAA notes its previous comments, above. It has no objections to this method where the plans are mutually supportive and meet the requirements of the respective parts. However, the FAA's civil aviation security organization's review and approval process of the security plan may employ different criteria than the reviews under part 139, for the review of the emergency plan. Simple inclusion in the security plan without the opportunity for the FAA's civil aviation security organization's review and approval on a case-by-case basis would not be acceptable. Additionally, only those limited portions of the emergency plan with direct relevance to security concerns should be incorporated into the airport security plan.

Section 107.105 Approval and Amendments

The FAA proposed to combine existing § § 107.5, 107.9, and 107.11 into a new section, proposed § 107.105. Several changes were proposed to the amendment process itself. Proposed § 108.105 prescribed the same approval and amendment procedures for aircraft operators.

Throughout this proposed section, any references to the ''Director of Civil Aviation Security'' were replaced with ''Assistant Administrator.'' Also, time restraints on filing petitions for reconsideration of the FAA's decision were included for airport operators. Specifically, § 107.105(a)(2) proposed that airport operators submit to the Administrator a petition for reconsideration within 30 days after receiving the notice to modify. Proposed § 107.105(a)(2) included the provision in current § 107.11(c) that the filing of a petition would stay the notice to modify pending a decision by the Administrator. Section 107.105(a)(3) proposed that the Administrator disposes of any petition within 30 days of receipt.

Section 107.105(b) prescribed procedures for an airport operator to request an amendment to its security program currently covered under existing § 107.9. The FAA proposed to increase the number of days prior to the effective date that the airport must submit its proposed amendment from 30 to 45 days. The proposed rule also noted that the amendment process may take longer than 45 days if the proposed amendment was modified or denied.

Existing § 107.9(b) states that the FAA will respond to an amendment proposed by the airport operator within 15 days. The proposal extended this time period to give the FAA 30 days after receipt for approval or denial of the proposed amendment.

In proposed § 107.105(b)(4), the FAA proposed to modify existing § 107.9(d) to limit the time that an airport operator may petition the Administrator to reconsider the denial to 30 days.

Retention of the FAA's existing procedures to amend a security program was proposed in § 107.105(c) and (d). Two significant changes, however, were proposed to the existing procedures of § 107.11: (1) A new requirement for airport operators to submit petitions for reconsideration no later than 15 days before the effective date of the amendment, and (2) a clarification that a petition for reconsideration stays the effective date of the amendment, unless the emergency procedures are used.

Comments: Miami Airport states that there must be procedures in place to ensure that amendments are not sent into an abyss which is created by returning the amendments to airports repeatedly for rewrites, or with general disapproval language that does nothing to aid the airport to satisfy the FAA's objective. Another commenter states that as written, this section leaves the airport with the feeling that there will be even longer delays to requests from airport for items that are essential to airport operations.

FAA response: The FAA agrees with the proposition that amendments, when submitted by airport operators, must be handled in a timely manner and in good faith. They must be submitted in the same manner. In practice, the complexity of any given amendment and the differences between the respective positions of the FAA and the airport operator will determine how often the amendment is handled and how long the process will take. The regulatory language appearing in the final rule attempts to place good faith constraints upon the parties, but recognizes that the exigencies of business as well as other factors often preclude strict adherence to deadlines. It is, therefore, in the mutual interest of both the operator and the FAA to work closely to agree upon amendment language that has been submitted as completely and in the most timely manner possible.

Comments on § 107.105(b): Several commenters suggest that this section should be amended to require the FAA to acknowledge receipt of an airport's proposed amendment within 5 business days. Within 30 days of receipt, the FAA should either approve or deny, in writing, the proposed amendment. One

commenter had submitted a proposed amendment to the FAA with no action for 11 months.

One commenter states that the submission of amendments to the Administrator presents problems, since airports dissatisfied with local FAA replies, could submit their requests to Washington.

Another commenter suggests that the FAA's civil aviation security field units (CASFU) should be required to review and return comments to airports within 120 days after receipt of an airport-submitted security program amendment. The FAA personnel should be required to approve and return the final security program to the airport for initiation and distribution to the necessary parties, within 60 days after any required resubmission by the airport of the final version of the security program.

The ATA and Anchorage International Airport oppose increasing the time for the FAA to approve an amendment request for either an airport operator or an aircraft operator and recommend that the FAA expedite the amendment process.

The ACI–NA and AAAE oppose the changes to the amendment procedures that impose more stringent deadlines on the regulated parties and relax the time burden on the FAA. These commenters recommend a modification to the rule that would require the airport to submit the amendment 30 days prior to the proposed effective date. Then, the FAA would have 15 days after receipt to approve, deny, or question the amendment, after which the airport operator would have 15 days to respond to the FAA's request.

FAA response: The FAA agrees that the airport operator is entitled to an acknowledgement of receipt of a proposed amendment. The FAA does not believe that this issue needs to be resolved through the regulation, since the airport operator can have the amendments hand-delivered, or sent via return receipt mail.

Also, the agency has noted elsewhere that references to the Administrator are to be interpreted as referring not only to that office, but to a subordinate level of the civil aviation security chain-of-command. This level would include the Assistant Administrator and the subordinates to whom he has delegated program authority, as noted in § 107.1(b).

As noted above, the FAA concurs that the expeditious handling of amendments is essential, and that every effort is made to ensure their timeliness. The agency will strive to meet that commitment.

The agency has carefully considered the time constraints the regulation will place upon all parties to the amendment and the approval process. The FAA has decided to implement a timeframe that it believes is fair and equitable when approached by all parties in good faith. It should also be noted that, in practice, the regulated parties have often requested amendments for activities that were to take place much sooner than the regular amendment process call for. The FAA often handles these on an expedited basis.

The FAA also notes that exclusive area agreements under § 107.111(b) and tenant security programs under § 107.113(a) may be terminated at any time by the FAA if it is determined to be in the interest of security and safety.

Comments on § 107.105(d): Miami International Airport, Lincoln Airport Authority, Federal Express, and Denver International Airport support the ASAC recommendations that Emergency Amendments be issued to the airport program with expiration dates.

Tucson Airport and Port Authority of NY and NJ state that FAA Emergency Amendments should be ''sunsetted'' 180 days from date of issuance if not canceled sooner. The 180-day constraint would not preclude reissuing of the Emergency Amendment, but would build in a review of the propriety and effectiveness of measures to be implemented.

One commenter states that there should be some provision to allow for local modifications to the FAA amendments.

Sacramento Department of Airports states that the current practice of policy memoranda should be discontinued. While there are instances where changes must be issued immediately, in memoranda, these memoranda should be followed up by the FAA within 30 days from the official regulatory change.

FAA response: The comments received in response to this section dealing with ''Emergency Amendments'' illustrate the different practices that have developed. In its original context, ''Emergency Amendment'' was used for exigent and permanent change to the basic individual airport's security program. It also has been used much like the Security Directive process available for several years to aircraft operators under § 108.18, that is, an amendment issued to address time critical threats that are expected to have a limited duration. Depending on the nature of the threat upon which the Emergency Amendment was based and the measures imposed, an expiration date was either set or left ''indefinite.'' But, in either case, the directive nature of the Emergency Amendment was focused on a specific threat, ostensibly with a finite period of applicability.

The final language of this section is intended to return this process to one in which permanent changes to the actual security program are made based upon such emergencies as may arise. Response to certain threats of finite duration, that were formerly handled by Emergency Amendments, now may be addressed in the new § 107.303, Security Directives and Information Circulars. The agency now intends for Emergency Amendments to security programs to be used for exigent changes made to the individual security program, on what is expected to be a permanent basis.

The FAA wishes to assure the regulated parties that it does not issue security program changes through policy memoranda. While memoranda are used for the FAA's internal guidance regarding ongoing programs and enforcement policies for existing requirements, the Emergency Amendment process under § 107.105(d) will only transmit Emergency Amendments to airport operators under cover memoranda. In many cases, where temporary emergency measures subsequently have become part of the baseline, those changes have been proposed through the normal process, with comments invited and considered before any final determination had been made. The FAA has become increasingly sensitive to the airport operators' concerns in this regard, and will continue to follow that practice under the new § 107.105, and as will be noted later, § 107.303.

Section 107.107 Changed Conditions Affecting Security

Proposed § 107.107 would expand the types of changed conditions that would require operators to take corrective actions. It would expand the scope of the requirement to encompass all the elements of the security program to ensure that any changes that may impact security would be reported to and addressed by the FAA as soon as possible.

As proposed, the airport operator would be required to report any changes in the physical layout of the airport, both areas relating to airport operations and aircraft operator operations. The proposal would augment the existing procedures for the airport operators to follow when a changed condition occurs by requiring the airport operator to initially notify the FAA within 2 hours, or within an approved timeframe, of the discovery of any changed condition that

could affect how an airport complies with regulatory requirements.

The proposal would require the airport operator during this initial notification to obtain verbal approval of any interim measures to be taken to maintain adequate security. The proposal would continue to allow the FAA to issue emergency security program amendments under proposed § 107.105(d) if an agreement on adequate interim measures could not be reached. However, the proposal provided relief in responding to short-term changes.

Proposed § 107.107(c) and (d) would require the airport operator to follow certain procedures to amend its security program to reflect the change. For changed conditions under 60 days' duration, § 107.107(c) proposed that the airport operator be relieved from the amendment process required under proposed § 107.105 and only be required to provide written notification within 72 hours for FAA approval. Recognizing that many changed conditions affecting security can be readily resolved in less time than it would take to complete the formal amendment process, the FAA sought this change to provide some relief in reporting short-term or temporary changes while ensuring that the FAA retains oversight of temporary or short-term changed conditions to security.

Proposed § 107.107(d) would provide procedures for the disposition of changed conditions anticipated to be over 60 days in duration.

Comments on § 107.107(a): Atlanta International Airport, among others, stated that the airport operator cannot be held accountable to notify the FAA of changes of aircraft operator operations, level of services, and aircraft. Miami International Airport and Ft. Wayne Airport state that this requirement would be more appropriate in parts 108 and 129.

The CALA states that changes should only include things as airport perimeter and structural redesigns, relocation of screening checkpoints, and redefining of airport secured areas. Miami International Airport, Port Authority of NY and NJ, and Lincoln Airport Authority state that the layout and physical structure (§ 107.107(a)(3)) can change frequently during construction. An overall construction plan should be submitted to the FAA, but not a constant series of notifications about the changes.

The ATA requests very clear criteria as to what ''changed conditions'' are, to satisfy the notification requirement. Denver International Airport suggests that ''changed conditions'' should be limited to conditions that have a serious and continuing impact on security. Furthermore, it was stated, the FAA did not consider the cost associated with personnel staff changes and equipment requirements for scheduling notification to comply with the newly revised notification requirements.

FAA response: In response to these comments, the FAA would like to clarify that its intent is that the only changes which need to be reported are those that cause the airports to be out of compliance with the provisions of part 107 or the FAA-approved security program, at the time the changed condition occurs. Furthermore, this section is not intended to include all construction projects, only those that impact its security program, such as access, movement control functions, and its support of passenger screening checkpoints. The language of the final rule has been modified to more accurately reflect that position, and to provide greater latitude to the airport operator insofar as the required timeframes for reporting changes that impact its compliance posture.

Comments on proposed § 107.107(b): Thirty-four airports, two local governments, a State government, six local departments and commissions of aviation, two airlines, and UPS suggest that a 2 hour initial notification of changed conditions is unnecessary and an arbitrary timeframe. These commenters state that the FAA does not seem prepared to handle the information overload for after-hours, weekend, and holiday occurrences when it is anticipated that FAA field reps would not be available to receive such information. These commenters recommend that the requirement to verbally contact the FAA should apply only to changes that seriously impact security and only as soon as practicable (such as within 24 hours of discovery by the airport operator). The option to provide this information electronically should be considered (such as e-mail and fax). On the other hand, ACI–NA and AAAE recommend that notification should occur within 48 hours. ATA suggests deleting this section because it lacks clear definition.

FAA response: The FAA agrees that a 2-hour initial notification of changed conditions may not be an acceptable timeframe. To provide some flexibility to the operators, this section has been modified to provide that notification be made within 6 hours of discovery or other timeframe for notification to be established in the individual security program. Further, while FAA field offices are not open 24 hours a day, telephone notification can be made to alternate contact numbers for field office staff.

Section 107.109 Alternate Means of Compliance

The FAA proposed this new section to provide relief for small airports located in communities that are only served by seasonal air carrier operator or foreign aircraft operator traffic (such as ski resorts), remotely located, subject to extreme environmental conditions, or have limited facilities and few employees. Often these airports serve aircraft larger than 60 seats for only a portion of the year, or on an infrequent but regular basis. This section would permit the FAA to approve airport operators of such airports to use alternative means to comply with the requirements of the rule. To petition for relief from part 107 requirements, larger airport operators would still have to use the exemption process under existing § 11.25, Petitions for rule making or exemptions.

Comments: The FAA received some comments regarding unique alternate measures at specific airports.

FAA response: Alternate measures at specific airports must be considered case-by-case and questions regarding them cannot be resolved in this rulemaking.

Section 107.111 Exclusive Area Agreements

Proposal: The notice proposed that the Administrator may approve an amendment to an airport security program that permits an air carrier or foreign air carrier that has an approved security program under part 108 or part 129 to assume responsibility for specified security measures for all or portions of the critical security areas or restricted operations areas. The exclusive area agreement must be in writing and must include all of the necessary information, as indicated in the NPRM, to be considered complete.

Comments: A commenter recommends that regulated entities be held responsible for the activities of their unregulated contractors, permitees, invitees, etc. The ALPA and RAA comment that the FAA should allow exclusive area agreements to be developed, which create joint liability and responsibility for the airlines involved. The RAA notes that this requirement could take the form of a consortium to share responsibilities.

Roanoke Regional Airport states that if the airport is conducting the ''monitoring and auditing'' to ensure compliance, then no ''responsibility'' transfer has occurred and such an

''exclusive lease'' for that purpose would be meaningless.

The ACI–NA and AAAE propose new language stating that the FAA may unilaterally revoke the agreement and descriptions of punitive actions that may be imposed on the aircraft operator or its employees by the FAA for violations of security regulations.

The ATA believes that no security requirements other than those agreed to by the parties to the agreement should be mandated.

One airport asks if the carrier's leasehold agreement could serve as the binding document for exclusive areas. If not, specific guidance for exclusive area agreements should be provided in an AC.

The Port Authority of New York and New Jersey and the city of Phoenix request that the words ''or one entity'' be added to § 107.111(a) after the phrase ''foreign air carrier,'' to allow air carriers to form a consortium or a corporation, like fuel farms and other enterprises operating international terminals. Shared responsibility should be allowed, but only when there is a legal entity established as the responsible party to ensure that the FAA has the ability to enforce the regulations.

FAA response: The FAA agrees that regulated entities are responsible for the actions of their unregulated contractors. The regulation provides for this concern by not excluding the regulated entities from such responsibilities. Hence, the FAA does not believe it is necessary to modify the proposed language in order to respond to the comment. The fundamental responsibilities for compliance with this part rest with the airport operator or on an aircraft operator or foreign air carrier under an exclusive area agreement.

Under the existing exclusive area provisions of § 107.13, and new § 107.111, the FAA's intent is for the airport operator to maintain an awareness of the security posture of the area covered under the agreement. To avoid misunderstanding, we have not adopted proposed § 107.111(b)(4) and (5) regarding the airport monitoring and auditing the aircraft operator, or terminating the exclusive area agreement. The FAA expects the ASC to maintain a general awareness of all security functions, and raise with the aircraft operator and/or the FAA any apparent deficiencies.

The FAA will continue to be responsible for inspection duties in exclusive areas, and for ensuring compliance, and will initiate enforcement actions when necessary.

The FAA agrees with the suggestion made by ACI–NA and AAAE that the regulation permits the agency, in extraordinary circumstances, to unilaterally and immediately terminate exclusive area agreements. In most cases the FAA will work directly with the aircraft operator to correct the problems. However, since poorly implemented agreements represent a vulnerability in the system, and thereby compromise the safety of the larger community, the FAA sees a clear connection between such circumstances and the need for immediate termination, and the return of the responsibility to the airport operator. For that reason, the procedures set forth in § 107.105(d), Emergency Amendments, would be employed for that purpose. The FAA sees no need for additional language toward that end in this section.

On the issue of joint liability and responsibility, the FAA has chosen not to provide such latitude. The agency believes that when more than one party holds joint responsibility for such matters, the responsibilities often are overlooked under the presumption that the ''other'' party will act. In that same view, a shared agreement might tend to fragment responsibility. Not that this would not prevent several aircraft operators from using the same portion of the secured area. Only one of them, however, could have an exclusive area agreement for a given part of the secured area.

The proposed rule stated that the exclusive area agreement could cover security measures in the critical security area or restricted operations area. The final rule clarifies that these measures include §§ 107.201, 107.203, and 107.205, and would include other sections cited in those, such as § 107.207. Other responsibilities held by the airport operator cannot be assumed by the aircraft operator. An example is the provision of law enforcement support (*see* § 107.215), which can only fall to the airport operator.

In response to the question as to whether a leasehold agreement could substitute for an exclusive area agreement, the FAA believes that it is permissible if the leasehold agreement meets the criteria established in § 107.111. Such an agreement, in appropriate part, could be approved by the FAA as a part of the approved security program. Often, however, a leasehold agreement includes material not relevant to the security program, such as financial arrangements. Such information likely would have to be removed.

Comments on § 107.111(a): The RAA stated that they were very concerned about the provision that responsibility for the security of an exclusive area cannot be shared. The nature of regional airline operations often mandates that they share facilities with their major airline partners, some of which have exclusive area agreements with airports.

Atlanta Hartsfield International Airport asks if this provision will allow the assignment of access points, leading from the public area to the sterile or critical security areas, to the air carriers. They would like to have the flexibility to assign doors and portals leading to baggage make-up areas, directly to the affected air carrier.

FAA response: Like the proposal, this new section assembles all of the provisions relating to exclusive area agreements that previously appeared in §§ 107.3(b)(3), (b)(5) and 107.13. Section 107.111(a) expands the existing exclusive area responsibilities for air carriers and foreign aircraft operators to include individual access points (e.g., doors and gates). The security responsibilities for these points may be assumed by a part 108 aircraft operator, or part 129 foreign air carriers, based on a local agreement with the airport operator when approved by the FAA as a part of the airport security program.

Comments on § 107.111(b): A commenter states that nothing in this section specifically notes that the aircraft operator is directly accountable to the FAA as a regulated party for any responsibilities assumed in the agreement. This should be stated in the rule and the ACSSP.

Two airports suggest changing the word ''dimensions'' to ''general description.''

Port Authority of NY and NJ would like the flexibility to assign doors and portals leading from the baggage make-up areas directly to the affected aircraft operator.

FAA response: Complementary language in the newly rewritten part 108 (*see* § 108.227) provides that the aircraft operator is required to comply with the responsibilities in the exclusive area agreement. A failure to comply could result in enforcement action against the aircraft operator.

Section 107.111(a) exclusive area agreements, states that in an approved amended security program, an aircraft operator or foreign air carriers (one that has a security program under parts 108 or 129) would be permitted to assume responsibility for specified security measures for all or portions of the secured area, AOA or SIDA. This may include doors between baggage make-up areas and secured areas.

With regard to comments about the term ''dimensions'' in paragraph (b)(1), the agency's position remains as previously stated. In performing its

regulatory responsibility, the airport operator, aircraft operator, foreign air carriers, and the FAA must be able to distinguish clearly the boundaries of the exclusive area. This distinction is necessary in determining what security measures must be applied, and by whom.

The FAA removed proposed paragraphs (b)(4) and (5) from the final rule language of § 107.111. These sections had required that the airport operators monitor and audit the carrier with whom it had an exclusive area agreement.

Furthermore, in response to the Port Authority of NY and NJ, the language of the proposed regulation clearly allows for the airport operator as well as the aircraft operator to be responsible for doors and portals leading from the baggage make-up areas (*see* § 107.111(b)(1)).

New § 107.111(c) provides a compliance date one year after the effective date of the rule for existing exclusive area agreements to meet new § 107.111. This will give aircraft operators and airport operators time to change existing agreements to conform to the new rules. Any new agreements, however, will have to meet the new rules.

Section 107.113 Airport Tenant Security Programs

As noted in the NPRM, this new section was proposed to permit the use of airport tenant security programs. These programs allow airport tenants, other than aircraft operators regulated under part 108, or foreign air carriers regulated under part 129, to assume some of an airport operator's security responsibilities, as specified in 49 U.S.C. § 44903(c)(2). That statute also clarifies that when an airport operator chooses to implement this program, it accepts the responsibility to inspect the tenant for compliance with the tenant security program, and to take enforcement action as appropriate.

Comments: Detroit Metropolitan Airport disagrees with the notion that tenants would be responsible to the airport operator and not the FAA on security matters.

Ft. Wayne Airport states that this section should include a blanket exemption for any and all military and other Federal facilities co-located on the airport property. If they are not exempted, then close coordination between the FAA and the Department of Defense must occur prior to initiation of the new part 107 regulation.

The LSG/Sky Chefs and Lincoln Airport Authority urge the FAA to either mandate the tenant security program everywhere or eliminate this option altogether. The FAA should provide clear guidance as to what a tenant program consists of, instead of addressing the issues for the first time by each airport during the development of the program or through enforcement actions.

The ACI–NA and AAAE state that nothing in proposed § 107.113 specifically identifies tenants as the regulated party with direct accountability to the FAA for security responsibilities assumed in the agreement.

The NATA strongly opposes any attempt to regulate directly airport tenants and believes that this Congressionally-approved approach of airport tenant security programs will address the concerns of the airport operator community that were raised previously over security violations of its tenants. The penalties posed by the airport operator should not be permitted to go beyond those provided by the FAA. The tenant should not be required to enter into such an agreement with the airport, and it should be emphasized that it is voluntary in nature. There must be an allowance for the airport tenant to cancel the agreement with the airport operator.

FAA response: While Detroit Metropolitan Airport objects that tenants would be responsible to the airport operator rather than to the FAA on security matters, the statute that enacted this program provides no latitude in this regard, and was enacted largely through the efforts of an industry association.

In response to the suggestion by the Fort Wayne Airport that military and other Federal facilities at the airport be exempted, the FAA notes that Federal civilian entities are merely tenants within the context of civil aviation security. The FAA does not regulate military facilities, in that the agency's jurisdiction does not extend to military reservations. The military's cooperation in ensuring a secure airport environment is always sought. As an integral part of the host airport, the military facility, and relevant security issues, must be reflected in the airport security program.

In response to the suggestions made by LSG/Sky Chef and the Lincoln Airport Authority, there does not appear to be any reason to either require tenant security programs for all tenants or to forbid them. Each airport and tenant has different circumstances, and the use of these programs will be based on the needs and wishes of concerned parties at each airport. Within the latitude of the statute, the FAA believes such decisions are best made at the local level. However, in further response, the FAA has provided more information in the rule as to what must be in the tenant security program.

As with exclusive area agreements, airport tenant security programs would only provide for the tenant to assume responsibility for measures under § § 107.201, 107.203, and 107.205, and sections cited in those provisions. If appropriate in a given situation the airport might simply copy provisions from its own program into the tenant program. The airport operator may not transfer responsibility to provide law enforcement support. Further, the tenant may only take on employment verification responsibilities as provided in § 107.209. The tenant may not conduct the criminal history records checks, which under title 49, United States Code, section 44936, may only be done by the airport operator or aircraft operator.

Section 44903(c)(2) provides that the tenant may assume responsibility in an area that it leases or is designated for its exclusive use. The FAA interprets this to foreclose the use of an airport tenant security program for companies that contract with the airport operator to manage a terminal building. The terminal is used by one or more aircraft operators and numerous passengers, visitors, and businesses. Further, it remains the fundamental responsibility of the airport operator to provide security under the statute and the regulations for areas that directly serve the flying public. This has been made more clear in § 107.113(a). The FAA views the airport tenant security program to permit a tenant to take on security duties for areas that are not directly handling passengers for whom part 108 measures apply. It is not a means for the airport to transfer duties that are directly dealing with passengers, which is the fundamental mission of part 107. Thus, a fixed base operator at a remote site may be an acceptable candidate for an airport tenant security program. Its duties, while important to the overall security of the airport, are not as directly involved with passengers. Security at the terminal building is directly involved with passengers and should not be transferred from the airport operator.

At some airports an aircraft operator with a part 108 security program is the major or only aircraft operator at a terminal, and may lease and manage the terminal building. The aircraft operator may assume security responsibilities for that terminal under an exclusive area agreement under § 107.111.

The final rule also has been clarified to provide that only one tenant can be responsible for each area covered by a tenant security program. This is consistent with the statutory provision that the area be leased to or used exclusively by the tenant. Further, as with aircraft operators, it is evident that when responsibility is unduly diluted, it is more difficult to promote compliance with the security requirements. It should be noted that the FAA will carefully consider whether security is served before approving an airport tenant security program. Before approving the program, the FAA must find that the tenant realistically is capable of carrying out the security measures it is assuming and is willing to do so.

In response to ACI–NA and AAAE, the FAA notes that the statute does not provide for the tenant to be directly accountable to the FAA for violations. Rather, the airport operator is responsible for taking action against the tenant if it fails to comply with its security program. The term ''regulated party'' is a vague one. The tenant is regulated in that it becomes responsible for carrying out its FAA-approved security program, with consequences from the airport operator if it fails to do so.

In response to the NATA comment, the statute on which airport tenant security programs are based states that the tenant will be required to pay financial penalties to the airport operator in the event that the tenant fails to carry out any such security requirement. The statute does not address the amount to be assessed by the airport operator. The FAA's interest in this process will be served when the agency is satisfied that the program includes provisions for the imposition of fines or other penalties adequate to promote or ensure compliance by the tenant participating in the agreement.

As to NATA's comment that the tenant's agreement to an airport tenant security program should be voluntary, Section 44903(c)(2) is silent as to whether airport operators can require their tenants to enter such an agreement. The FAA generally is not involved in such tenant-landlord issues unless there are violations of Federal law, regulations, or grant assurances. As to whether the tenant will be able to cancel the agreement, if the tenant is not able or willing to carry out the tenant security program the FAA will amend the airport security program to remove the tenant security program and provide that the airport operator is directly responsible for the security measures. Any issues between the airport operator and tenant as to possible breach of contract generally will not be resolved by the FAA.

Comments on § 107.113(b): One airport suggests removal of the reference to ''monetary and other penalties.'' The airport operator must have the flexibility to resolve tenant security program infractions on a case-by-case basis.

Two airports comment that under proposed § 107.113(b)(4) tenants should be directly accountable to the FAA, if a ''person'' can be accountable.

FAA response: The tenant security program must outline the terms of the agreement, including monetary and other penalties. The reference to ''money penalties'' comes from the statute, Section 44903(c)(2)(A)(ii). The term ''other penalties'' allows flexibility on the part of the airport operator; however, the nature of that phrase must be outlined in the program by the airport operator. By the same token, the FAA will not approve a tenant security program for which the airport operator has not established a meaningful system of monetary penalties and other penalties applicable in cases of noncompliance. Further, the agency recognizes that token penalties may yield only token compliance or may be willingly incurred by some tenants as a cost of doing business. Such factors will be considered by the FAA in evaluating each tenant security program.

As to responsibility of the tenant under § 107.11, routine use of enforcement action by the FAA against the tenant would dilute the airport operator's responsibility under Section 444903(c) to make sure its security program is carried out. However, in appropriate cases, the FAA will consider action, particularly against individuals.

Section 107.201 Security of the Secured Area

The FAA proposed in § 107.201 to require the airport operator to establish a critical security area and implement certain security measures. The proposed critical security area essentially replaced the secured area that originated with existing § 107.14.

Proposed § 107.201(b) would require an identification system that incorporates the standards of proposed § 107.209 (now § 107.211), including implementation of a challenge program and escort procedures.

It was proposed that, under this section, individuals with unescorted access to the critical security area continue to be required to submit an employment verification as specified in proposed § 107.207 (now § 107.209.)

The FAA proposed that § 107.201(b)(6) require the airport operator to train individuals in a manner prescribed in proposed § 107.211 (now § 107.213) prior to authorizing such individuals unescorted access to the critical security area.

This section also proposed in § 107.201(b)(7) to require signs at access points to and along the perimeter of critical security areas. The NPRM's preamble discussion of the sign requirements referred readers to the FAA's AC 107–1 (May 19, 1972). This AC recommends that airport operators appropriately post signs warning of the entry restrictions to certain areas at the airport and any penalties associated with unauthorized entry. The FAA proposed that the airport operator be permitted 2 years to implement the new sign requirements.

Comments on § 107.201(a): One commenter states that § 107.201 should be deleted, as the systems called for in § 107.209 (Identification Systems) are unnecessary and systems identified by proposed § 107.205 (Access Control Systems) are sufficient.

The Airport Consultants Council (ACC) states that the FAA should not have different training and identification requirements for the critical security area and restricted operations area.

Another commenter asks if it is the intention of the FAA to have the critical security area replace the present SIDA. If so, the requirement for display of identification media should be completely spelled out.

FAA response: The secured area is discussed above under General Discussion of the Final Rule. As noted in the earlier General Discussion, the FAA has decided to retain the term ''AOA'' and ''secured area.'' Therefore, these terms will be used in place of ''critical security area'' and ''restricted operations area,'' respectively, for the remainder of this discussion.

Contrary to the views of the first commenter, the FAA does not believe that this section should be deleted. Proposed § 107.205, Access Control Systems (§ 107.207 in the final rule), specifies the requirements for the system, measures, or procedures for controlling entry into the secured area. An important element of strong security is redundancy. If an unauthorized person were to enter the secured area, the airport operator must have a means to determine that the person who is present is not authorized to be there; hence, the need for an identification system as provided for in proposed § 107.209 (new § 107.211). Section 107.201 establishes the secured area as

a place on the airport that incorporates these two critical security systems, as well as others, to protect the most critical operations of part 108 and part 129 aircraft operators.

In response to ACC, the FAA notes the different burdens of providing training in the secured area versus the more general requirement attached to the AOA, as noted by ACC. The agency believes that a strict training and ID standard should attach to unescorted access privileges to the secured area, where the most critical operations are performed. In other areas, there is not the same need at each airport for the most intense security requirements.

As to the commenter who asked if it is the FAA's intention to have the critical security area replace the current secured area, the FAA notes this was the intention in the NPRM. Again, however, the term ''critical security area'' has not been adopted, in favor of the current term ''secured area.''

In response to the commenters question regarding replacing the SIDA, the FAA notes that a secured area is a SIDA, and incorporates other security measures as well.

Comments on § 107.201(b): Federal Express, eight airports and one air carrier recommend changing the word ''prevent'' to ''deter and/or detect.'' These commenters believe that the program must be able to detect and remove unauthorized personnel from these areas.

One commenter states that this section implies that full badging may be required everywhere inside the fence at an airport. Such determinations should be made on an airport-specific basis in concert with local FAA officials. Badging should be based on need, not by definition of an area.

The ACI–NA and AAAE expressed several concerns regarding the proposed vehicle identification requirements.

The CALA and an airport state that § 107.201(b)(5) should be more clear and be expanded to exempt airports from having to review background investigations completed by airport tenants on persons requiring SIDA access, received from aircraft operators, that are directly regulated by the FAA.

Several airports state that this proposal should allow general terms on the signs and variations in interpretation depending upon how the airport is divided. Adding sign requirements for all doors would increase the cost significantly. Furthermore, posting signs meeting the additional criteria discussed in the NPRM would pose additional costs without any accompanying increase in security. One airport states that a minimum distance between the warning signs on the perimeter should be provided to ensure uniformity at airports. The ACC states that the proposal lacks reference to sign requirements relevant to the Americans with Disabilities Act.

FAA response: Several commenters questioned the use of the word ''prevent'' as it appears in §§ 107.201 and 107.205. The FAA disagrees with the arguments put forth by commenters. The word ''prevent'' in this context means to keep unauthorized persons and ground vehicles from the area, and appears in current § 107.13(a)(1). The section goes on to list the methods the airport operator must use to do so. The FAA believes that the high level of security required in the secured area is best completed by first preventing unauthorized access.

Further, the FAA agrees with the commenters, to the extent that a detection capability must also exist should a security system fail to prevent an unauthorized penetration or other potentially dangerous situation from occurring. This philosophy is consistent with the FAA's long held belief that the civil aviation security system is an integrated set of interdependent measures. Consequently, the final regulation also incorporates the requirement for ''detection'' in § 107.201(b), a carryover from existing § 107.13. As to the commenter who noted that the proposal implies that full badging may be required everywhere at an airport, the FAA notes that the proposal to require identification systems in both the critical security area and the restricted operations area has not been adopted. The final rule requires identification media only in the SIDA, of which the secured area is a part.

As to ACI-NA's and AAAE's questions about vehicle identification systems as proposed in §§ 107.201 and 107.203, for reasons discussed in response to comments in § 107.211, the FAA has decided not to adopt the proposed requirements for vehicle identification systems.

In response to the commenter who suggested that this proposal should allow for general terms on signs, the FAA notes its intent is to allow each local program the latitude to place appropriate signs in a manner that befits the local conditions. Signs remind the person working at the airport that they are entering an area where certain security measures are in place and for which they may be held individually accountable. Also, the signs warn the uninitiated person that access to the area beyond that point is restricted, and that security measures are in effect beyond that point. The FAA believes there is a value to the notification and deterrence effect of such signs. Consequently, the proposed language essentially is unchanged.

Section 107.203 Security of the AOA

The FAA proposed in this new section to require the designation of a restricted operations area and to specify security measures that must be implemented in it.

As in the critical security area, this section proposed that airport operators use a personnel and vehicle identification system to control movement that meets the standards prescribed in proposed § 107.209.

The FAA proposed to require that the airport operator implement the same escort and challenge procedures used in the proposed critical security area; however, access investigation would differ. This section proposed to require the existing 5-year employment history verification standards currently used in the AOA and as they appear in local airport security programs. This section also proposed requirements for signs similar to those of the critical security area.

Comments on § 107.203(a): One airport states that conducting background investigations, badging, training, and auditing all of these operators and individuals would be extremely costly, while adding no improvement to airfield security. This commenter recommends that the focus remain on security and protecting the SIDA or critical security area.

The ACI–NA and AAAE strongly recommend that the requirements formerly associated with the SIDA be limited in application to the critical security area and that the terminology be changed.

FAA response: The AOA is discussed above under General Discussion of the Final Rule. As previously noted, the FAA has deleted the proposed change to the use of the term ''restricted operations area,'' and has retained the term ''air operations area'' to reflect that area and its requirements under § 107.203. The term AOA will be used from this point on.

After further consideration, the FAA has determined that requiring identification in the AOA is not necessary at all airports, nor are the strict escort and challenge procedures that were proposed. The final rule reflects the emphasis placed on the secured area under § 107.201, as more latitude is permitted for the airport operator under § 107.203 than was proposed. However, while the measures

to be used in the AOA are not strictly prescribed by regulation, the airport operator continues to be responsible for the burden of preventing and detecting unauthorized entry, presence, or movement of persons and ground vehicles in the AOA. Some airports have decided it is necessary, with FAA approval, to require the display of identification throughout their AOA. Also, most airports require a 5-year employment history verification for those with unescorted access to the AOA. This provision, or another check to verify the person's identification, would continue to be part of the airports system to control the AOA.

Under the final rule, security requirements for the AOA remain similar to those in current § 107.13. They are: control of access to and movement on the AOA, the response to unauthorized penetrations, the provision of security information to persons with unescorted access to the AOA, and the posting of signs. The FAA believes this less prescriptive approach in the AOA will provide the greatest flexibility to the airport and its tenants. These measures generally are in effect today. The concerns of many commenters are, therefore, mitigated since part 107 airports currently possess FAA-approved security programs which adequately describe the AOA and no new burden is imposed.

Comments on proposed § 107.203(b): Two airports recommend deleting the requirement for access media for personnel with equipment within the AOA from § 107.203(b). The practicality is that this requirement will be very burdensome for small airport operators with little or no benefit to the critical security area as a result of the additional expense and manpower requirements.

Continental Airlines and the National Association of Police Officers (NAPO) state that § 107.203(b)(2) should be more thoroughly clarified and expanded to exempt airports from reviewing background investigations by airport tenants or persons requiring SIDA access. These background investigations are received from aircraft operators who are directly regulated by the FAA.

Three airports state that the posting of signs meeting the additional criteria appearing in the discussion of the NPRM would pose repetitive monetary expenditures without any accompanying increase in security. One commenter states that a minimum distance between the warning signs on the perimeter should be provided to ensure uniformity at airports.

FAA response: To the commenter who suggested deleting the requirement for access media for personnel with equipment within the AOA, the FAA points out that it is possible under the regulation and would be a local decision. For example, the FAA is aware that at some locations individuals working in teams (such as, construction crews) may not each possess individual access or identification media. Instead, such teams may work under escort of someone with the appropriate authority. The latitude for an airport operator to employ this practice continues to be acceptable under this final rule.

As to Continental's and NAPO's suggestion to exempt airports from reviewing background investigations for unescorted access to the AOA, the FAA points out that it has not adopted the specific 5-year employment verification requirement proposed under § 107.203(b)(2). Instead, the FAA chose to retain in that section the less prescriptive approach of current § 107.13 as regards control of the AOA. New § 107.203 fixes the airport operator's responsibility for the AOA to that of control of entry and movement, and the prevention and detection of unauthorized persons and vehicles.

The FAA expects that airport operators seeking to comply with new § 107.203 will need to verify the identification of persons granted unescorted access to the AOA. Since the 5-year employment verification process has provided for that for many years, some airports may choose to retain that approach. The FAA would also consider other methods to accomplish the same end.

As to the comments regarding fencing, the FAA disagrees that the costs do not result in additional security. Fences provide a positive, physical barrier to intrusions. They provide deterrence, as well as notice to well-intentioned persons who recognize that fencing sets an area apart for some purpose. Taken together with the requirements for the posting of signs under the rulemaking, the agency is convinced the two measures will provide a visible and effective means to provide an initial level of protection to the airport.

The FAA does not wish to specify a fixed distance between signs. Local conditions, the character of fence lines, topography, etc., should be more determining of sign placement than a distance set in regulation. At the same time, the FAA would expect signs to be constructed and placed in such a way as to be readily visible and readable from any point along the fence line, with details reflected in the airport security program.

Section 107.205 Security of the Security Identification Display Area (SIDA)

As noted under the General Discussion of the Final Rule, the term ''SIDA'' is being retained, but its definition is being revised.

It is the FAA's intent that airport operators who choose to apply the provisions of new § 107.209 to areas outside of secured areas must have clearly justifiable reasons for doing so. The use of the employment history verification and in some cases, criminal history records checks, under § 107.205, imposes a burden on individuals that only should be used when necessary. Examples of areas outside of the secured area that may be SIDA's include cargo make-up areas, fuel farms, maintenance areas, and other areas handling activities related to part 108 operations.

The following table illustrates the differences in security requirements between the secured area, SIDA, and AOA.

Requirements	Secured area	Security identification display area	Portions of air operations area that are not SIDA
Complex Access Controls	X		
Baseline Access Controls			X
Escort Procedures	X	X	
Personnel Identification System and Continuous Display of Identification	X	X	
Challenge Program	X		X
Employment History	X	X	
Verification and Criminal Records Check	X		X
Security Training	X	X	X
Security Briefing			X

Requirements	Secured area	Security identification display area	Portions of air operations area that are not SIDA
Signs	X	X	X

Section 107.207 Access Control Systems

This section was proposed as § 107.205 but was renumbered in the final rule as § 107.207.

The FAA proposed in this section to specify the requirements for access control systems that are required in proposed § 107.201 and § 107.203.

Proposed § 107.205(a) covered access systems for critical security areas that were essentially the same as in current § 107.14. As proposed, § 107.205(b) covers access requirements for the restricted operations area. The proposal was largely the same as the requirement in current § 107.13(a), except for the proposal that the system be locally controlled, and that the airport have accountability procedures. The proposed accountability procedures included regular audits of issued access media, and measures to ensure that access controls are locally controlled and could not be used to gain access to the restricted operations area of other airports.

Proposed § 107.205(c) addressed concerns raised by the ASAC on the issuance of temporary access media to individuals who are not in possession of their original access media. A typical example of this is an airport or aircraft operator employee who reports to work without her/his approved access and identification medium and cannot practicably be escorted throughout the course of her/his assigned shift.

Section 107.205(d) proposed that the airport operator establish and implement escort procedures for individuals who do not have access authority. Many airport operators already have some type of escort procedure in place based on FAA policy guidance, but such procedures are applied inconsistently and often ineffectively.

The FAA proposed § 107.205(e) to allow airport operators to address the issue of group validation access. The present performance standards under § 107.14(a) do not allow for group access, but the proposed language would have allowed the FAA to work with each airport operator to resolve the issue locally. Comments regarding the practicality of group access were requested.

The FAA proposed § 107.205(f) to address access control points that lead from non-public areas, other than critical security areas, to the sterile area.

Proposed § 107.205(g) would incorporate the current provisions of § 107.14(b) for alternative access systems.

Comments on proposed § 107.205 (new § 107.207): A commenter says this section is unclear and impossible to implement, while several commenters noted that the whole burden appears to be placed on the airport operator with none on the aircraft operator. An airport asks whether the proposal envisions access controls such as cameras and gate guards.

ATA is concerned about the proposed access controls for employees, particularly crewmembers, because existing controls are more than adequate.

FAA response: In response to the comment that this section is unclear and impossible to implement, the FAA disagrees. The agency wishes to point to the fact that most of the provisions of the proposal are successfully in daily use at hundreds of airports across the country under current §§ 107.13 and 107.14. As to the claim that the burden falls only to the airport operator and not aircraft operators, the FAA has long held that the responsibility to ensure a safe airport operating environment falls primarily to the airport. However, aircraft operators are required to control access to their aircraft under part 108 and, therefore, are jointly responsible for adequate security in portions of the secured area and the AOA. Further, under exclusive area agreements aircraft operators take complete responsibility for much of the security. Under this final rule, the FAA provides a means for greater relief to the airport operator through the broadened exclusive area provisions appearing in § 107.111 and with the new provision for tenant security agreements under § 107.113.

As to the exact measures to be used to control access under new § 107.207, the means by which the requirements are accomplished is largely a local decision for the airport operator, as detailed in the security program. The final rule does not specifically require the use of cameras and gate guards, although both are in common use throughout the industry today and can be a part of the systems that provide the appropriate level of security under this rule.

The FAA agrees with the ATA that the requirements for access controls under the current regulation are adequate when diligently and conscientiously implemented. For that reason, access control standards have not been expanded in the final rule. Rather, new §§ 107.201, 107.203, and 107.207 essentially reflect the access control requirements of current §§ 107.13 and 107.14.

To the commenter who objected to identification media that displayed a persons access authority, the FAA offers that this requirement has been in place for years at many airports and has proven effective. Each airport operator has flexibility to design a system that works for its airport.

Comments on proposed § 107.205(a) (new § 107.207(a)): Tucson Airport Authority states that the FAA should also address the regulatory requirement of § 107.205(a)(2) in part 108 and part 129.

ACI–NA, AAAE and two airport commenters state that § 107.205(a)(3) should be deleted, while several other airports and a local aviation department state that under § 107.205(a)(3) it would be too complex and difficult for airport employees to challenge access to different critical security areas.

One commenter questions the reasoning to allow employees to have access to only a portion of the critical security area.

Several airports reject the proposed requirement in § 107.205(a)(4) to control an individual's access to critical security area by time and date. Industry does not have the personnel required to modify access by time and date. An airport and a local aviation department state that a universal access system (UAS) for flight crews would make compliance with proposed § 107.205(a)(4) impossible. An airline states that during contingency plan operations, the issuance of special identification media limiting access by time and date could be controlled in accordance with § 107.205(g).

FAA response: As background information, the FAA notes that proposed § 107.205(a) reflects the requirements in current § 107.14(a), and represents no new requirements. The FAA agrees with the Tucson Airport

Authority that aircraft operators and foreign air carriers must notify airport operators in a timely manner of individuals whose access authority has changed. This is an element of carrying out their duties to protect their aircraft from access by unauthorized persons.

In response to the ACI–NA, AAAE, and others' comments opposing proposed § 107.205(a)(3), the requirement that the access system differentiates between individuals authorized to have access to an entire secured area or to portions of a secured area is in current § 107.14(a). The rule does not require airport operators to restrict individuals' access to specific portions of the secured areas. The rule provides that if the airport does in fact restrict access, the access control system must be capable of recognizing these restrictions. The airport is given latitude to design a system that works for its particular circumstances.

The current § 107.14(a) requires that a system be capable of limiting an individual's access by time and date has existed in the regulation since it was adopted in 1989. The proposal contained this requirement in § 107.205(a)(4). The intent was to ensure that the airport operators had a capability to limit the number of persons accessing the secured area while under a heightened or specific threat. Despite many such threats since that time, to include several during the Gulf War of 1990, the FAA has never felt the need to direct the implementation of that capability. However, it is conceivable that a threat situation may develop which could be so specific that only through implementation of this capability would the airport be permitted to remain operational. The agency notes, however, that in such a situation, the emergency authority available to the Administrator under new §§ 107.105 and 107.305 would permit the FAA to impose such requirements as necessary to respond to the emergency, as is true under current § 107.11. Hence, the retention of the disputed language is unnecessary. Its retention may impose more of a continuous burden on the industry than the worth of the measure might justify. The deletion would relieve the airports with existing systems from having to exercise, maintain, and upgrade this capability. Further, if new systems are installed, they will not have to meet this criterion.

Comments on proposed § 107.205(b) (new § 107.207(c)): ACI–NA, AAAE and several airports state that the language in the proposed rule seems to suggest that § 107.14 type controls would be required at all access points to the restricted operations area. This would be an expansion of the existing automated access control systems. These commenters do not believe that this is the FAA's intent, and request clarification of this issue.

One commenter states that if the FAA insists on the issuance of some type of airport operator access media for the AOA (proposed restricted operations areas), then a detailed justification for this identification media should be established. One airport suggests that the FAA delete the requirement under § 107.205(b)(2) and replace this with language that requires the airport operator to prevent inadvertent entry into the AOA.

UPS requests specific definition under § 107.205(b)(3) of ''be locally controlled.'' UPS requests that the system be located off property for centralization of control and reporting capability.

FAA response: In response to ACI–NA, AAAE, and others who understood the proposal to place the same level of access controls on the AOA as on the secured area, the agency notes that this is a misapprehension. Rather, the proposed rule (and the final rule, § 107.207(c)) reflect largely the same requirements on access points to the AOA as those in current § 107.13. In new § 107.207(a) of the final rule, the FAA only is to a large extent continuing the current requirements to control access to the AOA. The main addition is that the system must have an accountability system to maintain the integrity of the system. Such a system, would for instance, maintain program accountability for keys that are issued, including retrieval of the keys and re-keying the locks when necessary.

The FAA has chosen not to adopt the commenter's suggestion to delete the requirement under § 107.205(b)(2) and replace it with language which requires the airport operator to ''prevent inadvertent entry'' into the AOA. Part 107 deals directly with intentional, potentially criminal acts against civil aviation. Part 139 deals with concerns regarding inadvertent entry into or onto the AOA.

UPS asked for clarification of the term ''local control'' in proposed § 107.205(b)(3). The original concept of ''local control,'' was that a system be totally contained by the local airport or the air carrier on a local basis. When the proposed rule was written, the FAA's intent was to preclude system-wide manual access control media such as lock and key systems, in which the same access medium could be used at many airports. The danger the FAA saw, for example, was that a lost or stolen key could compromise security at all the airports where that key could operate the access control system. This has been a practice by certain air carriers in the past. The concern was a situation could arise requiring an immediate change of locks at all affected locations systemwide. This would be logistically difficult and extremely costly to achieve.

Upon review, the FAA agrees the proposal that access systems be locally controlled overstated the intent. Locks with keys that can be used throughout an aircraft operator's system may be acceptable. However, the FAA continues to object to the use of such systems that could not be altered immediately at the local level to prevent compromise of the system. Therefore, such system-wide access controls would not be approved in either airport or aircraft operator security programs unless there was sufficient local ability to alter the system as needed.

Comments on proposed § 107.205(c) (new § 107.207(d)): One commenter states that ''secondary'' access media should be renamed ''temporary'' access media, to more accurately convey the intent of this section.

UPS, Federal Express, and an airport recommend that this section be clarified to state that secondary access media can be issued when an individual unintentionally/inadvertently forgets his/her access media.

FAA response: In response to the commenter who recommends the name change, the FAA term ''secondary'' access media was chosen since it was believed to more accurately represent the fact that this privilege could be granted by the airport operator only to those persons who already have an access medium and who have already fulfilled requirements for this privilege. The use of the term ''temporary'' access media was considered but was dismissed because the FAA believes ''temporary'' implies granting of a privilege that did not previously exist and that would have a finite life. Therefore, the FAA has maintained the term ''secondary'' access media, while using ''temporary'' elsewhere in the rule (see § 107.211).

In considering the comments of UPS, Federal Express, and others, the FAA's intent in the proposed language of § 107.205(c) was to extend to the airport operator the latitude to issue ''secondary'' media. It was not the FAA's intent to require the airport operator to use secondary access media, but rather to provide the option should the airport operator choose.

Comments on proposed § 107.205(d) (new § 107.211(e)): ACI–NA, AAAE, and

several airports state that § 107.205(d)(2) should read ''* * * individuals are continuously accompanied, supervised or monitored * * *''

One airport states that escorting procedures that include group validation are flawed in that there is no means of determining who is responsible or if the group remains together.

FAA response: In the final rule, the requirements for escort appear in § 107.211.

In considering the escort function and its importance to providing for a flexible civil aviation security system, the FAA adopts the suggestion by ACI–NA and others to include the word ''monitored.'' The FAA believes the escort function can be consistently and effectively applied under this latitude at some locations. The key is whether the person monitoring the subject can immediately assess the actions of the subject and take action if the subject engages in unauthorized activity. The exact procedures may be developed at each airport and placed in the airport security program.

To the airport concerned about fixing responsibility for group escort, the FAA notes that the local escort procedures should be designed and implemented in such a way as to make clear where that responsibility lies. Further, the local escort procedures should be clear as to the actions a person providing escort should take should a person or group under escort fail to comply with the conditions of the escort.

The final rule refers to escort within the secured area or SIDA. There are some areas of AOA's, however, where escort and challenge are part of the system for controlling the presence and movement of individuals. For instance, a fixed base operator (FBO) in the AOA may monitor the activities of GA pilots and others, and challenge them if they go beyond the FBO area.

Comments on proposed § 107.205(e): Several commenters asked questions about group validation.

FAA response: Current § 107.14(a) precludes group access. The performance standards requires that each person using a § 107.14(a) access point must be tested to ensure that their authority is appropriate to the access point. At the time the changes to part 107 were proposed the operational difficulties associated with § 107.14(a) access points caused the FAA to consider permitting group access at § 107.14(a) points.

The FAA conducted tests at several locations to determine if group access through § 107.14(a) points was a viable option in light of the inherent criticality of secured areas. The results convinced the FAA that in most cases, the operational benefits offered through group access at such points could not be justified when weighed against the threat to the secured areas. Consequently, the FAA has determined that the proposed language permitting group access in § 107.205(e) is not adopted. The effect in the final rule is that only single person access will be permitted through access points that must meet the requirements of new § 107.207(a), that is, access to the secured area.

Comments on proposed § 107.205(f) (new § 107.211(e)(5)): ATA and FedEx request clarification of the areas/points included within the scope of § 107.205(f). The terms ''all points'' and ''nonpublic'' need to be defined.

ACI–NA, AAAE and an airport state that when someone accompanies a person with authorized access at that airport, the requirements of this section should not be necessary.

FAA response: The FAA has reevaluated proposed § 107.205(f). In the many cases where access points described in the proposal are indirectly controlled in accordance with current § 107.14(a) or (b), the proposed new language would require those access points to be directly controlled. Hence, a potentially burdensome requirement would have been imposed unnecessarily. The agency believes the current language is adequate for its purposes, therefore, the agency has decided not to adopt the requirement proposed in § 107.205(f).

However, as the preamble noted, there is a concern regarding a person bypassing the screening checkpoint by being escorted from the critical security area (now secured area) into the sterile area. New § 107.211(e)(5) addresses this by requiring that persons escorted into the sterile area must be screened or be escorted out of the sterile area.

Comments on the UAS: A number of comments were received on the UAS, which would allow a single access medium to be used at many airports, yet the proposed provision seems to rule out that possibility.

FAA response: The discussion in the NPRM regarding UAS was for information only. UAS has been implemented at some airports and is an on-going program.

Section 107.209 Employment History, Verification, and Criminal History Records Checks (Proposed § 107.207)

The NPRM did not contain the text of this section because it was being revised in a separate rulemaking. On September 24, 1998, the FAA issued a final rule (63 FR 51204). That rulemaking amended § 107.31, Employment history, verification, and criminal history records checks. Under the current final rule, § 107.31 has been renumbered as § 107.209 and appears under Subpart C, Operations.

Comments: Two airports state that the complexity of employment history verification requires that language should have been included in the NPRM (Notice No. 97–13) to fully assess its provisions against the other proposed changes to part 107.

Another commenter requests that the FAA continue to aggressively pursue access to the DOJ/FBI Integrated Automated Fingerprint Identification System—for security investigation—by the law enforcement entities supporting United States airports. The current program remains less than practical and largely unworkable.

FAA response: An NPRM (62 FR 13262; March 19, 1997) and a final rule (63 FR 51204; September 24, 1998) have already been issued with respect to Employment history, verification, and criminal history records check. Therefore, there was no need to republish changes associated with that rulemaking along with the NPRM for this rulemaking.

In this final rule, § 107.209 has been modified to correct an oversight that appeared in the final rule for old § 107.31. The new rule adds § 107.209(b)(3), which states that when an individual has admitted to a conviction of a disqualifying crime the investigative process ends and the individual is denied unescorted access privileges. Although this was the obvious implication of the section and the preamble, it was not clearly stated in the rule.

As to the comments submitted by two airports that sought consideration of the requirements of 107.209 within the context of the NPRM, the FAA wishes to ensure those commenters that this was done, and that the final rule reflects that process.

To the commenter that addressed the FAA's pursuit of the Integrated Automated Fingerprint Identification System, the FAA notes that it has in fact done so and tests are ongoing at this time.

The FAA receives numerous calls requesting clarification on the use of automated telephone systems that provide employment information. The FAA has contacted several of these companies and found that the information being provided comes directly from the past employer.

These telephone services provide employment information that may be

used to partially satisfy current § § 107.31 and 108.33 regarding the employment history of those individuals seeking certain positions at an airport. The automated services provide the employment dates and does so only if the person calling has the past employer's company identification number and the specifically assigned identification number of the individual whose employment information is sought.

The use of the specifically assigned numbers reflects a level of security is being provided to the information contained within the system. The security is viewed as a means to protect the information from unauthorized changes. Since this method of providing past employment information is the ''current state of business'' the FAA will accept this method as an adequate means to verify past employment dates when the telephone services have security measures in place.

Therefore, the FAA interpretation of current § § 108.33(c)(4) and 107.31(c)(4) and new § § 107.209(c)(4) and 108.2(c)(4) includes the use of these automated telephone services that require the use of special information to access an individual's employment history. No language change is deemed necessary for this final rule.

Section 107.211 Identification Systems (Proposed § 107.209)

The FAA proposed that under this new section, an identification system would be required for both the critical security area and the restricted operations area. The FAA added this section to regulate standards governing the issuance, display, and accountability of identification systems to promote their effectiveness.

In addition, the FAA proposed that the standards become effective 2 years after a final rule is adopted, providing airport operators with time to make necessary changes so that their systems meet regulatory requirements. The ASAC requested that airport operators be afforded 5 years to phase in any identification changes required by the revised rule, however, the committee did not provide any financial or operational data to support this position.

In proposed § 107.209(a), standards were proposed for personnel identification media. Under this proposal, the media must convey accurate information about the individual, bear an expiration date, be readily identifiable for challenge purposes, and indicate the individual's authorization for access and movement. The FAA also proposed procedures to ensure the airport's accountability for the effectiveness of the system. It is anticipated that initial accountability criteria and percentages will have to be tested over an extended period of time and amended as appropriate.

In proposed § 107.209(b), standards were proposed for a vehicle identification system, including identification media requirements and procedures to ensure accountability of the system. At ASAC's suggestion, the FAA also proposed in § 107.209(c) to permit the use of the identification program for vehicles used under part 139, if that system also meets the requirements of this proposed section.

Under § 107.209(d) the FAA proposed that airport operators may issue temporary identification media to persons whose duties are expected to be temporary, such as contractors. To minimize the number of accountable and valid identification media, the FAA proposed that such individuals should have their identification media valid only for the time needed to perform their temporary duties.

The FAA proposed in § 107.209(e) to allow an airport operator to approve the identification media of other entities, which meet the standards of this regulation. Inclusion of this practice would codify an acceptable practice used by many airports.

Under § 107.209(f) the FAA proposed to require an airport operator to develop a challenge program. Airport operators currently establish their own challenge procedures to meet the requirements of existing § 107.25(e)(2), but in this paragraph the FAA proposed to expand these requirements in order to ensure more standardized challenge procedures between airports, and within the critical security areas and restricted operations areas.

General comments on proposed § 107.209 (new § 107.211): ACI–NA, AAAE, ALPA, UPS, ATA, NATA, FedEx, TWAA, RAA, several airports, and others provided comments concerning the identification systems. In general these commenters request greater clarification and detail in what the rule requires. ALPA recommends that an identification system cannot ''control the presence'' or ''movement'' of people or vehicles. It can only ''identify'' or ''validate'' the authority of the person or vehicle to be in the critical security area, or it can be used to ''control access.''

FAA response: The agency believes the responses to comments on specific paragraphs of § 107.209, below, provide the clarification and detail that the commenters request.

The FAA agrees with ALPA who noted that identification systems alone cannot control the presence or movement of people or vehicles. The FAA recognizes that an identification system is one of the many components of the security system. The identification media worn by persons indicate the authority of those persons to be present at given locations, and permit challenge of those without the appropriate identification. This fact, in the FAA's view, provides a means to control ''movement'' and ''presence.'' The FAA also recognizes that an identification system that relies upon display, challenge, and escort can only be as good as its users are vigilant and responsible.

Comments on proposed § 107.209(a) (new § 107.211(a)): UPS and ATA oppose application of identification requirements to flight and cabin crewmembers. They also oppose mandatory inclusion of expiration dates on media for current employees of aircraft operators. ATA states that an exemption should be allowed for flight and cabin crewmembers while they are in areas governed by exclusive area agreements. FedEx suggests that this section would place a tremendous administrative and logistical burden on the aircraft operator and crewmembers. One commenter urges the FAA to consider developing a photo identification for FAA pilot certificates in lieu of the existing non-photo based pilot certificate currently in use.

Several airports and two local aviation departments questioned the feasibility of having ''scope of access'' information on the face of the badge, particularly if there are numerous areas. To assist operators these commenters request that the FAA define ''accurate identification.'' ALPA raised the same concern and recommends that an AC be developed, or the current one amended, prescribing guidance for airport operators on the development of identification media. The AC should outline standard characteristics for all cards to make challenge easier while allowing latitude in other areas to accommodate individual airport needs. Furthermore, ALPA recommends that airport identification media be in full compliance with UAS standards, recently adopted by the FAA-chaired UAS Working Group.

ACI–NA, AAAE, and an airport agree with ASAC's recommendations that a 5-year expiration date for identification media is appropriate, particularly if the date is carried within the media itself. RAA does not support the requirement for an expiration date on personnel

identification media and requests that the FAA delete this provision.

ACI–NA and AAAE state that if audits are necessary, the FAA should consult with the industry to develop specific audit criteria and guidance documents. One commenter states that the FAA should define audit criteria, since airports need this definition to develop a system of record keeping to simplify the audit process. One airport agrees with ASAC's recommendation that 2-year audits are sufficient.

Two airports state that unaccountable badge percentages should be defined system-wide as the ''total unaccountable badges which include those lost, stolen, or not retrieved, divided by total unexpired badges issued.'' One commenter states that expired badges should not be considered as an ''unaccounted for'' badge. Another commenter states that factoring in badges with an expiration date in the unaccounted for percentage is not representative of any particular logic and requests the FAA to expand their discussion in terms of why an expiration date is necessary on a badge since airport operators are required to replace badges after a certain number of badges are not accounted for. This consideration should be a component in a cost analysis comparison for airports to upgrade their old § 107.14 systems to accommodate an expiration date on security badges.

Several airports agree with the ASAC's recommendations that the unaccountable percentages of identification badges should be raised from 5 to 10 percent. This is a more logical and rational benchmark to replace an access media badging system.

An airport states that personnel who work for more than one company that requires access to the restricted operations area should be allowed to obtain an identification card for each company. One commenter states that this gives the companies more control.

FAA response: A fundamental concept of industrial security, to include that form practiced at the nation's airports, is to establish a credible and well controlled identification system. Without such a system, there can be no surety that the persons present at or having access to a protected asset are so authorized. As discussed earlier, identification systems are useful only if unbadged persons are challenged in a timely manner. It is important to limit the number of different identification media that can be used in an area. Too many different authorized ID's, or ID's that are difficult to read, make it too hard for authorized persons to determine who is not displaying a proper ID. Expiration dates, clearly visible at a reasonable distance, contribute to a system's usefulness. With this in mind, and in specific response to ATA, the FAA will not exempt or exclude any category of person or occupation from the requirement to properly display appropriate identification in such areas as the regulation or security program mandates with exceptions noted in new § § 107.7 and 107.11. Further, a person's failure to display proper identification in accordance with an approved security program, may result in an individual becoming the subject of an FAA enforcement action under new § 107.11. This situation would not preclude other actions being taken by local authorities against the individual. Conceivably, additional culpability may attach to the regulated party responsible for control of the area in which the violation occurred.

At the same time, it must be noted that new part 108 provides a means for aircraft operators to develop identification systems that meet these standards that can be accepted by the airport operator. In this way, cabin and flight crew would not need to have a different ID for each airport, but could use their aircraft operator ID.

The FAA is not adopting the suggestion to add a photograph to the airman certificate to use it as a security tool. At best, the airman certificate would show that the person is a qualified pilot. It would not show that person's authority to be in any particular area of any particular airport.

In response to the several commenters who requested that the FAA further define ''accurate identification,'' the FAA has clarified the final rule. This information includes full name, full-face image, and identification number. The airport operator may include additional details or information at its option. Scope of access information can be displayed by using color-coded badges—a method in common use today.

In response to the commenters who addressed the issue of expiration dates, the FAA believes that clearly displayed expiration dates are an important aspect of identification media and challenge procedures. The recurring need to replace media that have reached an expiration date will afford the issuing authority the opportunity to review the holders' continued need for the media. Additionally, most identification systems will suffer some degree of unaccountability soon after implementation—identification can be lost, stolen, or otherwise become unaccounted. The unaccountable percentage generally grows over time. If expiration dates are clearly displayed, unaccountable identification media will become useless upon reaching their expiration date. Wearing an expired medium would single out the wearer as someone whose authority to be present must be challenged. The specific criteria for establishing expiration dates can be developed locally and in consideration of conditions unique to that location.

Additionally, the inclusion of an expiration date provides a benefit from a logistics standpoint. Media that have reached their expiration can be dropped from the population upon which the unaccountable percentage is based. Section 107.209(a)(3)(v) is changed in the final rule to make it clear that only media that are unexpired need to be counted for revalidation purposes.

Given the criticality of tightly controlled identification systems, the FAA cannot adopt the ASAC's suggestion that audits be performed only once every 2 years. It is not unreasonable to expect the various regulated parties to conduct comprehensive audits a minimum of once per year. In fact, such a practice is common at many airports today, while automation permits many airports to conduct audits even more frequently.

The FAA agrees with ACI–NA and AAAE that the FAA should consult with the industry to develop specific audit criteria. This will be accomplished following this rulemaking. The criteria will be incorporated into FAA-approved security programs.

The validity of an identification system is based, in part, on the idea that the media in circulation are controlled, and that only those persons who have a legitimate need for such media possess them. The validity of most identification systems can be expected to erode as media are lost, stolen, or otherwise unaccounted for over time. So, when a particular percentage of media become unaccounted for, this would represent a critical point marked as a percentage of the total population of the media. At some point, that percentage represents an unacceptably high risk to the assets the system seeks to protect. Therefore, the FAA supports the concept that the percentage figure of unaccounted identification must be based upon a common and valid formulation.

Along those lines, the FAA called for comments on what criteria should be the basis for accountability percentages. As noted in the NPRM, a range of 2 to 10 percent seems common, depending upon the nature of the venue. The FAA acknowledges the ASAC's recommendation that the traditional 5 percent maximum figure should be

increased to 10 percent, thereby allowing for a greater number of identification media to be unaccounted for before a system would need revalidation or replacement. However, the FAA believes 10 percent to be unacceptably high. Further, with technological advances, and the fact that the 5 percent figure has been in wide use for many years within the civil aviation system, the FAA sees no reason to alter that number as a maximum point at this time. However, as technologies change, and as systems are redesigned, a formula fixed in regulation may prove unwieldy. Hence, the FAA is not imposing a fixed system-wide percentage in the regulation. Since changing technologies and events may alter policy regarding the percentage, language fixing a percentage in regulation would be difficult to change in a timely fashion. Rather, the percentage will appear in the FAA-approved security programs, in accordance with FAA policy. Such programs can be modified in accordance with § 107.105. Again, at present, the FAA policy provides for a maximum allowable unaccounted percentage of 5 percent. The economic analysis for this rule has been based upon that figure.

In response to the comments on personnel who work for more than one company, the FAA has revised the language in the final rule. The revision permits the airport operator to issue to the individual such identification media as are necessary to carry out the duties of any employment the individual may hold at the airport. But, the airport operator, if it chooses to exercise that option, must ensure that its records reflect all other media issued to that individual. The FAA's intent is that any situation that would cause the airport operator to modify, suspend, or revoke any of the privileges associated with any of the individual's identification media, would also cause the airport operator to review the privileges for all other identification media issued to that individual. The airport operator would then be expected to make a finding as to whether the circumstances giving rise to the change would warrant additional modifications to other privileges held by the individual.

As to the need for retrieval of media that bears an expiration date, the FAA notes that it is not uncommon in the press of business at an airport for expiration dates to go unobserved. In order to limit the exposure to the system posed by numerous expired identification media that may otherwise appear valid, the FAA believes retrieval of expired or unnecessary media to be a prudent measure and a reasonable expectation. Where retrieval is not possible, a readily observable expiration date may provide the airport operator an added dimension of security.

Comments on proposed § 107.209(b) and (c): Several airports are concerned about the complex and exhaustive efforts that would be required of airport operators to license, catalogue and audit vehicles used in the critical security area and restricted operations area. An airport says that the cost to build and maintain a vehicle identification database and development of vehicle identification media would be significant. Federal Express, TWA and Alaska Airlines suggest that there is no case to support the inclusion of all airport vehicles in this system and that this requirement should only apply to vehicles which access the AOA from public roadways. ACI–NA, AAAE, UPS, and Federal Express state that this section and similar references to a new vehicle identification system should be deleted as they address no known security concern. Many other comments point out significant logistical and administrative difficulties with adopting a vehicle ID system.

ACC suggests the deletion of the requirement for vehicle identification altogether.

FAA response: The agency has reviewed the comments received on the proposed requirements for vehicle identification. It has come to agree with the commenters that a significant enhancement of security using this procedure at this time would not be realized. The agency believes, however, that it remains the responsibility of the regulated parties as well as individuals, all of who are now subject to new § 107.11, to assure that existing systems and procedures are applied as intended.

In light of existing requirements for control of ground vehicles under part 139, the requirements for access control in § 107.205(a) and the challenge program in § 107.209(f), the FAA believes that adequate measures are in place to identify unauthorized individuals and any vehicles they may be driving. These measures will only be successful if tenants and employees diligently apply the required measures so as to avoid incidents that may require more stringent standards.

The agency has removed the proposed vehicle identification requirements at this time, however, the FAA will monitor the situation and may reconsider vehicle identification in future rulemakings, should circumstances warrant.

Comments on proposed § 107.209(d) (new § 107.211(b)): There were no comments on this section.

FAA response: The FAA notes that the intended purpose of temporary identification is the same as for permanent identification, and as discussed in the response to comments on § 107.209(a). One difference is that the need is short term. The use of temporary identification media is not restricted to any particular class of person or occupation. The FAA believes such latitude is best left to the local authorities. Further, the agency wishes to make clear that the decision to use such media is left solely to the airport operator. The language of § 107.211(c) is only intended to place a consistent and reliable structure to such a program should it be employed.

Comments on proposed § 107.209(e) (new § 107.211(c)): ALPA states that ''Airport-approved identification media'' should be renamed ''Non-airport issued identification media'' for the sake of accuracy and clarity.

One commenter states the security program should indicate that use of aircraft operator identification media issued to flightcrew members of certificated aircraft operators is authorized for unescorted movement in the following portions of the AOA: (1) The immediate vicinity of the aircraft to which flightcrews are assigned, (2) flightcrews operations/flight office, or the equivalent; and (3) points in between, as defined in this security program.

One commenter opposes allowance of airport operators to approve the identification media of other entities that meet the standard of the regulation. This commenter would be willing to allow such media in exclusive area agreements where the entity responsible for that area permits that media.

FAA response: In response to ALPA's call to rename ''airport-approved identification media,'' the agency offers the following. For an identification medium to be accepted as a reliable indication of unescorted access authority in the SIDA, the media must be approved for the individual airport security program. For instance, an airport security program would not approve the use of an aircraft operator identification medium unless that aircraft operator was operating at that airport.

Of the airport-approved media, some are issued directly by the airport operator. Other media approved for use by the airport actually are issued by other entities such as the aircraft operators or the FAA. The main difference is the party of issuance. ''Airport-approved media'' is a term that encompasses all media, regardless of issuing party, since all such media are

cited as valid for use on the airport in the language of the security program. On the other hand, ''airport-issued media'' refers only to those physically issued directly by the airport operator. The agency believes the terminology to be properly descriptive, historically useful, and accurate. The proposed terminology is retained.

The suggestion to include language in the security program specifying the unescorted movement privilege that attach to flight crew identification media is fully consistent with a nationally mandated amendment to all FAA-approved security programs. The amendment became effective in 1993 and remains current. The new part 108 requires the same standards for identification media as part 107.

Additionally, contrary to the views of the last commenter, the FAA strongly believes that a great deal of discretion must fall to airport operators in exercising their judgment as to what other media, if any, meets the standards for approval and use within their airport security system. Since such a major portion of the responsibility for the security of the airport's surface falls on the airport operator, the FAA believes it reasonable to relegate most decisions in regard to the acceptability of others' identification to the airport operator.

Comments on proposed § 107.209(f) (new § 107.211(d)): One commenter states that challenge procedures should continue to be solely reflective of locally developed performance standards and the FAA should not micromanage the program further. The commenter urges serious reconsideration of this measure.

ACI–NA and AAAE recommend adding a subparagraph (4) under § 107.209(f), incorporating the details of the ''challenge program'' to be described in the security program.

One airport requests that the phrase ''law enforcement support'' be replaced with ''support.'' All challenges may not need to escalate to the LEO level.

FAA response: The agency is not dictating specific challenge procedures. Instead, it only proposed requiring that an acceptable local program be developed in compliance with the general language of new § 107.211(d).

The FAA concurs with the principle that the details of the challenge program should be developed locally and reflected in the security program, and § 107.211(d) so states.

The FAA agrees in part with the comment to replace the phrase ''law enforcement support'' with the less specific ''support.'' The language in new § 107.211(d)(3) clarifies that a response by other than law enforcement personnel may be included in the program. However, the airport operator continues to be obligated to ensure adequate armed law enforcement response in support of the program. This has been reflected in the final language.

New § 107.211 also includes requirements for escort, which is discussed above under proposed § 107.205(d).

Section 107.213 Training (Proposed § 107.211)

The FAA renumbered this section as § 107.213, it was proposed as § 107.211. In the NPRM, the FAA proposed that persons with security responsibilities and with unescorted access to the critical security area (now the secured area or a SIDA in the final rule) be trained similar to that current requirements under existing § 107.25.

All individuals who have unescorted access to, and movement privileges within, the AOA would be provided with information commensurate with their security responsibilities under this proposal.

In addition, this proposed section directed the airport operator to ensure that persons performing security functions for the airport are briefed on their responsibilities under the proposed rule, the security program, and any other pertinent security information.

This proposed section also specified requirements for maintaining documentation of training and the deadline for implementing a revised training syllabus.

Comments on proposed § 107.211(a) (new § 107.213(a)): One airport requests that the FAA delete the phrase ''Security Directives and Information Circulars'' from § 107.211(a). The airport operator cannot be responsible for retraining all employees every time new Security Directives or Information Circulars are issued.

FAA response: While the FAA understands the commenter's concerns, the proposal may not be as broad as the commenter may perceive. An airport operator is only required to train a person on a new Security Directive or Information Circular if the requirements and information in the document is applicable to the person's job and when that job is performed on behalf of the airport operator. A person without ''the need to know'' need not be briefed, and in fact, cannot be briefed under the provisions of § 107.101(c)(1).

Comments on proposed § 107.211(b) and (c) (new § 107.213(b) and (c)): Under § 107.211(b) and (c), the airport operator is required to ensure that all employees authorized access to the critical security area or the restricted operations area have training. Under proposed § 107.7, the airport is required to issue any FAA special agent an airport identification upon request. Commenters see this requirement as a double standard; they state that everyone requesting an airport badge should be required to complete local airport safety training. Miami International Airport states that a new airport employee can not obtain an identification badge without taking the SIDA class.

Commenters say that § 107.211(c) indicates that the airport operator would have to provide every individual a copy of the whole curriculum. Commenters hope that this is not the intent. ACI–NA and AAAE interpret the proposal to mean that each airport would develop its own curriculum, and suggest that national standards may not be appropriate at individual airports.

Several airports comment that a statement should be included to allow for ''grandfathering'' existing individuals authorized unescorted access privileges under the existing SIDA badge issuance under old § 107.25.

Another airport states that for secured areas, an individual must be trained but should not need to acknowledge the training in writing. For AOA's, they must receive information and acknowledge in writing. This seems to be putting more stringent requirements on AOA's than secured areas training.

A commenter states that the two-tiered training program, which provides less stringent training requirements for AOA personnel, has little utility. The commenter submits the differences between the two to be minimal and states that a more conservative higher level training standard approach does no harm.

FAA response: The FAA understands the commenters concerns regarding issuance of an airport identification upon request of any FAA special agent. As discussed more fully under § 107.7, the agency agrees that under routine circumstances, appropriate safety and security related training should be provided to FAA special agents before they exercise full access privileges to an airport. Such training can be provided at the airport which is the agent's primary duty location and can be supplemented with local training at other airports requiring such training. This approach is in common use today throughout the industry for persons requiring similar access privileges. In emergency situations, such as in responses to hijacking situations, the responding agents may not have the opportunity to

be provided the training or access media for that particular airport. The exigencies of their unique duties in such circumstances may override other considerations and the language of the final rule has been modified to permit this.

New § 107.213(c) does not require that each trainee be provided the whole curriculum. The intent is to ensure that employees have been provided all relevant information in accordance with the security program. The relevant information can be given in writing, by videotape, a personal briefing, or any other means the airport operator chooses to provide the information to the individual. The FAA agrees that each airport would develop its own curriculum.

The rule does not provide that all individuals who have already taken training under current § 107.25 may be ''grandfathered.'' Each airport will have to evaluate whether there have been changes, for example, designations of areas as AOA or secured area. If changes are made, the airport must train those individuals who need to comply with the new conditions.

In regard to the comment that the proposal on training acknowledgements seems inconsistent on its face, persons receive the more definitive training required for unescorted secured area and SIDA access in a more formal, classroom-like setting, with the ability to ask questions. The airport operator can directly observe whether the person has successfully completed that training.

Conversely, persons receiving information necessary for AOA access may do so in a less formal, more self-study process in which case an acknowledgement by the trainee would be an appropriate record. However, it is evident that training under § 107.213(c) may also be in a classroom setting. The final rule in § 107.213(d) does not require an acknowledgement by the trainee under § 107.213(c), it only requires that a record of training given to each individual be maintained.

In regard to the comment on the two levels of training, the FAA has sought to provide for an option to train those with access to the AOA only using a lower-cost method. Should an airport operator wish to exceed the minimum required training standards and require more formal training, the FAA would be supportive.

Comments on proposed § 107.211(e) (new § 107.213(f)): One airport is concerned that proposed § 107.211(e) would allow all training to be dropped for the 2-year period prior to the effective date of the rule.

FAA response: After further consideration, it appears that the only new feature in § 107.203(b) for training for persons with access to secured areas or SIDA's is training in § 107.11. Therefore, new § 107.213(e) provides that for persons who already have such access, classroom training will not be required. The airport operator need only to provide them information on § 107.11. Providing information under new § 107.213(e) is a new requirement, but is less complicated than the § 107.213(b) training. Airports will have 1 year to implement this program.

Section 107.215 Law Enforcement Support (Proposed § 107.213)

This section was renumbered in the final rule as § 107.215, it was proposed as § 107.213. In the Notice, this section specified the qualifications of law enforcement support required under proposed § 107.103, which were similar to those in current § 107.15. The most substantial change made to this proposed section was the distinction between the use of uniformed and ''plainclothes'' law enforcement personnel.

Comments: Phoenix Aviation Department, Tucson Airport, and Port Authority of NY and NJ request more flexibility for airport operators to be permitted to respond with ''plainclothes'' officers provided appropriate insignia/badge is displayed when necessary. The FAA was urged to reconsider the uniformed concept and allow plainclothes LEO response, while airports should be expected to maintain a visible uniformed presence throughout the airport environment.

ALEAN and two airports request the FAA to delete references to ''in the number and manner'' in § 107.213(a). Several airports state that the number of officers necessarily is a local decision.

Alaska Airlines recommends that the airport law enforcement and aircraft operator should establish a triage type system for LEO response. Two airports state that § 107.213(b)(1) should be clarified to state that LEO's are to be available to respond to an ''airport security related'' incident. Another airport states that § 107.213(b) is a general and non-specific section and could mean response at anytime to any location on the airport. If this section is referring to the screening checkpoint, it should state that.

ATA and RAA support the requirement that, on request of an aircraft operator or foreign air carrier, certified law enforcement personnel should respond to an incident.

FAA response: In response to the commenters who urged the FAA to reconsider its position on the use of only uniformed law enforcement personnel for the response to the screening checkpoint, the agency points out that the language of the regulation does not preclude the use of plain-clothes officers to supplement a uniformed response, or to supplement or comprise a complete response to any other situation. Regarding a response to the checkpoint, however, the value of a uniformed law enforcement presence in terms of deterrence, ease of recognition during an emergency situation, and in sustaining the confidence of the public, cannot be overstated. The FAA insists that this capability continue.

The FAA recognizes that the ''number and manner'' in which law enforcement personnel are provided is largely a local determination under new § 107.215(a)(1). The FAA looks to whether law enforcement responds to screening checkpoints, alarming doors, and other events in a timely manner, as well as providing adequate security patrols.

In response to Alaska Airlines and others, the FAA notes that proposed § 107.213(b) (new § 107.215 (b)) applies only to those airports identified in § 107.103(c). Such airports normally do not have airport law enforcement on site and only have limited passenger operations that would require screening and law enforcement support. The wording in the proposal is essentially unchanged from the current § 107.15(b) and refers to a law enforcement response for any reason in support of the civil aviation security program. The FAA sees no need to modify the language or to require a ''triage system'' as suggested.

Section 107.217 Law Enforcement Personnel (Proposed § 107.215).

In Notice 97–13, this section was proposed as § 107.215. It has been renumbered as § 107.217 in the final rule. As discussed in regards to proposed § 107.213 above, the requirement for all law enforcement personnel to be in uniform was modified. To reflect the proposed change it was proposed that § 107.215(a)(2) not include the uniform requirement as appears in current § 107.17(a)(2).

Proposed § 107.215(c) updated training requirements in current § 107.17(c) for State and local law enforcement officers to reflect the fact that all states have law enforcement training programs. This proposed paragraph also specified that private security personnel used to meet the requirements of part 107 must be trained in a manner acceptable to the

Administrator if the State and local jurisdiction does not prescribe training standards for such personnel.

Comments on proposed § 107.215(a) (new § 107.217(a)): NAPO and Monterey Peninsula Airport are concerned that there will be substantial replacements of law enforcement officers (LEO's) by less experienced and inadequately trained private security forces. NAPO states that the FAA should not generate a rule inviting substantial replacements of experienced and well-trained LEO's which will have potentially serious consequences on airport and aircraft operator security. NAPO recommends that the FAA specify areas of the airport and situations mandating the presence of LEO's and also require a minimum contingent of LEO's at each US airport. One airport suggests replacing the word ''indicia'' with ''appropriate badge or uniform of authority.''

FAA response: The FAA does not have the latitude to provide for the concerns raised by the NAPO and other commenters. The term's ''law enforcement personnel'' and ''indicia of authority,'' as reflected in proposed § 107.215 (new § 107.217), were established under Title 49, United States Code section 44903. The statute authorizes the operator to use the services of qualified State, local, and private law enforcement personnel. The regulation is revised to be consistent with the statutory language.

Comments on proposed § 107.215(b) (new § 107.217(b)): Miami International Airport, UPS, ACI–NA, AAAE, and others comment that the FAA should provide for local law enforcement officers to be ''deputized'' to enforce federal regulations. Some of the commenters' note that LEO's are more often called to respond to incidents such as interference with flight crews, where they have no authority to take action nor are they supported by the statute.

FAA response: Situations such as cited by Miami International Airport and other commenters fall outside the scope of this rulemaking. The FAA notes, however, that nothing in the final rule precludes having law enforcement personnel deputized to enforce selected Federal statutes. Further, there are some airports at which selected airport police officers have been deputized by the United States Marshal Service.

Comments on proposed § 107.215(c) (new § 107.217(c)): Two airports request a deletion of the reference to ''LEO's'' from § 107.215(c). Another commenter recommends retaining the title law enforcement ''officer'' instead of law enforcement ''personnel.'' Miami International Airport states that LEO is a recognized term within the industry. ALEAN states that the term ''private law enforcement personnel'' is confusing and problematic. The phrase should be ''private security personnel.''

Tucson Airport and Phoenix Aviation Department request clarification of what constitutes adequate training under this section. Two airports and a port authority request removal of reference to ''any other subject the Administrator determines is necessary,'' stating that this gives the FAA a blank check to do anything.

FAA response: As explained previously, the use of the terms ''law enforcement personnel'' and ''private law enforcement personnel'' are consistent with Title 49 U.S.C. § 44903. To be qualified for this task, law enforcement personnel (whether state, local, or private) must have the arrest authority, weapons authority, and training set out in this section. The term ''private security personnel'' often is used for uniformed persons who are not armed and do not have arrest powers, and is not suitable for this section. The FAA knows of at least one airport jurisdiction in which law enforcement support had been provided to the airport operator under contract by a private firm. There, privately employed individuals were granted arrest powers and in all other respects meet the requirements for law enforcement support as outlined in this statute and part 107.

In response to the Tucson Airport, the FAA notes that the language of the final rule, in effect, leaves to the local jurisdiction the determination as to what constitutes ''adequate training'' for publicly employed LEO's. In the case of private law enforcement personnel serving the law enforcement role required under this part, the Administrator must approve their training, and must, therefore, determine the adequacy of their training.

With respect to the phrase ''any other subject the Administrator determines is necessary,'' the FAA Administrator reserves the right to add to the training program. The changing nature of the civil aviation security program, and of terrorism or other criminal threats in general, may generate the necessity for additional training in the future that cannot be anticipated at this time.

Comments on proposed § 107.215(d) (new § 107.217(d)): Five airports state that the FAA should remove reference to ''principal operations office'' and add ''as detailed in the security program.'' The place of retention of training records is a matter of legal guidance and operational needs and preferences.

Another commenter states that police training records should be maintained by airport police personnel. A commenter asks who pays for maintaining the training records required by this paragraph.

The Tucson and Phoenix Airports question the means and resources of training under this section.

FAA response: The FAA concurs with the commenters' concerns regarding the location of the records. The final rule does not specify the location of the records.

The final rule does not require the airport operator to possess the actual records, it only requires that they be available for review upon request in accordance with § 107.7(a)

The rule does not specify who will absorb the costs for maintaining the training records. Likely, this will depend on what entity maintains the records.

Section 107.219 Supplementing Law Enforcement Personnel (Proposed § 107.217)

In the Notice, this section appeared as § 107.217; it has been renumbered in the final rule as § 107.219. Under the proposal, existing § 107.19 entitled ''Use of Federal law enforcement officers,'' was revised and renumbered as § 107.217, ''Supplementing law enforcement personnel.'' This revised section sets forth the same procedures for an airport operator to request Federal assistance in supplementing local law enforcement, and has incorporated statutory language that would provide for supplemental support from any personnel employed by the Federal government.

Comments: Commenters suggest that the idea of supplementing airport LEO's with Federal officers is fraught with problems including jurisdiction, legal authority, training and availability. The NAPO recommends that the FAA should reconsider its clarification of statutory authority to allow for wholesale substitution of governmental LEO's in all airport locations under most circumstances and situations. Another commenter suggests that § 107.217(b) should be removed because the statement is too broad and serves no interest.

FAA response: New § 107.219(a), which remains unchanged from the proposal, is intended to provide emergency law enforcement support to airport operators where local law enforcement is either no longer available or is not adequate to meet the requirements of an emergency situation. While this provision has existed in regulation for many years, it has not yet

been invoked. Commenters are referred to Title 49 United States Code section 44903(c).

The basic information required by § 107.219(b) is intended to help the Administrator decide whether or not to supplement local law enforcement personnel and to prioritize assignment of resources in the event multiple requests are received. The specific requirements of paragraph (b) are directly related to Title 49 United States Code section § 44903, and therefore must be retained.

Section 107.221 Records of Law Enforcement Response (Proposed § 107.219)

This section has been renumbered in the final rule as § 107.221; it was numbered as § 107.219 in the proposed rule. The FAA proposed that § 107.219 would incorporate new recordkeeping requirements found throughout the proposed rule and ensure that the FAA has access to such records.

Under proposed § 107.219(a) the FAA would have access to any record required under the proposed rule and would require the submission of records to the FAA pursuant to a schedule approved in the airport's security program.

A slight modification was proposed for records resulting from law enforcement activity. In proposed § 107.219(b)(l), the word ''action'' was changed to ''response.'' Proposed § 107.219(b)(2) extended the period of time during which records must be maintained to a more practical 180 days. It was also proposed in § 107.219(c) to require records to include more specific information about individuals who are detained or arrested. This information would aid the FAA and the FBI in the investigation of such incidents and in the analysis of data as a management tool.

The addition of proposed § 107.219(d) would require the airport operator to make and maintain for 180 days records of any corrective action taken against persons who fail to comply with falsification and security responsibilities under § § 107.9 and 107.11. A new § 107.219(e) was also proposed to require the airport operator to maintain any additional records that may be needed to support the security program, and highlight additional recordkeeping requirements found throughout the proposed rule.

Comments on proposed § 107.219(a): Three airports, a port authority and an aviation department request that the FAA replace the word ''furnished'' with ''made available.'' Another commenter states that § 107.219(a) should be deleted, and add ''Records required to be maintained should be made available to the Administrator upon request.''

One commenter states that increasing record creation/maintenance requirements for the pleasure of the FAA incorporates no increase in security posture while encroaching upon visible patrol time and availability of personnel for timely response to needs for LEO services.

FAA response: After further consideration, it is evident that new § 107.7 provides for inspection by the FAA of records used to show compliance with this part. Therefore, proposed § 107.219(a) is not needed and is not adopted.

Comments on proposed § 107.219(b) (new § 107.221(a)): The Airport Consultants Council (ACC), an airport, a port authority, and a local aviation department state that the FAA should consider more realistic record retention requirements and strongly urges the FAA to reassess the across-the-board 180-day timeframe and develop a more logical retention matrix associated with the type of information. Another commenter recommends maintaining the current 90-day requirement. A commenter states that the vast majority of the records required in this section is generated at the security checkpoint and would be best supplied and retained by the aircraft operator and their contractors. Another airport states that records for police actions should be the only requirement as there are a significant number of responses where no action is taken. Metropolitan Washington Airports Authority requests that the FAA replace the phrase ''law enforcement response'' with ''law enforcement action.''

FAA response: This paragraph is renumbered § 107.221(a) in the final rule. The FAA's 180-day timeframe is intended to ensure that the subject records are maintained during what is expected to be the maximum period between regularly scheduled FAA inspections. It is hoped that this interval will ensure that records are available when and as needed for FAA purposes.

The records required by this section refer to law enforcement records. The FAA agrees with the substance of the comment that only certain actions taken in support of the security program should be provided to the FAA, while other records need only be made available upon request. Therefore, the final rule requires that records be made of law enforcement ''actions'' instead of the broader category of ''responses.'' The specific types of records that the FAA expects the airport operator to provide routinely, in accordance with the schedule included the security program, would include actions taken in support of the security program and that result in arrests, detentions, or discovery or confiscation of weapons, explosives, and incendiaries.

Comments on proposed § 107.219(c) (new § 107.221(b)): The ACC and an airport state that § 107.219(c)(4) is too broad a category. The FAA needs to assess the validity of retaining this information. One commenter suggests the FAA provide a process to gather and store relevant statistics in a timely manner.

FAA response: This paragraph is renumbered § 107.221(b) in the final rule. The FAA disagrees that the information cited under the proposed rule is broad. Rather, it believes that such information in 107.221(b)(4) is specific, and is routinely developed for each instance of detention or arrest. The agency believes this information is necessary to identify trends, and to meet reporting requirements placed upon the FAA by other entities, to include the Congress.

Comments on proposed § 107.219(d): FAA is not adopting language related to a compliance and enforcement program as proposed under § 107.103, at this time. Such issues will be dealt with in a later rulemaking action.

Comments on proposed § 107.219(e): An airport, a port authority and a local aviation department suggest that the FAA delete the phrases ''maintain any additional records'' and ''but not limited to'' in § 107.219(e). Any new requirement for maintaining records should be introduced through the rulemaking or amendment process with sufficient time to implement the recordkeeping procedures.

FAA response: The FAA agrees that any additional reporting requirements, particularly as levied by entities with authority over the FAA, such as, the Department of Transportation and the Congress, would not be so time critical that a more deliberate approach is precluded. The agency, therefore, recognizes that airports would need time to comment on and to implement any additional recordkeeping procedures beyond that already specifically required in regulations or security program language. Proposed § 107.219(e) is withdrawn.

Section 107.301 Contingency Plan

This proposed new section would require airport operators to implement FAA-issued contingency measures contained in their security programs when directed by the Administrator. It also proposed that airport operators (and aircraft operators under parallel

language of part 108) should test these contingency plans to ensure that all parties involved are aware of their responsibilities and that information contained in the plan is current.

Comments: Sacramento County Department of Airports requests clarification of the Contingency Plan and asks whether the FAA expects airports to replace the Aviation Security Contingency Plan (AVSEC).

ACC requests that the FAA update its alert levels and contingency measures.

An airport and a port authority state that the term ''exercises'' should be removed from the phrase, ''conduct reviews and exercises.'' Then the regulations would parallel to existing part 107 and part 139. Another commenter recommends an annual requirement to review and exercise the contingency plan.

Two airports state that § 107.301(b) should specify that table top exercises instead of the application of measures with real events is sufficient to meet the requirement for reviews and exercises.

One commenter states that it is the FAA's responsibility to ensure that invited parties participate in contingency plan reviews and exercises. Another commenter recommends that aircraft operator participation should be addressed in part 108.

FAA response: The current AVSEC Plan is mandated by a security program amendment. The FAA does not expect the airports to replace the AVSEC Plan based upon this rulemaking. Rather, this proposal language was intended to clearly state the regulatory foundation for the existing plan.

The FAA disagrees with the commenter who suggested removal of the requirement for airport operators to conduct ''exercises'' of their contingency plans. The FAA developed the AVSEC Plan to ensure that the FAA, airport operators, aircraft operators, and other affected parties are able to respond effectively and on short notice, to each threat to civil aviation security. A contingency plan, in order to be most effective, must be rehearsed regularly with all key participants and infrastructures involved. The FAA experience has shown this approach will help to ensure a timely response to actual threats, therefore, the requirement to perform ''exercises'' will remain. The agency expects that such exercises will be conducted in accordance with requirements established in local security programs.

The airport operator has a responsibility to ensure that all key participants, including aircraft operators, are knowledgeable about the contingency plan and participate in exercises. Consistent with this, aircraft operators have a responsibility under § 108.301 to develop and practice the contingency plan and to participate in tabletop exercises of the airport plan. The FAA views its role as ensuring that all parties to this plan maintain a state of preparedness necessary to respond to reasonably foreseeable situations. The agency believes the regulation, as modified, promotes that end.

Section 107.303 Security Directives and Information Circulars

This proposed new section would correspond to proposed § 108.305 and requires airport operators to respond to Security Directives in the same manner as aircraft operators.

The FAA has used Security Directives as a means to disseminate information to aircraft operators concerning security threats and to require appropriate measures to be implemented. The FAA uses Information Circulars for the notification of general information regarding threats to civil aviation security.

This section also proposed to permit the ASC to apply for a security clearance through the FAA in order to receive classified information related to national security.

Comments on § 107.303(a): One airport states that § § 107.303(a) and (b) are inconsistent. Paragraph (a) refers to the Assistant Administrator issuing a Security Directive and paragraph (b) refers to the Administrator issuing a Security Directive. Another commenter states that the language should be amended to account for the fact that the Administrator issues Information Circulars to convey threat information.

One commenter states that the type and quality of threat information provided to the airport operators is barely useful in security practices.

One port authority states that the FAA should specify in the language that all Security Directives will be addressed to the ASC and/or their designated alternate.

One commenter states that there should be some distinction made between airport and aircraft operator Security Directives.

FAA response: The FAA agrees that there were apparent inconsistencies in the language. The final rule has been amended to reflect that all actions are taken by the Administrator. However, under § 107.1(b) the Administrator's authority is also exercised by the Assistant Administrator for Civil Aviation Security or the Deputy Assistant Administrator for Civil Aviation Security. Section 107.1(b) also addresses further delegation of the Administrator's authority.

In response to the commenter that stated that threat information is ''barely useful,'' the FAA notes that it makes every effort to provide useful threat information to all regulated parties. However, much of the information upon which Security Directives and Information Circulars are based may have been classified by other Government agencies. Consequently such information can only be released if it has been crafted in such a way as to protect the interests of those agencies. The ability of the agency to grant a Federal security clearance to certain airport officials allows greater latitude in passing on more specific, and hopefully more useful information.

Further, often the information the government holds is very limited, and there is little more specific information to pass along. In such a case, the FAA provides what information it can to keep the airport operator as informed as possible.

The FAA agrees with the commenter that the ASC plays a crucial role in the chain of communication. The final language of the regulation reflects in § 107.5(b)(1) the ASC as the point of contact for this purpose, however, other officials at the airport may also receive information at the FAA's discretion and based upon the circumstances.

The FAA agrees with the commenter who notes that confusion could result when more than one type of regulated party receives a similarly titled document. The FAA also recognizes that the Emergency Amendment process has been used for the notification of both airports and foreign air carriers regulated under part 129. The agency notes that the language of the documents generated under this provision will clearly indicate their applicability and intent.

Comments on § 107.303(b): One airport and a local aviation department state that airports should have a minimum of 3 business days to comply with Security Directives.

FAA response: The FAA does not believe it is appropriate to provide in the regulation a minimum of 3 business days to comply with Security Directives. Security Directives usually respond to an immediate threat. Hence, the FAA will not place regulatory constraints upon its ability to be responsive in these situations. It will, however, be mindful of the difficulties in complying with contingency measures and will permit additional time for implementation where the circumstances of the situation permit.

Comments on proposed § 107.303(c): One commenter strongly opposes § 107.303(c) that presumes to regulate the airport via the Security Directive.

One airport states that a Security Directive cannot be implemented in ''24 hours.'' Another commenter suggests replacing the references to ''24 hours'' or ''72 hours'' with references to business days (such as, 1 day or 3 days). Miami International Airport suggests that ''24 hours'' and ''72 hours'' should refer to business hours. Smaller airports are not continuously staffed and may not receive a Security Directive until resuming normal workday hours. Otherwise, the FAA must be required to contact the airport to advise that a Security Directive is being transmitted.

One commenter strongly disagrees with the time requirements to comply with a Security Directive. Any significantly intrusive or expensive measure would only need to be implemented if the airport, aircraft operators and the FAA agree that the threat justifies the action.

One commenter states in regards to § 107.303(c)(3) that airports should only be responsible for advising employees directly employed by the airport with a need to know (those on the payroll).

FAA response: The Security Directive process, like the Emergency Amendment process that has been in use for years, is intended to respond to imminent threats. The FAA cannot categorically state in this rule that in each case the airport should have a specified number of hours or days to implement the measures. The FAA is aware that each case must be evaluated, and the circumstances of each airport must be considered, in determining compliance times.

The FAA disagrees with the commenter who addressed § 107.303(c)(3) in that the airport operator may be the only appropriate authority to pass on such information, especially to persons not employed directly by the airport operator or an aircraft operator. The airport operator may also be the only authority in the position to design, describe, and institute appropriate measures. Further, the airport operator has control over such critical functions as the access systems and identification systems. As such, the duty to provide such details to persons having the need to know would logically fall to the airport operator.

Comments on proposed § 107.303(d) and (e): There were no comments on these paragraphs.

Comments on proposed § 107.303(f): Another commenter strongly supports receiving classified information after the ASC has applied and received a security clearance.

FAA response: The proposed language was intended to highlight this option. However, the language has been deleted in the final rule simply because it is unnecessary. The FAA wants to make it clear that the option for the airport operator to receive classified material by an appropriate designated official still exists, and the FAA actively encourages the exercise of that privilege.

New § 107.303(e) makes clear that the airport operator may submit written comments on a Security Directive. The FAA currently receives many verbal comments on Emergency Amendments, and expects to continue to receive verbal comments on Security Directives issued to airports. This often is a quick way for industry and the FAA to exchange information on the practical impact of the Emergency Amendment or Security Directive and for the FAA to provide guidance, and make changes to the Emergency Amendment or Security Directive as needed.

Section 107.305 Public Advisories

This proposed new section was added to incorporate new statutory language and a 1986 security program amendment.

Comments: ASAC and six airports recommend that the most effective means to notify passengers of public advisories is to flag those foreign airports on airline reservations systems. The booking agent would then notify the passengers verbally that the destination airport does not meet FAA standards.

Three airports and a local aviation department recommend that the aircraft operators should be responsible for posting warnings in the ticket jacket. A part 108 requirement to advise passengers via ticket sleeve inserts would diminish airport signage costs, information overload and clutter.

One airport asks why the security program has to specify the timeframe that the public advisory shall be posted? It is meaningless to have an arbitrary time of posting in the security program. Another airport states that by the time the passengers see the sign, they have checked in and committed themselves to the trip.

FAA response: The requirement to provide public notification at US airports that a foreign airport has been determined to have failed to maintain or carryout effective security measures is found in the Title 49 U.S.C. 44907(d)(1)(ii)(A). Under this statute the notification also is published in the **Federal Register** and the news media is notified. The FAA believes that posting the identity of that airport is best accomplished by a single entity at each location. That entity is determined to be the airport operator. The law also requires aircraft operators to notify their passengers of that foreign airports' status.

As to the question regarding timeframes for postings, the rule provides that the period of time is determined by the Secretary of Transportation.

Section 107.307 Incident Management

This new section was added to require the airport operator to establish procedures to evaluate and respond to threats of sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

Proposed § 107.307(b) would specifically provide that the evaluation of a threat would be conducted in accordance with the security program. However, any event covered by the part 139 airport emergency plan, such as an actual hijacking, would be handled as specified in the airport emergency plan.

To promote coordination between part 107 and part 139, the FAA also proposed to amend § 139.325 to ensure that emergency response procedures to hijack and sabotage incidents contained in the airport emergency plan are consistent with the approved security program. Proposed § 107.307(d) supported this coordination by requiring the airport operator to review annually threat and incident response procedures. Such a review is intended simply to ensure threat response procedures and contacts are still accurate and should not be interpreted as a requirement for a full-scale exercise.

In the event that an airport required to have a security program under part 107 is not required to have an airport emergency plan under part 139, proposed § 107.307(c) would require the airport to develop emergency response procedures in addition to threat evaluation procedures.

Comments: The Sacramento County Department of Transportation and two airports recommend deleting § 107.307. An airline suggests that § 107.307(a) could lead to disputes between the aircraft and airport operators as to who should actually evaluate bomb threats against flights and aircraft. One commenter recommends removing the phrase, ''As described in the security program'' from § 107.307(a) since it is unnecessary.

FAA response: The FAA agrees that the proposal was not clear as to the airport's role in evaluating threats made to air carriers. The final rule states that

the airport operator must evaluate or take action on only those bomb threats it receives directly, or that are referred to the operator by any other entity. For example, should an aircraft operator receive a bomb threat that it evaluates under the provisions of § 108.303 and determines that the bomb threat is neither specific nor credible, it need not refer the bomb threat to the airport operator. However, if the aircraft operator refers a threat to the airport operator or if the airport operator receives a threat directly or by other means, the airport operator is obligated to act under the provisions of § 107.307.

The FAA also agrees with the commenter's request to delete the opening phrase ''As described in the security program'' from § 107.307(a). Since the implementing details of almost all requirements appearing in part 107 are placed in the FAA-approved security program, the insertion of the subject language in § 107.307(a) is unnecessary.

Part 139—Certification and Operations: Land Airports Serving Certain Aircraft Operators

Section 139.325 Airport Emergency Plan

The FAA proposed to add a new section, § 107.307, to require the airport operator to establish procedures to evaluate and respond to threats of sabotage, aircraft piracy, and other unlawful interference to civil aviation operations. Existing part 107 lacks a specific requirement for airport operators to respond to threats of such criminal activity. Instead, part 139, Certification and Operations: Land Airports Serving Certain Aircraft Operators, requires airport operators to be prepared to respond to an actual incident of sabotage, hijack, and other emergencies by developing and testing an airport emergency plan under § 139.325. These emergency procedures are sometimes incorporated in the security program verbatim, and generally speak to emergency services responses.

The FAA believes that emergency response procedures to such incidents such as bombing or hijacking, should remain in the part 139 airport emergency plan. An expedited response to emergency situations is critical, and response procedures to any emergency should be limited to one document to minimize delays and confusion.

To promote coordination of the procedures to implement the requirements of part 107 and part 139, the FAA proposed to amend § 139.325 to ensure that emergency response procedures to hijack and sabotage incidents contained in the airport emergency plan are consistent with the approved security program.

Comments: One commenter recommends removing the requirement to have the airport operator to obtain two approvals for its security program (FAA Security Division and FAA Airports Division). Another commenter recommends excluding all emergency plans dealing with security, stating that security emergency plans belong in part 107 only. Another commenter states that the consensus of the airport community is to remove any cross-reference between part 107 and 139.

One commenter states that part 139 does not have protection under the non-disclosure rules.

FAA response: Nothing in this rule requires the airport operator to obtain two approvals for its security program. The changes to § 139.325 require the airport operator to ensure consistency between the operator security program required under part 107 and its airport emergency plan under part 139. The purpose here is to prevent confusion and contradictory program language that would hamper rather than facilitate any response to an actual emergency situation at the airport.

The FAA disagrees with the recommendation to exclude all emergency plans dealing with security. The security program under part 107 is intended primarily to detail how the airport operator will prevent or respond to emergency situations. The airport emergency plan focuses on the emergency services response to a situation that has already occurred. Since the emergency plan deals primarily with emergency medical services, fire and rescue services, etc., the concerns are unique to that program and are properly included in that plan. The FAA recognizes some areas of overlap, but the programs and their purposes are distinct enough that the FAA believes they deserve their own separate document with review by the FAA specialists versed in their respective fields of expertise.

In response to the comment about protection under the non-disclosure rules, any sensitive security information as defined in part 191 that may be contained in the emergency plan must be protected in accordance with that regulation.

Summary of Economic Comments

This section will summarize the economic comments and the FAA's responses. A detailed discussion of these comments and responses is contained in the full evaluation in the docket for this proposed rule. A total of 66 commenters raised economic issues.

General comments: Two commenters believed that the numbering and ordering of several sections changed since the analysis was originally done.

One commenter could not understand why the FAA avoided any cost estimation for the effects of §§ 107.31 and 108.33.

One commenter notes that the NPRM's economic summary states that the proposed rule ''is not a significant rulemaking action,'' and so asks, then why are we doing it?

One commenter objected to the FAA using 1994 FAA forecasts for a document that was not published until 1998.

One commenter believes that the proposed regulations would have an impact on international trade.

Two commenters believe that the costs of these regulations will result in yet another unfunded mandate.

FAA response: No specific examples were given of how the scope had changed. One commenter did submit a chart, which purported to show these differences. In this chart, most of the differences were explained in terms such as ''not the same,'' ''increased scope,'' or ''potential reduced flexibility''. Without specific examples, the FAA cannot respond to this commenter's concerns.

The FAA has provided cost estimates for §§ 107.31 and 108.33 in the analysis for the ''Unescorted Access'' final rule.

The Office of Management and Budget (OMB) and the Department of Transportation (DOT) have specific definitions for ''significant'' rulemaking actions that include certain cost and/or policy criteria. The fact that this rulemaking does not meet these criteria does not mean that this rulemaking action is irrelevant.

Even in the best of times, given the limited resources within the FAA and DOT, it is often normal for there to be a delay between the time that the analysis is done and published.

Unlike air carriers, airports are not in competition with their foreign counterparts.

As required by Congress, the FAA has examined these regulations in light of the Unfunded Mandates Reform Act of 1995 and found that this Act does not apply.

Comments on the assumptions used in the analysis: Two commenters questioned the assumption that the number of airports and their distribution into airport types would not change for the 10 year span of the analysis.

Four commenters believe that using data from many different years, such as 1989, 1991, 1992, and 1994 is inappropriate for a 10-year projection to 2009.

Two commenters were uncomfortable that data was used from an analysis dealing with testing for alcohol usage.

Two commenters believe that the number of badged staff used in the NPRM analysis were incorrect.

One commenter stated that the assumption that all identification media will be magnetic stripe is unrealistic.

One commenter believed that the FAA's assumption that it would take 1 hour to reissue a card assumed no queuing and thus was too low.

One commenter claimed that the discount and price deflator numbers needed clarification and standardization.

One commenter objects to the FAA grouping airports into Types A, B, and C airports, which he believes have little or no apparent correlation to the existing categorization of airports.

One commenter was not comfortable with the difference in the costs of new identification badges at different airports.

FAA response: Since no one can accurately predict the number of airports and how the distribution by size and type for any year in the future, the FAA will not modify these assumptions.

The cost data that the FAA uses is not in one place; instead, it must be gleaned from several different sources. All wage rates were adjusted to 1994 dollars in the NPRM, and 1998 dollars for the Final Rule.

The data gleaned from this analysis applied to GSC's.

The data was obtained from the 1994 survey. Since neither commenter provided different data, the FAA will continue to use the data obtained from the survey.

Since the vast majority are magnetic stripe, cost estimates based on this assumption are expected to be close to the actual amount.

Based on information from industry, the FAA bases its estimate of 1 hour to reissue a card.

According to OMB, the FAA applies a discount factor of 7% to calculate the present value of costs. The GDP implicit price deflators are used to convert costs in different year dollars to the same year dollars.

These airport types track with the security provisions that are in place in the current § 107.3.

The differences in the costs of the badges between the different airports are based in the differences in the wage rates at these airports and in the complexity of the badges needed.

Section 107.3—Definitions

Comments: One commenter believes that the FAA's assertion that changes in definition would not result in any incremental costs is incorrect.

FAA response: This section's purpose is to define the words and terms that will be used later on in the document. When each of these new words and terms are used operationally (in latter sections), they are costed out then.

Section 107.5—Airport Security Coordinator

Comments: One commenter was not comfortable with the FAA's assumption that since the GSC's attrition rate is 5%, the ASC's attrition rate must be the same.

One commenter, in looking at the FAA's costs estimates for additional ASC responsibilities says that the additional ASC duties would need to be transferred to other personnel; the FAA did not cost out the hiring, training, and wages of these additional personnel.

FAA response: Concerning the attrition rates, the commenter offers no other data for the FAA to use, so the FAA will continue to use the 5% attrition rate.

The FAA has no way of knowing if ASC's would need to transfer any of these responsibilities and who they would be reassigned to.

Section 107.9—Falsification

Comments: One commenter does not accept the FAA's belief that there would be few cases that statements or documents would be falsified, and hence, cost would be minor.

FAA response: In the analysis, the FAA specifically invited comments on the number of instances of falsifications that airports have experienced. However, no commenter submitted anything different.

Section 107.11—Security Responsibilities of Persons

Comments: One commenter noted that the FAA assertion that ''the cost of administering a compliance program would only be incurred by airports currently without a program'' was wrong, as existing compliance programs have administrative costs.

One commenter further states that he does not believe that an ASC and a clerk could develop or modify the challenge program in 8 hours.

FAA response: The FAA made a misstatement here and meant to say that ''the *additional* cost of administering a compliance program * * *.''

The FAA agrees with the commenter and is using a figure of 40 hours per each of these employees in the development or modification of the challenge program.

Section 107.103—Content

Comments: Two commenters were not comfortable with the FAA assumption that it would take 15 minutes to assemble each of the elements required by the new section § 107.103.

One commenter believes that the 10-year estimate of $49,200 for administrative costs to change the descriptions in the ASP averages out to $10.69 per airport annually, clearly too low.

FAA response: The FAA agrees and increased the amount of time from 15 to 60 minutes in the final rule analysis.

The FAA is increasing the amount of time required to make these administrative changes, so these costs will rise. In addition, many of the administrative changes will only occur in the first year of implementation.

Section 107.107—Changed Conditions Affecting Security

Comments: One commenter objected to the proposed rule's requirement for airports to report to the FAA any operational changes within a 2-hour period.

Two commenters were confused as to how the FAA's requirement that the Agency be informed of new conditions in 2 hours could lead to cost savings.

FAA response: The FAA has removed the 2-hour time frame from the final rule; the new requirements are that the airport must notify the FAA within 6 hours, or within the time specified in the security program.

The cost savings do not come from these proposed requirements but from new rules that would relieve the airport from formally amending its security program for a condition under 60 days.

Section 107.111—Exclusive Area Agreements

Comments: One commenter does not understand how the FAA's analysis could state that individual costs on the transfer of exclusive use agreements from airports to air carriers will balance out.

FAA response: This analysis looks at any incremental costs. If the airport was doing ''X'' and now the aircraft operator is doing ''X'', to include total aircraft operator costs without looking at total airport savings would be erroneous.

Section 107.201—Security of the Secured Area and Section 107.203—Security of the AOA

Comments: Fourteen commenters make copious arguments against many of the requirements and costs in proposed §§ 107.201 and 107.203. The FAA has modified this section in the final rule, so these comments are not pertinent.

Three commenters believe that adding signage requirements for all doors would increase the cost significantly.

FAA response: If airports change the boundaries of areas to be secured, they will be required to post new signs within these areas. New signs will need to be posted once, not repeatedly and only if the boundaries have been modified.

Section 107.207—Employment History, Verification, and Criminal History Records Checks

Comments: Two commenters questioned the FAA's assertion that it would take $363 to secure a door, as noted in the calculations of proposed § 107.205(f), claiming that the costs of new infrastructure to existing systems would be higher.

One commenter questions whether parts of proposed §§ 107.209 and 107.205 (the NPRM's §§ 107.211 and 107.207) don't contradict each other. He points out that former restricts badge issuance to only 1 per person while the latter allows for the issuance of secondary media.

One commenter was uncomfortable with the FAA's assumption that each employee would forget their access media card on average one time per year.

One commenter objected to the FAA's assertion that employee absences result in supervisors drawing from a labor pool which ensures against employee no-shows; with the exception of reserve flight crews, no airport or air carrier operates with stand-by personnel.

One commenter believes that since there are references to vehicle identification systems in both proposed § 107.205 and in existing part 139, this would lead to two systems that are equally expensive, access control systems.

FAA response: The requirements of proposed § 107.205(f) are not in the final rule. The commenter is confusing the temporary badges discussed by proposed §§ 107.205 (access) and § 107.209 (identification). For the former, the airport may issue a second access media to someone who forgets to bring it to work. For the latter, the airport may issue a second identification media if the employee has more than one job at the airport.

The FAA agrees with the commenter that in the new analysis, the FAA bases costs on the assumption that each employee would forget their access media on average three times a year.

The commenter is correct and such language has been removed from the final rule analysis.

The FAA is not requiring vehicle identification in the final rule.

Section 107.211—Training

Comments: One commenter could not understand the big differences between the costs of personnel and vehicle identification systems.

One commenter believes that applying the challenge procedures to both types of secured areas but having two-tiered training and identification requirements is confusing and costly.

Four commenters believe that having expiration dates on badges, which cause the need to reaudit and revalidate the system, causes great expense and does not augment security.

Six commenters believe that a vehicle identification system would be very expensive.

One commenter objects to an audit that would compare airport records to airline and airport tenant files. Another commenter objected to what it believed was a second yearly audit to compare airport records to airline and airport tenant files.

One commenter could not understand why escort programs ''would not entail costs to airport operators because it codifies a program that is currently in place at all airports in their ASP.''

FAA response: A major reason for this cost differential between personnel and vehicle identification systems is that former involves personnel salary time and picture identification costs; there are no such requirements for vehicle identification. However, the FAA is not requiring vehicle identification in the final rule.

The fact that a challenge system is needed in both areas does not obviate the need to maintain a two-tiered training system.

There are good reasons why an expiration date is needed on identification badges. A person's appearance changes over time. In addition, if an individual losses their identification, anyone would be able to use that badge in the SIDA, perhaps without the picture being carefully viewed by other persons in the area.

Information from the survey indicated that a vehicle identification system at a large airport costs about $4,700 to set up an identification system and $2,300 and $12,100 to audit and revalidate the system, respectively.

The FAA believes that both commenters misread the proposed regulations as there is no such requirement.

Since the FAA is only costing out the new or incremental costs imposed by this proposed regulation, moving a portion of the existing requirements from the ASP to the regulation does not impose any incremental costs.

Section 107.215—Law Enforcement Personnel

Comments: Two commenters were uncomfortable with the FAA using survey data to project cost savings based on the use of plainclothesmen.

FAA response: The FAA has revisited this issue and now believes that there will not be any costing savings.

Section 107.221—Records of Law Enforcement Response

Comments: One commenter notes that the NPRM's § 107.219 (now § 107.221) doubles the requirement for maintaining records, from 90 to 180 days, and wonders why.

FAA response: With regard to the need for 180 days, the FAA stated in the NPRM's Preamble: ''often times, the current 90-day requirement is insufficient for investigation and enforcement purposes.''

Section 107.301—Contingency Plan

Comments: One commenter points out that each airport was required to incorporate the contingency measures into their airport security program several years ago. By shifting this information to the new airport security program, this would involve costs to each airport.

FAA response: The FAA agrees that these contingency measures have existed in each airport operator's security program and believes that they should now be part of the public rule rather than the private rulemaking. In costing out the proposed provisions, the FAA is looking at the incremental change that these changes would impose on the airport. Given that airports already have these contingency provisions, no airport would have to establish one.

Paperwork Reduction Act

Information collection requirements pertaining to this final rule have been approved by the Office of Management and Budget (OMB) for one year under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB control number 2120–0656. Comments

were received on the NPRM publication and are discussed earlier in this preamble.

The FAA is committed to provide the industry with the most current, accurate, and relevant cost impact figures possible. In order not to impede the timely issuance of the regulation, it is our intent to provide updated information on the issues currently contained in the rule, and to solicit additional data from the industry and general public in support of OMB's renewal under the current Paperwork Reduction Act clearance.

The FAA has carefully evaluated the likely incremental burdens of the changes to part 107, and OMB has approved these estimates for a limited period under OMB 2120–0656. However, the FAA recognizes that the rule is codifying many existing practices and procedures, and that the newly codified part 107 will also bring about evolutionary changes of its own. As part of its review of the existing paperwork burden required every 3 years, FAA is now planning a thorough review as part of that renewal clearance of OMB 2120–0075, which expires May 31, 2001. This will also allow the airports and the FAA an opportunity to evaluate how best to implement the changes, and to minimize any new burdens.

It is important to note that the figures contained in the previous clearance for part 107 [OMB #2120–0075], which reflect an estimated annual impact of 75,414 hours of impact, have not changed significantly for a number of years. Those numbers are to a considerable degree based upon long-standing and probably outdated assumptions, and do not fully reflect growth in the demands on airports since that time. Overall traffic at U.S. airports has increased by one-third since 1990, with a concomitant increase in terminal facilities and related demands on security support activities and law enforcement personnel. This includes large demands such as those imposed by the implementation of access controls under § 107.14 in 1989.

During the intervening years, updates of the information collection burden have not kept pace. Amendments have been addressed piecemeal due to periodic security exigencies and legislative requirements. However, a single comprehensive review of the economic impacts of the entire program as an integrated whole has not been possible until this comprehensive rewrite of the regulations. It is our goal to address the informational deficit through additional data gathering and analysis in support of the upcoming May 31, 2001 OMB renewal process.

The current FAA submittal, which estimates approximately 512,000 total annual hours of impact on the industry, must be viewed in a significantly different context from the previous estimates: The FAA will be examining both the old and new regulation in order to validate ongoing burdens and seek to eliminate duplication.

The core provisions of the new regulation have been adopted from current industry practice. Specifically, under the existing regulation, the goals of some security functions are set forth as general mandates. At the same time, the regulation requires the airport operator to accomplish those mandates through language in nonpublic FAA-approved airport security programs. For example, for many years, existing § 107.13 has required airport operators to control access to and movement on certain areas of airports. The implementing details were to be set forth in the security programs. It is the common practice under part 107, to perform this task, in large part, through the use of personal identification (ID) systems. Yet, the existing regulation does not specify the use of such systems; hence, the associated burdens were never adequately reflected. However, the revised part 107 specifically requires the use of ID in certain areas. So, the burdens associated with these systems, while already in place, must be reflected as though totally new. As a result, some of the hours attributed to this new rule are already being expended, so the new burden could actually be less than 512,000 hours. In addition, since the use of such systems has been common industry practice for many years, there exists a considerable amount of industry experience in their implementation. This will allow the FAA to reflect a more valid estimate of impact based on greatly improved data.

Based on extensive comments to the FAA, some costly requirements, such as the access control time and date requirements have been removed from the existing rule, and some NPRM provisions were dropped, such as vehicle IDs and some name changes of the security areas.

Some hours of estimated impact are not really added hours of burden. This regulation simply codifies many existing practices. If anything, the standardization has a strong potential to reduce the collective impact of the rule on both the FAA and the airports.

It is FAA's intent to issue the rule immediately under an interim OMB clearance in order to allow airports to initiate the necessary revisions to their airport security programs. Simultaneously, FAA will initiate the development of an effort to gather updated data to further refine the estimates. These will be submitted to OMB early in 2001 in support of a final clearance under the Paperwork Reduction Act.

As provided for by the Paperwork Reduction Act, it should be noted that an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The assigned control number for the collection of information associated with this rule is 2120–0656.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. This proposal is consistent with the ICAO security standards.

Regulatory Evaluation Summary

This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) but is not considered to have a significant economic impact under Executive Order 12866.

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended March 1996, requires agencies to analyze the economic effects of regulatory changes on small entities. Third, OMB directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that the rule will generate benefits that justify its costs. The rule will not have a significant impact on a substantial number of small entities. The rule will not constitute a barrier to international trade and does not contain Federal intergovernmental or private sector mandates. The full analyses performed in response to the above requirements are contained in the docket and are summarized below.

The FAA analyzed the expected costs of this regulatory proposal for a 10-year period (2000 through 2009). As required by OMB, the present value of this cost stream was calculated using a discount

factor of 7 percent. All costs in this analysis are expressed in 1998 dollars.

The FAA has determined that implementing the final rule changes will affect airport owners; in addition, § 107.307 will impose additional costs on the CASFO representatives.

Currently, there are 458 airports in the U.S. aviation system that have an airport security program approved by the FAA; the contents of these programs, their approval, and the amendment process are key components of part 107. All airport security programs cover many of the same requirements and concerns. However, due to the different physical layouts and security requirements of each airport, each airport's security program will have some unique features. Accordingly, it is important to note there is not a single airport security program, but instead, many programs that have many common elements.

Many of the changes to parts 107 and 139 simply change definitions or make minor word changes. These changes will not result in any incremental costs and will not be covered in this summary. Nine sections will increase costs and two sections will result in cost savings. The changes to security will affect virtually all airports in the system. The analysis assumes no change in the number of airports over the next 10 years.

Section 107.5, entitled ''Airport Security Coordinator'' increases the responsibilities of the ASC. Under this rule, the ASC, or in certain cases the airport operators or their designees, must review materials and security functions for effectiveness and compliance and take corrective action immediately for each instance of non-compliance with this part and notify the FAA of the instances and any corrective measures taken. The ASC must also be trained in accordance with the FAA-approved security program. The estimated cost resulting from these changes total $10.8 million (net present value, $7.6 million).

Section 107.7, entitled, ''Inspection Authority'' (amending the current § 107.27), requires each airport operator to provide the FAA with evidence of compliance with part 107 and its ASP, including copies of records. The airport may be required to send the FAA selected records; for this analysis, the FAA assumes that airports will need to furnish 5% of these reports to the FAA. For this analysis, the FAA assumes that all airports file quarterly. Ten-year costs for these increased records sum to $37,900 (present value, $26,300).

Section 107.103, entitled ''Content'' (amending the current § 107.3) expands the documentation requirements for the airport security programs. The estimated administrative costs will be approximately $420,000 (present value, $330,000).

Section 107.107, entitled ''Changed conditions affecting security'' involves notification costs. All airports are required to notify the FAA to certain changes in airport security. This rule will increase the number of airport security changes of which the FAA needs to be aware and will relieve airports of having to modify their airport security program for a changed security condition under 60 days. The net results of these changes will be an estimated $4.3 million in savings (present value, $3.0 million).

Section 107.201, entitled ''Security of the secured area'' defines the requirements for the most critical security portions of the airport. The intent is to better define the areas of the airport in which the security interest is the most critical and where security measures should be the most stringent. This will entail additional requirements, such as changing warning notices and signs for this area. Most current employees will probably need additional one-time training to educate them as to these new changes. Due to the reclassification and redesignation of the secured area, the FAA believes that 5 percent of all airport employees will no longer need to be issued access media and will no longer need to be trained for access to this area, nor will they need access media. The net result is that these revisions will save an estimated $28.6 million (present value, $15.3 million).

Section 107.203, entitled ''Security of the air operations area'' establishes the means used to control access and movement on the AOA; such access and movement is held to the same standards as controlling access and movement in the secured areas. However, the regulation on the AOA will still entail additional costs including providing information to all employees with access to the AOA and changing warning notices and signs for this area. These revisions will cost an estimated $10.2 million (present value, $9.5 million).

Section 107.207, entitled ''Access control systems'' enhances the existing performance standards for access controls by allowing the issuance of a secondary access medium to individuals. The secondary access media program gives airport operators an option, in addition to using either existing airport escort programs or denying employees access without their original cards, both of which can be very costly. An airport operator opting to use a secondary access media will incur additional costs, including development costs, annual computer time, card manufacturing costs, and card storage costs. A few airports currently escort all employees who do not have their access cards, resulting in lost productivity; costs involved with escorting are covered in § 107.211. Most others deny entry to employees without access cards; they are either sent home to retrieve the card or not allowed to work for the day, so that employee's supervisor needs to spend time reassigning employees. The FAA based its costs by assuming that half the airports adopt the secondary access media and the other half use the current two options. The total 10-year costs for this section total $75.5 million (net present value, $52.7 million).

Section 107.211, entitled ''Identification systems'' requires airports to implement an identification system if they do not have one, and require identification systems to meet certain standards. Such standards will require airports to audit their identification systems once a year and revalidate their identification systems when a certain percentage of the currently issued and active identification media become unaccountable for personnel systems. This section also will require airport operators to implement a challenge program in the secured area and SIDA. The purpose of the challenge program is to improve each airport operator's ability to limit unauthorized incursions in the secured area; the rule requires all airports to make modifications to their present challenge programs. In addition, there will be cost savings from those airports that will no longer use their escort program for employees who forget their access media (as discussed in § 107.207). The total cost of this section will be $7.2 million (present value, $9.2 million).

Section 107.221, entitled ''Records of law enforcement response'' requires that records be maintained pursuant to a schedule in the airport security program and increases the time an airport must maintain records from 90 days to 180 days. Airports will still be required to report all deadly weapon activity, arrests, and threats against civil aviation. The additional recordkeeping and maintenance costs will total $17.8 million (present value, $12.2 million).

Section 107.307, entitled ''Incident management,'' will require that airports incorporate certain procedures into their airport security programs for responding to threats of sabotage, aircraft piracy, and other unlawful acts against civil aviation. This section will also impose

costs upon the FAA; FAA representatives will have to review and approve airport incident threat response procedures and ensure coordination of such procedures with their counterparts in airport safety. Ten-year costs are estimated to be approximately $2.1 million (present value, $1.5 million).

Section 139.325 is amended to require each airport to ensure that the instructions for each airport emergency plan are consistent with its airport security program. This action will entail costs for each airport. The FAA assumes that the ASC and a clerk will each need to spend 2 hours in 2000 and 1 hour in each subsequent year to ensure consistency. Total costs over 10 years equal $270,000 (present value, $200,000).

The 10-year total cost of this rule is estimated to be $92.2 million (present value, $75.4 million).

The rules to amend parts 107 and 108 are intended to enhance aviation safety for U.S. airport operators and aircraft operators in ways that are not currently addressed. The benefits of the rules will be a strengthening of both airport and air carrier security by adding to their effectiveness. Security is achieved through an intricate set of interdependent requirements.

It would be extremely difficult to determine to what extent an averted terrorist incident can be credited to either airport or aircraft security. Accordingly, the benefits from the rules for parts 107 (airport operators) and 108 (aircraft operators) have been combined in this benefit-cost analysis. These benefits are comprised of the criminal and terrorist incidents that these rules are intended to prevent; hence, these benefits will be contrasted against the costs of the changes to parts 107 and 108. The combined costs of part 107 and 108 total $131.3 million (present value, $104.1 million) over 10 years.

Terrorism can occur anytime and anywhere in the United States. Members of foreign terrorist groups, representatives from state sponsors of terrorism, and radical fundamentalist elements from many nations are present in the United States. In addition, Americans are joining terrorist groups. The activities of some of these individuals and groups go beyond fund raising. These activities now include recruiting other persons (both foreign and U.S.) for terrorist activities and training them to use weapons and make bombs. These extremists operate in small groups and can act without guidance or support from state sponsors. This makes it difficult to identify them or to anticipate and counter their activities. The following discussion outlines some of the concrete evidence of the increasing terrorist threat within the United States and to domestic aviation.

Investigation into the February 1993, attack on the World Trade Center (WTC) uncovered a foreign terrorist threat in the United States that is more serious than previously known. The WTC investigation disclosed that Ramzi Yousef had arrived in the United States in September 1992, and had presented himself to immigration officials as an Iraqi dissident-seeking asylum. Yousef and a group of radicals in the United States then spent the next 5 months planning the bombing of the WTC and other acts of terrorism in the United States. Yousef returned to Pakistan on the evening of February 26, 1993, the same day that the WTC bombing took place. By August 1994, Yousef had conceived a plan to bomb as many as 12 U.S. airliners flying between East Asian cities and the United States.

Yousef and his co-conspirators tested the type of explosive devices to be used in the aircraft bombings and demonstrated the group's ability to assemble such a device in a public place, in the December 1994, bombing of a Manila theater. Later the same month, the capability to get an explosive device past airport screening procedures and detonate it aboard an aircraft also was successfully tested when a bomb was placed by Yousef aboard the first leg of Philippine Airlines Flight 424 from Manila to Tokyo. The device detonated during the second leg of the flight, after Yousef had deplaned at an intermediate stop in the Philippine city of Cebu.

Preparations for executing the plan were progressing rapidly. However, the airliner-bombing plot was discovered in January 1995, by chance after a fire led Philippine police to the Manila apartment where the explosive devices were being assembled. Homemade explosives, batteries, timers, electronic components, and a notebook full of instructions for building bombs were discovered. Subsequent investigations of computer files taken from the apartment revealed the plan, in which five terrorists were to have placed explosive devices aboard United, Northwest, and Delta airline flights. It is likely that thousands of passengers would have been killed if the plot had been successfully carried out.

Yousef and his co-conspirators were arrested and convicted in the bombing of Philippine Airlines flight 424 and in the conspiracy to bomb U.S. airliners. Yousef was sentenced to life imprisonment for his role in the Manila plot. Yousef also was convicted and sentenced to 240 years for the WTC bombing. However, there are continuing concerns about the possibility that other conspirators remain at large.

The fact that Ramzi Yousef was responsible for both the WTC bombing and the plot to bomb as many as 12 U.S. air carrier aircraft shows that: (1) Foreign terrorists are able to operate in the U.S. and (2) foreign terrorists are capable of building and artfully concealing improvised explosive devices that pose a serious challenge to aviation security. Civil aviation's prominence as a prospective target is clearly illustrated by the circumstances of the 1995 Yousef conspiracy.

The bombing of a Federal office building in Oklahoma City, Oklahoma, shows the potential for terrorism from domestic groups. While the specific motivation that led to the Oklahoma City bombing would not translate into a threat to civil aviation, the fact that domestic elements have shown a willingness to carry out attacks resulting in indiscriminate destruction is worrisome. At a minimum, the possibility that a future plot hatched by domestic elements could include civil aircraft among possible targets must be taken into consideration. Thus, an increasing threat to civil aviation from both foreign sources and potential domestic ones exists and needs to be prevented and/or countered.

That both the international and domestic threats have increased is undeniable. While it is extremely difficult to quantify this increase in threat, the overall threat can be roughly estimated by recognizing the following:

- U.S. aircraft and American passengers are representatives of the United States, and therefore, are targets;
- Up to 12 airplanes could have been destroyed and thousands of passengers killed in the actual plot described above;
- These plots came close to being carried out; it was only through a fortunate discovery and then extra tight security after the discovery of the plot that these incidents were thwarted;
- It is just as easy for international terrorists to operate within the United States as domestic terrorists, as evidenced by the World Trade Center bombing; therefore,
- Based on these facts, the increased threat to domestic aviation could be seen as equivalent to some portion of 12 Class I Explosions on U.S. airplanes. (The FAA defines Class I Explosions as incidents that involve the loss of an entire aircraft and incur a large number of fatalities.)

In 1996, both Congress and the White House Commission on Aviation Safety

and Security recommended further specific actions to increase civil aviation security. The Commission stated that it believed that the threat against civil aviation was changing and growing, and recommended that the Federal government commit greater resources to improving civil aviation security. President Clinton, in July 1996, declared that the threat of both foreign and domestic terrorism to aviation was a national threat. The U.S. Congress recognized this growing threat in the Federal Aviation Reauthorization Act of 1996 by: (1) authorizing money for the purchase of specific anti-terrorist equipment and the hiring of extra civil aviation security personnel; and (2) requiring the FAA to promulgate additional security-related regulations.

In the absence of increased protection for the U.S. domestic passenger air transportation system, it is conceivable that the system would be targeted for future acts of terrorism. If even one such act were successful, the traveling public would demand immediate increased security. Providing immediate protection on an ad hoc emergency basis would result in major inconveniences, costs, and delays to air travelers that may substantially exceed those imposed by the planned and measured steps contained in these rules.

Based on the above statement, the FAA concludes that these rules set forth a better method to provide increased security at the present time. The FAA considered to the limited extent possible, the benefits of these rules in reducing the costs associated with terrorist acts. The following analysis describes alternative assumptions regarding the number of terrorist acts prevented and potential market disruptions averted that result in these rules' benefits to be at least equal to these rules' costs. This is intended to allow the reader to judge the likelihood of benefits of these rules equaling or exceeding their cost.

The cost of a catastrophic terrorist act can be estimated in terms of lives lost, property damage, decreased public utilization of air transportation, etc. Terrorists acts can result in the complete destruction of an aircraft with the loss of all on board. The FAA considers a Boeing 737 as representative of a typical airplane flown domestically. The fair market value of a Boeing 737 is $16.5 million, and the typical 737 airplane has 113 seats. It flies with an average load factor of 64.7%, which translates into 73 passengers per flight; the airplane will also have 3 pilots and 3 flight attendants.

In order to provide a benchmark comparison of the expected safety benefits of rulemaking actions with estimated costs in dollars; a minimum of $2.7 million is used as the value of avoiding an aviation fatality (based on the willingness to pay approach for avoiding a fatality). In these computations, the present value of each incident was calculated using the current discount rate of 7 percent. Applying this value, the total fatality loss of a single Boeing 737 is represented by a cost $210.6 million (78 × $2.7 million). The safety related costs of a single domestic terrorist act on civil aviation also includes property damage as well as investigative and legal costs, so that the total cost sums to $271.2 million (present value, $190.5 million).

Since the cost of a Class I Explosion on a large domestic airplane is approximately $272 million, coupled with the relative low cost of compliance ($131 million), this rule (and the rule for part 108) will need to prevent one Class I Explosion over the next 10 years in order for quantified benefits to exceed costs. In view of the recent history of terrorist incidents in the United States, a potential catastrophic loss of at least this magnitude is considered to be plausible in the absence of this rule.

The FAA also used the same set of benefits in two proposed rulemakings, *Security of Checked Baggage on Flights Within the United States* and *Certification of Screening Companies.* All of these rulemakings have the same goal—to significantly increase the protection of U.S. citizens and other citizens traveling on U.S. domestic air carrier flights from acts of terrorism as well as increase protection for those operating aircraft. Because the combined discounted costs of all of these rules exceeds $190.9 million, the cost of one Class I Explosion, the FAA calculated the economic impact and the potential averted market disruption sufficient, in combination with safety benefits, to justify all these rulemakings.

Certainly the primary concern of the FAA is preventing loss of life, but there are other considerations as well. Another large economic impact is related to decreased airline travel following a terrorist event. A study performed for the FAA by Pailen-Johnson Associates, Inc., *An Econometric Model of the Impact of Terrorism on U.S. Air Carrier North Atlantic Operations,* indicated that it takes about 9 to 10 months for passenger traffic to return to the pre-incident level after a single event. Such a reduction occurred immediately following the destruction of Pan Am Flight 103 over Lockerbie, Scotland in December 1988. In general, 1988 enplanements were above 1987's. There was a dramatic fall-off in enplanement in the first 3 months of 1989 immediately following the Pan Am 103 tragedy, and it took until November 1989, for enplanements to approximate the 1987 and 1988 levels. Statistics show that there was an almost 20 percent reduction in 1989 in expected enplanements caused by the destruction of Pan Am 103 by terrorists.

The estimated effect of a successful terrorist act on the domestic market has not been studied. Although there are important differences between international and domestic travel (such as the availability of alternative destinations and means of travel), the FAA believes that the traffic loss associated with international terrorist acts is representative of the potential domestic disruption.

There is a social cost associated with travel disruptions and cancellations caused by terrorist events. The cost is composed of several elements. First is the loss associated with passengers opting not to fly—the value of the flight to the passenger (consumer surplus) in the absence of increased security risk and the profit that would be earned by the airline (producer surplus). Even if a passenger opts to travel by air, the additional risk may reduce the associated consumer surplus. Second, passengers who cancel plane trips would not purchase other goods and services normally associated with the trip, such as meals, lodging, and car rental, which would also result in losses of related consumer and producer surplus. Finally, although spending on air travel would decrease, pleasure and business travelers may substitute spending on other goods and services (which produces some value) for the foregone air trips. Economic theory suggests that the sum of the several societal value impacts associated with canceled flights would be a net loss. As a corollary, prevention of market disruption (preservation of consumer and producer welfare) through increased security created by these rules is a benefit.

The FAA is not able to estimate the actual net societal cost of travel disruptions and the corollary benefit gained by preventing the disruptions. However, there is a basis for judging the likelihood of attaining benefits by averting market disruption sufficient, in combination with safety benefits, to justify the rule. The discounted cost of these four rulemakings is $2.3 billion, while the discounted benefits for each Class I Explosion averted comes to $190.9 million. Hence, if one Class I Explosion is averted, the present value of losses due to market disruption must at least equal $2.1 billion ($2.3 billion

less $190.9 million—one Class I Explosion). If two Class I Explosions are averted, the present value of losses due to market disruption must at least equal $1.9 billion ($2.3 billion less $381.8 million—two Class I Explosions).

The value of market loss averted is the product of the number of foregone trips and the average market loss per trip (combination of all impacts on consumer and producer surplus). If one uses an average ticket price of $160 as a surrogate of the combined loss, preservation of a minimum of 13.3 million lost trips would be suffered, in combination with the safety benefits of one averted Class I Explosion, for the benefits of these rulemakings to equal costs. This represents less than 5 percent of annual domestic trips (the traffic loss caused by Pan Am 103 on trans-Atlantic routes was 20 percent). Calculations can be made on the minimum number of averted lost trips needed if the net value loss was only 75 percent of the ticket price or exceeded the ticket price by 25 percent. If total market disruption cost was $130 or $200 per trip, a minimum retention of 16.3 and 10.6 million lost trips, respectively, would need to occur for the benefits to equal the costs of these rulemakings, assuming one Class I Explosion would be prevented. The FAA also calculated the economic impact and the potential averted market disruption sufficient, in combination with safety benefits, to justify all four rulemakings given anywhere from two to four Class I Explosions prevented. These values can be seen in the full economic analysis contained in the docket.

Based on changes in the domestic security risk, the White House Commission recommendation, recent Congressional mandates, and the known reaction of Americans to any air carrier disaster, the FAA believes that pro-active regulation is warranted to prevent terrorist acts (such as Class I Explosions) before they occur.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For this rule, the small entity group is considered to be part 107 airports (Standard Industrial Classification Code [SIC] 4581—Airports, Flying Fields, and Airport Terminal Services). The FAA's small entity size standards criterion define a small airport as one owned by a county, city, town, or other jurisdiction having a population of 49,999 or less. If two or more towns, cities, or counties operate an airport jointly, the population size of each is totaled to determine whether that airport is categorized as a small entity. In addition, all privately owned, public-use airports are considered small. The FAA has identified a total of 129 airports that will be considered small entities pursuant to this rule. These 129 airports break down into 31 airports subject to § 107.103(a), 90 airports subject to § 107.103(b), and 8 airports subject to § 107.103(c).

The FAA examined the revenue base for all part 139 small airports. The most reliable measure of income was tax revenues; these averaged out to $2.4 million at the 34th percentile of all small airports subject to part 139. One percent of the 1998 annual revenue for all small airports at the 34th percentile is $24,000 in 1998 dollars. Many part 139 small airports do not have security programs; only those airports that have scheduled service are eligible for such a program. These airports have a larger tax base, greater aviation traffic activity, and overall generate larger tax revenues than airports without scheduled service. Accordingly, the annual tax revenue for airports subject to part 107 is larger than $2.4 million. Moreover, airports with scheduled service earn additional revenues from retail vendor sales, car rental leasing, and fixed-base operator activities. Adding these commercial proceeds to tax revenues boosts the average annual income for these small airports above $2.4 million. Thus, 1 percent of the 1998 annual median revenue for airports impacted by this rule is greater than $24,000 in 1998 dollars.

The FAA has estimated the 10-year and annualized cost impact on each of the small entities. Over 10 years, these regulations will cost each airport subject to §§ 107.103(a), (b), and (c) an estimated $53,000, $34,100, and $31,900, respectively. The annualized costs for these airports are $6,400, $3,400, and $3,200, respectively. These costs are not considered burdensome because they are well below the aforementioned $24,000. Furthermore, as revealed by the above analysis, the revenues and earnings for small airports receiving scheduled traffic is greater than $2.4 million annually. Accordingly, the FAA has determined that the rule will not have a significant economic impact.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

In accordance with the OMB memorandum dated March 1983, Federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade. This rule will affect all airport owners that have a FAA-approved security program in accord with part 107. Unlike domestic air carriers that compete with foreign air carriers, domestic airports are not in competition with foreign airports. For this reason, a trade impact assessment is not applicable.

Federalism Implications

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. Most airports subject to this rule are owned, operated, or regulated by a local governmental body (such as a city or county government), which in turn is incorporated by, and derives its authority from, a State. This rule has minimal direct effect on the States, and does not alter the relationship between the airport operators and the FAA that is established in the FAA's statute. The annual costs of compliance with this rule are very low compared with the resources available to the airports. Further, before issuing the NPRM, the FAA consulted with representatives of the airports through the Aviation Security Advisory Committee. Accordingly, the FAA has determined that this action 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, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any 1 year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates or private sector mandates.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) P.L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Distribution/Derivation Tables

The following distribution table is provided to illustrate how the current regulation relates to the revised part 107, and the derivation table identifies how the revised part 107 relates to the current rule.

DISTRIBUTION TABLE

Old section	New section
107.1(a)(1)–(4)	107.1(a)(1)–(4)
107.1(b)(1)–(4)	107.3, which adds eight new unnumbered definitions
107.1(b)(5)	Removed
107.1(b)(6)	Removed
107.2(a)–(c)	107.9(a)–(c)
107.3(a)(1)–(3)	107.101(a)(1)–(3)
107.3(b)	107.103(a)
107.3(b)(1) and (2)	107.103(a)(4)(i)–(ii)
107.3(b)(3)	107.103(a)(20)
107.3(b)(4)	107.103(a)(4)(iii)
107.3(b)(5)	107.111(b)(2)–(3)
107.3(b)(6)	107.103(a)(19)
107.3(b)(7)	107.103(a)(12)
107.3(b)(8)	107.103(a)(11)
107.3(b)(9)	107.103(a)(13)
107.3(c)	107.103(d)
107.3(d) and (e)	107.101(b) and (c)
107.3(f)(1)–(3)	107.103(c)(2)–(4)
107.3(g)(1)–(3)	107.103(b)(2)–(4)
107.5(a)	107.105(a)
107.5(b) and (c)	107.105(a)(1) and (2)
107.5(d) and (e)	107.105(a)(3)
107.7(a)(1)	107.107(a)(3)
107.7(a)(2)	107.107(a)(1)
107.7(a)(3)	107.103(a)(19)
107.7(a)(4)	107.107(b)
107.7(a)(5)	107.107(a)(1)
107.7(b)(1)	107.107(b)(1)
107.7(b)(2)	107.107(c) and (d)
107.9(a) and (b)	107.105(b)(1) and (2)
107.9(c)(1)and (2)	107.105(b)(3)
107.9(d)	107.105(b)(4)
107.9(e) and (f)	107.105(b)(5)
107.11(a)	107.105(c)
107.11(b) and (c)	107.105(c)(1) and (2)
107.11(d) and (e)	107.105(c)(3)
107.11(f)	107.105(d)
107.13(a)	107.203(a)
107.13(a)(1)	107.203(b)(1)
107.13(a)(2)	107.203(b)
107.13(a)(3)	107.203(b)(2)
107.13(b)(1) and (2)	107.111(b)(1)–(3)
107.14(a)	107.207(a)(1)–(3)
107.14(b)	107.207(b)
107.14(c) and (d)	Removed
107.15(a)(1)	107.215(a) and (a)(1)
107.15(a)(2)	107.215(a)(2)
107.15(b)	107.215(b)
107.17(a)–(c)(2)	107.217(a)–(c)(2)
107.17(d)(1)–(4)	107.217(c)(3)(i)–(iv)
107.19	107.219
107.20 and 107.21	Moved to Part 108
107.23(a)	107.221(a)
107.23(a)(2)	107.221(a)(2)
107.23(a)(3)	107.7(b)

DISTRIBUTION TABLE—Continued

Old section	New section
107.23(b)	107.221(c)
107.25(a)	107.3
107.25(b) and (e)	107.213(b) and (c)
107.25(c) and (d)	Removed
107.25(e)(1) and (2)	107.213(c)(2) and (3)
107.25(e)(3)–(5)	107.213(c)(5) and (6)
107.25(f)	107.211(a)(3)
107.25(g)	107.213(d)
107.27	107.7(b)
107.29	107.5 (expanded)
107.31	107.209 (unchanged)

DERIVATION TABLE

New section	Old section
107.1(a)(1)–(4)	107.1(a)(1)–(4)
107.1(a)(5)	New
107.1(b)	New
107.3	107.1, plus eight new unnumbered definitions
107.5	107.29
107.5(b)(3)–(6), (c), and (d).	New
107.7, (a), (a)(1) and (2), (c) and (d).	New
107.7(b)	107.27
107.9(a)–(c)	107.2(a)–(c)
107.11(a), (a)(1), (a)(2) and (b).	New
107.101(a)(1)–(3)	107.3(a)(1)–(3)
107.101(a)(4)	New
107.101(a)(5)	107.3(a)(4)
107.101(a)(5)	107.3(a)(4)
107.101(b) and (c)	107.3(d) and (e)
107.103(a)	107.3(b)
107.103(a)(1)	New
107.103(a)(2)	New—Reserved
107.103(a)(3), (a)(3)(i)–(v).	New
107.103(a)(4)(i) and (ii).	107.3(b)(1) and (2)
107.103(a)(4)(iii)	107.3(b)(4)
107.103(a)(11)	107.3(b)(8)
107.103(a)(12)	107.3(b)(7)
107.103(a)(13)	107.3(b)(9)
107.103(a)(14)–(18)	New
107.103(a)(19)	107.3(b)(6)
107.103(a)(20)	107.3(b)(3)
107.103(a)(21)	New
107.103(b)	107.3(g)
107.103(b)(1)	New
107.103(b)(2)–(4)	107.3(g)(1)–(3)
107.103(b)(5)–(8)	New
107.103(c)(1)	New
107.103(c)(2)–(4)	107.3(f)(1)–(3)
107.103(c)(5)–(7)	New
107.103(d)	107.3(c)
107.105(a)	107.5(a)
107.105(a)(1) and (2)	107.5(b) and (c)
107.105(a)(3)	107.5(d) and (e)
107.105(b)(1) and (2)	107.9(a) and (b)
107.105(b)(3)	107.9(c)(1) and (2)
107.105(b)(4)	107.9(d)
107.105(b)(5)	107.9(e) and (f)
107.105(c)	107.11(a)
107.105(c)(1)–(3)	107.11(a), (c) and (d)
107.105(d)	107.11(f)
107.107(a)(1)	107.7(a)(2)

DERIVATION TABLE—Continued

New section	Old section
107.107(a)(2)	New
107.107(a)(3)	107.7(a)(1)
107.107(b)	107.7(b)
107.107(c) and (d)	107.7(b)(2) plus new language
107.109	New
107.111(a)	New
107.111(b) and (b)(1)	107.3(b)(5)
107.111(c)	New
107.113(a)–(d)	New
107.201(a), (b) and (b)(1).	107.14(a)
107.201(b)(2)–(7)	New
107.203(a)	107.13(a)
107.203(b)(1)	107.13(a)(1)
107.203(b)(2)	107.13(a)(3)
107.203(b)(3) and (4)	New
107.205(b)(2) and (3)	New
107.207	107.13 and 107.14
107.207(a)(1)–(3)	107.14(a)
107.207(b)	107.14(b)
107.207(c)(1)–(e)(5)	New
107.209	107.31
107.211(a)(1)(i)–(iv)	New
107.211(a)(3)(i)–(vi),(e).	New
107.213(b) and (c)	107.25(b)–(e)
107.213(b)(1)	New
107.213(b)(2)	107.25(e)(1)
107.213(b)(4)	New
107.213(c)(5) and (6)	107.25(e)(3)–(5)
107.213(c)(1)	New
107.213(c)(2) and (3)	107.25(e)(1) and (2)
107.213(c)(4)	New
107.213(c)(5) and (6)	107.25(e)(3)–(5)
107.213(d)	107.25(g)
107.213(e)	New
107.215(a)	107.15(a)
107.215(a)(1)	107.15(a) and (a)(1)
107.215(a)(2)	107.15(a)(2)
107.215(b)	107.15(b)
107.217(a)–(c)(2)	107.17(a)–(c)(2)
107.217(c)(3)(i)–(iv)	107.17(d)(1)–(4)
107.217(d)	New
107.219	107.19
107.221(a)(1) and (2)	107.23(a)(1) and (2)
107.221(c)	107.23(b)
107.221(d)	New
107.301(a) and (b)	New
107.303(a)–(f)(2)	New
107.305	New
107.307(a)–(d)	New

List of Subjects

14 CFR Part 107

Airports, Arms and munitions, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 139

Air carriers, Airports, Aviation safety.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations as follows:

1. Part 107 is revised to read as follows:

PART 107—AIRPORT SECURITY

Subpart A—General

Sec.
107.1 Applicability.
107.3 Definitions.
107.5 Airport security coordinator.
107.7 Inspection authority.
107.9 Falsification.
107.11 Security responsibilities of employees and other persons.

Subpart B—Airport Security Program

107.101 General requirements.
107.103 Content.
107.105 Approval and amendments.
107.107 Changed conditions affecting security.
107.109 Alternate means of compliance.
107.111 Exclusive area agreements.
107.113 Airport tenant security programs.

Subpart C—Operations

107.201 Security of the secured area.
107.203 Security of the air operations area (AOA).
107.205 Security of the security identification display area (SIDA).
107.207 Access control systems.
107.209 Employment history, verification, and criminal history records checks.
107.211 Identification systems.
107.213 Training.
107.215 Law enforcement support.
107.217 Law enforcement personnel.
107.219 Supplementing law enforcement personnel.
107.221 Records of law enforcement response.

Subpart D—Contingency Measures

107.301 Contingency plan.
107.303 Security Directives and Information Circulars.
107.305 Public advisories.
107.307 Incident management.

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44706, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

Subpart A—General

§ 107.1 Applicability.

(a) This part describes aviation security rules governing:

(1) The operation of each airport regularly serving aircraft operations required to be under a security program under part 108 of this chapter.

(2) The operation of each airport regularly serving foreign air carrier operations required to be under a security program under § 129.25 of this chapter.

(3) Each person who is in, or entering, a secured area, air operations area, security identification display area, or sterile area described in this part and part 108 of this chapter.

(4) Each person who files an application or makes entries into any record or report that is kept, made, or used to show compliance under this part, or to exercise any privileges under this part.

(5) Each airport operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by the Assistant Administrator for Civil Aviation Security.

(b) Except as provided in § 107.105, the authority of the Administrator under this part is also exercised by the Assistant Administrator for Civil Aviation Security and the Deputy Assistant Administrator for Civil Aviation Security, and any individual formally designated to act in their capacity. The authority of the Assistant Administrator, including matters under § 107.105, may be further delegated.

§ 107.3 Definitions.

Terms defined in part 108 of this chapter apply to this part. For purposes of this part, part 108 of this chapter, and security programs under these parts, the following definitions also apply:

Air operations area (AOA) means a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes aircraft movement areas, aircraft parking areas, loading ramps, and safety areas, for use by aircraft regulated under part 108 or § 129.25 of this chapter, and any adjacent areas (such as general aviation areas) that are not separated by adequate security systems, measures, or procedures. This area does not include the secured area.

Airport operator means a person that operates an airport serving an aircraft operator or a foreign air carrier required to have a security program under part 108 or § 129.25 of this chapter.

Airport security program means an airport operator's security program required under § 107.101 and approved by the Administrator.

Airport tenant means any person, other than an aircraft operator or foreign air carrier that has a security program under part 108 or § 129.25 of this chapter, that has an agreement with the airport operator to conduct business on airport property.

Airport tenant security program means the agreement between the airport operator and an airport tenant that specifies the measures by which the tenant will perform security functions under § 107.113.

Assistant Administrator means the FAA Assistant Administrator for Civil Aviation Security as described in 49 U.S.C. 44932.

Escort means to accompany or monitor the activities of an individual

who does not have unescorted access authority into or within a secured area or SIDA.

Exclusive area means any portion of a secured area, AOA, or SIDA, including individual access points, for which an aircraft operator or foreign air carrier that has a security program under part 108 or § 129.25 of this chapter has assumed responsibility under § 107.111.

Exclusive area agreement means an agreement between the airport operator and an aircraft operator or a foreign air carrier that has a security program under part 108 or § 129.25 of this chapter that permits such an aircraft operator or foreign air carrier to assume responsibility for specified security measures in accordance with § 107.111.

Secured area means a portion of an airport, specified in the airport security program, in which certain security measures specified in this part are carried out. This area is where aircraft operators and foreign air carriers that have a security program under part 108 or § 129.25 of this chapter enplane and deplane passengers and sort and load baggage and any adjacent areas that are not separated by adequate security systems, measures, or procedures.

Security Identification Display Area (SIDA) means a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes the secured area and may include other areas of the airport.

Unescorted access authority means the authority granted to individuals by an airport operator, aircraft operator, foreign air carrier, or airport tenant authorized under this part or parts 108 or 129 of this chapter to gain entry to, and be present without an escort in secured areas and SIDA's.

§ 107.5 Airport security coordinator.

(a) Each airport operator shall designate one or more Airport Security Coordinator(s) (ASC) in its security program.

(b) The airport operator shall ensure that one or more ASC's:

(1) Serve as the airport operator's primary and immediate contact for security-related activities and communications with the Administrator. Any individual designated as an ASC may perform other duties in addition to those described in this paragraph (b)(1).

(2) Is available to the Administrator on a 24-hour basis.

(3) Review with sufficient frequency all security-related functions to ensure that all are effective and in compliance with this part, its security program, and applicable Security Directives.

(4) Immediately initiate corrective action for any instance of non-compliance with this part, its security program, and applicable Security Directives.

(5) Review and control the results of employment history, verification, and criminal history records checks required under § 107.209.

(6) Serve as the contact to receive notification from individuals applying for unescorted access of their intent to seek correction of their criminal history record with the FBI.

(c) After July 17, 2003, no airport operator may use, nor may it designate any person as, an ASC unless that individual has completed subject matter training, as specified in its security program, to prepare the individual to assume the duties of the position. The airport operator shall maintain ASC training documentation until at least 180 days after the withdrawal of a individual's designation as an ASC.

(d) An individual's satisfactory completion of initial ASC training required under paragraph (c) of this section satisfies that requirement for all future ASC designations for that individual, except for site specific information, unless there has been a two or more year break in service as an active and designated ASC.

§ 107.7 Inspection authority.

(a) For purposes of security inspections, each airport operator shall allow Special Agents designated by the Administrator, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This part, parts 108, 109, 129, and 191 of this chapter and any security program approved under those parts; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of the Administrator, each airport operator shall provide evidence of compliance with this part and its airport security program, including copies of records.

(c) The Administrator may enter and be present within secured areas, AOA's, and SIDA's, without access media or identification media issued or approved by an airport operator or aircraft operator, in order to conduct investigations, inspect, test compliance, or perform other such duties as the Administrator may direct.

(d) At the request of the Administrator and upon the completion of SIDA training as required in a security program, each airport operator promptly shall issue to a FAA special agent access and identification media to provide a FAA special agent with unescorted access to, and movement within, secured areas, AOA's, and SIDA's.

§ 107.9 Falsification.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this part, or exercise any privileges under this part.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued under this part.

§ 107.11 Security responsibilities of employees and other persons.

(a) No person may:

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this part.

(2) Enter, or be present within, a secured area, AOA, SIDA or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.

(3) Use, allow to be used, or cause to be used, any airport-issued or airport-approved access medium or identification medium that authorizes the access, presence, or movement of persons or vehicles in secured areas, AOA's, or SIDA's in any other manner than that for which it was issued by the appropriate authority under this part, or part 108 or part 129 of this chapter.

(b) The provisions of paragraph (a) of this section do not apply to conducting inspections or tests to determine compliance with this part or 49 U.S.C. Subtitle VII authorized by:

(1) The Administrator, or

(2) The airport operator, aircraft operator, or foreign air carrier, when acting in accordance with the procedures described in a security program approved by the Administrator.

Subpart B—Airport Security Program

§ 107.101 General requirements.

(a) No person may operate an airport subject to this part unless it adopts and carries out a security program that—

(1) Provides for the safety and security of persons and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence, aircraft piracy, and the introduction of deadly or dangerous weapon, explosive, or incendiary onto an aircraft;

(2) Is in writing and is signed by the airport operator or any person to whom the airport operator has delegated authority in this matter;

(3) Includes the applicable items listed in § 107.103;

(4) Includes an index organized in the same subject area sequence as § 107.103; and

(5) Has been approved by the Administrator.

(b) The airport operator shall maintain one current and complete copy of its security program and provide a copy to the Administrator upon request.

(c) Each airport operator shall—

(1) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 191 of this chapter, to persons with a need to know; and

(2) Refer all requests for SSI by other persons to the Administrator.

§ 107.103 Content.

(a) Except as otherwise approved by the Administrator, each airport operator regularly serving operations of an aircraft operator or foreign air carrier described in §§ 108.101(a)(1) or 129.25(b)(1) of this chapter, shall include in its security program the following:

(1) The name, means of contact, duties, and training requirements of the ASC required under § 107.5.

(2) [Reserved]

(3) A description of the secured areas, including—

(i) A description and map detailing boundaries and pertinent features;

(ii) Each activity or entity on, or adjacent to, a secured area that affects security;

(iii) Systems, measures, and procedures used to perform the access control functions required under § 107.201(b)(1);

(iv) Procedures to control movement within the secured area, including identification media required under § 107.201(b)(3); and

(v) A description of the notification signs required under § 107.201(b)(6).

(4) A description of the AOA, including—

(i) A description and map detailing boundaries, and pertinent features;

(ii) Each activity or entity on, or adjacent to, an AOA that affects security;

(iii) Systems, measures, and procedures used to perform the access control functions required under § 107.203(b)(1);

(iv) Procedures to control movement within the AOA, including identification media as appropriate; and

(v) A description of the notification signs required under § 107.203(b)(4).

(5) A description of the SIDA's, including—

(i) A description and map detailing boundaries and pertinent features; and

(ii) Each activity or entity on, or adjacent to, a SIDA.

(6) A description of the sterile areas, including—

(i) A diagram with dimensions detailing boundaries and pertinent features;

(ii) Access controls to be used when the passenger-screening checkpoint is non-operational and the entity responsible for that access control; and

(iii) Systems, measures, and procedures used to control access as specified in § 107.207.

(7) Procedures used to comply with § 107.209 regarding employment history, verification, and criminal history records checks.

(8) A description of the personnel identification systems as described in § 107.211.

(9) Escort procedures in accordance with § 107.211(e).

(10) Challenge procedures in accordance with § 107.211(d).

(11) Training programs required under §§ 107.213 and 107.217(c)(2), if applicable.

(12) A description of law enforcement support used to comply with § 107.215(a).

(13) A system for maintaining the records described in § 107.221.

(14) The procedures and a description of facilities and equipment used to support aircraft operator or foreign air carrier screening functions of §§ 108.201 or 129.25 of this chapter.

(15) A contingency plan required under § 107.301.

(16) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(17) Procedures for posting of public advisories as specified in § 107.305.

(18) Incident management procedures used to comply with § 107.307.

(19) Alternate security procedures, if any, that the airport operator intends to use in the event of natural disasters, and other emergency or unusual conditions.

(20) Each exclusive area agreement as specified in § 107.111.

(21) Each airport tenant security program as specified in § 107.113.

(b) Except as otherwise approved by the Administrator, each airport regularly serving operations of an aircraft operator or foreign air carrier described in §§ 108.101(a)(2) or (b), or 129.25(b)(2) or (b)(3) of this chapter, shall include in its security program a description of the following:

(1) Name, means of contact, duties, and training requirements of the ASC, as required under § 107.5.

(2) A description of the law enforcement support used to comply with § 107.215(a).

(3) Training program for law enforcement personnel required under § 107.217(c)(2), if applicable.

(4) A system for maintaining the records described in § 107.221.

(5) The contingency plan required under § 107.301.

(6) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(7) Procedures for public advisories as specified in § 107.305.

(8) Incident management procedures used to comply with § 107.307.

(c) Except as otherwise approved by the Administrator, each airport regularly serving operations of an aircraft operator or foreign air carrier described in §§ 108.101(c) or 129.25(b)(4) of this chapter, shall include in its security program a description of the following:

(1) Name, means of contact, duties, and training requirements of the ASC as required under § 107.5.

(2) A description of the law enforcement support used to comply with § 107.215(b).

(3) Training program for law enforcement personnel required under § 107.217(c)(2), if applicable.

(4) A system for maintaining the records described in § 107.221.

(5) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(6) Procedures for public advisories as specified in § 107.305.

(7) Incident management procedures used to comply with § 107.307.

(d) The airport operator may comply with paragraphs (a), (b), and (c) of this section by including in its security program, as an appendix, any document that contains the information required by paragraphs (a), (b), and (c) of this section. The appendix shall be referenced in the corresponding section(s) of the security program.

§ 107.105 Approval and amendments.

(a) *Initial approval of security program.* Unless otherwise authorized by the Assistant Administrator, each airport operator required to have a security program under this part shall submit its initial proposed security program to the Assistant Administrator for approval at least 90 days before the date any aircraft operator or foreign air carrier required to have a security program under §§ 108.101 or 129.25 of this chapter is expected to begin operations. Such requests will be processed as follows:

(1) The Assistant Administrator, within 30 days after receiving the proposed security program, will either approve the program or give the airport operator written notice to modify the program to comply with the applicable requirements of this part.

(2) The airport operator may either submit a modified security program to the Assistant Administrator for approval, or petition the Administrator to reconsider the notice to modify within 30 days of receiving a notice to modify. A petition for reconsideration must be filed with the Assistant Administrator.

(3) The Assistant Administrator, upon receipt of a petition for reconsideration, either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) *Amendment requested by an airport operator.* Except as provided in § 107.107(c), an airport operator may submit a request to the Assistant Administrator to amend its security program, as follows:

(1) The request for an amendment must be filed with the Assistant Administrator at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Assistant Administrator.

(2) Within 30 days after receiving a proposed amendment, the Assistant Administrator, in writing, either approves or denies the request to amend.

(3) An amendment to a security program may be approved if the Assistant Administrator determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the airport operator may petition the Administrator to reconsider the denial.

(5) Upon receipt of a petition for reconsideration, the Assistant Administrator either approves the request to amend or transmits the petition within 30 days of receipt, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to approve the amendment or affirm the denial.

(c) *Amendment by the FAA.* If safety and the public interest require an amendment, the Assistant Administrator may amend a security program as follows:

(1) The Assistant Administrator sends to the airport operator a notice, in writing, of the proposed amendment, fixing a period of not less than 30 days within which the airport operator may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the Assistant Administrator notifies the airport operator of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 days after the airport operator receives the notice of amendment, unless the airport operator petitions the Administrator to reconsider no later than 15 days before the effective date of the amendment. The airport operator shall send the petition for reconsideration to the Assistant Administrator. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the Assistant Administrator either amends or withdraws the notice, or transmits the petition, together with any pertinent information to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the amendment, or by affirming the amendment.

(d) *Emergency Amendments.* Notwithstanding paragraph (c) of this section, if the Assistant Administrator finds that there is an emergency requiring immediate action with respect to safety and security in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the Assistant Administrator may issue an amendment, effective without stay on the date the airport operator receives the notice of it. In such a case, the Assistant Administrator shall incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The airport operator may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the emergency amendment (EA).

§ 107.107 Changed conditions affecting security.

(a) After approval of the security program, each airport operator shall notify the Administrator when changes have occurred to the—

(1) Systems, measures, procedures, training, area descriptions, or staffing, described in the security program;

(2) Operations of an aircraft operator or foreign air carrier that would require modifications to the security program as required under § 107.103; or

(3) Layout or physical structure of any area under the control of the airport operator, airport tenant, aircraft operator, or foreign air carrier used to support the screening process, access, presence, or movement control functions required under parts 107, 108, or 129 of this chapter.

(b) Each airport operator shall notify the Administrator no more than 6 hours after the discovery of any changed condition described in paragraph (a) of this section, or within the time specified in its security program, of the discovery of any changed condition described in paragraph (a) of this section. The airport operator shall inform the Administrator of each interim measure being taken to maintain adequate security until an appropriate amendment to the security program is approved. Each interim measure must be acceptable to the Administrator.

(c) For changed conditions expected to be less than 60 days duration, each airport operator shall forward the information required in paragraph (b) of this section in writing to the Administrator within 72 hours of the original notification of the change condition(s). The Administrator will notify the airport operator of the disposition of the notification in writing. If approved by the Administrator, this written notification becomes a part of the airport security program for the duration of the changed condition(s).

(d) For changed conditions expected to be 60 days or more duration, each airport operator shall forward the information required in paragraph (b) of this section in the form of a proposed amendment to the airport operator's security program, as required under § 107.105. The request for an amendment shall be made within 30

days of the discovery of the changed condition(s). The Administrator will respond to the request in accordance with § 107.105.

§ 107.109 Alternate means of compliance.

If in the Administrator's judgment, the overall safety and security of the airport, and aircraft operator or foreign air carrier operations are not diminished, the Administrator may approve a security program that provides for the use of alternate measures. Such a program may be considered only for an operator of an airport at which service by aircraft operators or foreign air carriers under §§ 108.101 or 129.25 of this chapter is determined by the Administrator to be seasonal or infrequent.

§ 107.111 Exclusive area agreements.

(a) The Administrator may approve an amendment to an airport security program under which an aircraft operator or foreign air carrier that has a security program under part 108 or part 129 of this chapter assumes responsibility for specified security measures for all or portions of the secured area, AOA, or SIDA, as provided in §§ 107.201, 107.203, or 107.205. The assumption of responsibility must be exclusive to one aircraft operator or foreign air carrier, and shared responsibility among aircraft operators or foreign air carriers is not permitted for an exclusive area.

(b) An exclusive area agreement shall be in writing, signed by the airport operator and aircraft operator or foreign air carrier, and maintained in the airport security program. This agreement shall contain the following:

(1) A description, a map, and, where appropriate, a diagram of the boundaries and pertinent features of each area, including individual access points, over which the aircraft operator or foreign air carrier will exercise exclusive security responsibility.

(2) A description of the systems, measures, and procedures used by the aircraft operator or foreign air carrier to comply with §§ 107.201, 107.203, or 107.205, as appropriate.

(3) Procedures by which the aircraft operator or foreign air carrier will immediately notify the airport operator and provide for alternative security measures when there are changed conditions as described in § 107.107(a).

(c) Any exclusive area agreements in effect on November 14, 2001 shall meet the requirements of this section and § 108.227 no later than November 14, 2002.

§ 107.113 Airport tenant security programs.

(a) The Administrator may approve an airport tenant security program as follows:

(1) The tenant must assume responsibility for specified security systems, measures, or procedures of the secured area, AOA, or SIDA as provided in §§ 107.201, 107.203, and 107.205.

(2) The tenant may only assume responsibility for employment verification as provided in § 107.209.

(3) The tenant may not assume responsibility for law enforcement support under § 107.215.

(4) The tenant must assume the responsibility within the tenant's leased areas or areas designated for the tenant's exclusive use. A tenant may not assume responsibility under a tenant security program for the airport passenger terminal.

(5) Responsibility must be exclusive to one tenant, and shared responsibility among tenants is not permitted.

(6) The Administrator must find that the tenant is able and willing to carry out the airport tenant security program.

(b) An airport tenant security program shall be in writing, signed by the airport operator and the airport tenant, and maintained in the airport security program. The airport tenant security program shall include the following:

(1) A description and a map of the boundaries and pertinent features of each area over which the airport tenant will exercise security responsibilities.

(2) A description of the systems, measures, and procedures the airport tenant has assumed.

(3) Systems, measures, and procedures by which the airport operator will monitor and audit the tenant's compliance with the security program.

(4) Monetary and other penalties to which the tenant may be subject if it fails to carry out the airport tenant security program.

(5) Circumstances under which the airport operator will terminate the airport tenant security program for cause.

(6) A provision acknowledging that the tenant is subject to inspection by the Administrator in accordance with § 107.7.

(7) A provision acknowledging that individuals who carry out the tenant security program are contracted to or acting for the airport operator and are required to protect sensitive information in accordance with part 191 of this chapter, and may be subject to civil penalties for failing to protect sensitive security information.

(8) Procedures by which the tenant will immediately notify the airport operator of and provide for alternative security measures for changed conditions as described in § 107.107(a).

(c) If the Administrator has approved an airport tenant security program, the airport operator may not be found to be in violation of a requirement of this part in any case in which the airport operator demonstrates that:

(1) The tenant or an employee, permittee, or invitee of the tenant, is responsible for such violation; and

(2) The airport operator has complied with all measures in its security program to ensure the tenant has complied with the airport tenant security program.

(d) The Administrator may amend or terminate an airport tenant security program in accordance with § 107.105.

Subpart C—Operations

§ 107.201 Security of the secured area.

(a) Each airport operator required to have a security program under § 107.103(a) shall establish at least one secured area.

(b) Each airport operator required to establish a secured area shall prevent and detect the unauthorized entry, presence, and movement of individuals and ground vehicles into and within the secured area by doing the following:

(1) Establish and carry out systems, measures, or procedures for controlling entry to secured areas of the airport in accordance with § 107.207.

(2) Provide for detection of, and response to, each unauthorized presence or movement in, or attempted entry to, the secured area by an individual whose access is not authorized in accordance with its security program.

(3) Establish and carry out a personnel identification system described under § 107.211.

(4) Subject each individual to employment history verification as described in § 107.209 before authorizing unescorted access to a secured area.

(5) Train each individual before granting unescorted access to the secured area, as required in § 107.213(b).

(6) Post signs at secured area access points and on the perimeter that provide warning of the prohibition against unauthorized entry. Signs shall be posted by each airport operator in accordance with its security program not later than November 14, 2003.

§ 107.203 Security of the air operations area (AOA).

(a) Each airport operator required to have a security program under § 107.103(a) shall establish an AOA,

unless the entire area is designated as a secured area.

(b) Each airport operator required to establish an AOA shall prevent and detect the unauthorized entry, presence, and movement of individuals and ground vehicles into or within the AOA by doing the following:

(1) Establish and carry out systems, measures, or procedures for controlling entry to the AOA of the airport in accordance with § 107.207.

(2) Provide for detection of, and response to, each unauthorized presence or movement in, or attempted entry to, the AOA by an individual whose access is not authorized in accordance with its security program.

(3) Provide security information as described in § 107.213(c) to each individual with unescorted access to the AOA.

(4) Post signs on AOA access points and perimeters that provide warning of the prohibition against unauthorized entry to the AOA. Signs shall be posted by each airport operator in accordance with its security program not later than November 14, 2003.

(5) If approved by the Administrator, the airport operator may designate all or portions of its AOA as a SIDA, or may use another personnel identification system, as part of its means of meeting the requirements of this section. If it uses another personnel identification system, the media must be clearly distinguishable from those used in the secured area and SIDA.

§ 107.205 Security of the security identification display area (SIDA).

(a) Each airport operator required to have a security program under § 107.103(a) shall establish at least one SIDA. Each secured area must be a SIDA. Other areas of the airport may be SIDA's.

(b) Each airport operator required to establish a SIDA shall establish and carry out measures to prevent the unauthorized presence and movement of individuals in the SIDA and shall do the following:

(1) Establish and carry out a personnel identification system described under § 107.211.

(2) Subject each individual to employment history verification as described in § 107.209 before authorizing unescorted access to a SIDA.

(3) Train each individual before granting unescorted access to the SIDA, as required in § 107.213(b).

§ 107.207 Access control systems.

(a) *Secured area.* Except as provided in paragraph (b) of this section, the systems, measures, or procedures for controlling entry to the secured area required under § 107.201(b)(1) shall—

(1) Ensure that only those individuals authorized to have unescorted access to the secured area are able to gain entry;

(2) Ensure that an individual is immediately denied entry to a secured area when that person's access authority for that area is withdrawn; and

(3) Provide a means to differentiate between individuals authorized to have access to an entire secured area and individuals authorized access to only a particular portion of a secured area.

(b) *Alternative systems.* The Administrator may approve an amendment to a security program that provides alternative systems, measures, or procedures that provide an overall level of security equal to that which would be provided by the systems, measures, or procedures described in paragraph (a) of this section.

(c) *Air operations area.* The systems, measures, or procedures for controlling entry to the AOA required under § 107.203(b)(1) shall incorporate accountability procedures to maintain their integrity.

(d) *Secondary access media.* An airport operator may issue a second access medium to an individual who has unescorted access to secured areas or the AOA, but is temporarily not in possession of the original access medium, if the airport operator follows measures and procedures in the security program that—

(1) Verifies the authorization of the individual to have unescorted access to secured areas or AOAs;

(2) Restricts the time period of entry with the second access medium;

(3) Retrieves the second access medium when expired;

(4) Deactivates or invalidates the original access medium until the individual returns the second access medium; and

(5) Provides that any second access media that is also used as identification media meet the criteria of § 107.211(b).

§ 107.209 Employment history, verification, and criminal history records checks.

(a) *Scope.* The following persons are within the scope of this section:

(1) All airport operators, airport users, and individuals currently having unescorted access to a SIDA.

(2) All individuals seeking authorization for, or seeking the authority to authorize others to have, unescorted access to the SIDA.

(3) Each airport user and aircraft operator making a certification to an airport operator pursuant to paragraph (n) of this section, made on or after January 31, 1996. An airport user, for the purposes of this section only, is any person making a certification under this section other than an aircraft operator subject to § 108.229 of this chapter.

(b) *Employment history investigations required.* Except as provided in paragraph (m) of this section, each airport operator must ensure that no individual is granted authorization for, or is granted authority to authorize others to have, unescorted access to the SIDA unless the following requirements are met:

(1) The individual has satisfactorily undergone Part 1 of an employment history investigation. Part 1 consists of a review of the previous 10 years of employment history and verification of the 5 employment years preceding the date the appropriate investigation is initiated as provided in paragraph (c) of this section; and

(2) If required by paragraph (c)(5) of this section, the individual must then satisfy Part 2 of the employment history investigation. Part 2 is the process to determine if the individual has a criminal record. To satisfy Part 2 of the investigation the criminal record check must not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years ending on the date of such investigation, of any of the crimes listed as follows:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306;

(ii) Interference with air navigation, 49 U.S.C. 46308;

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312;

(iv) Aircraft piracy, 49 U.S.C. 46502;

(v) Interference with flightcrew members or flight attendants, 49 U.S.C. 46504;

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506;

(vii) Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505;

(viii) Conveying false information and threats, 49 U.S.C. 49 46507;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b);

(x) Lighting violations involving transporting controlled substances, 49 U.S.C. 46315;

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314;

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;
(xv) Espionage;
(xvi) Sedition;
(xvii) Kidnapping or hostage taking;
(xviii) Treason;
(xix) Rape or aggravated sexual abuse;
(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;
(xxi) Extortion;
(xxii) Armed robbery;
(xxiii) Distribution of, or intent to distribute, a controlled substance;
(xxiv) Felony arson; or
(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts; and

(3) If an individual admits to a conviction, or to having been found not guilty by reason of insanity, in any jurisdiction within the preceding 10 years of a crime listed in (b)(2) of this section, the investigative process shall end and the individual shall not be granted unescorted access or assigned to any functions listed in (a)(3) of this section.

(c) *Investigative steps.* Part 1 of the employment history investigation must be completed on all persons listed in paragraph (a) of this section. If required by paragraph (c)(5) of this section, Part 2 of the employment history investigation must also be completed on all persons listed in paragraph (a) of this section.

(1) The individual must provide the following information on an application form:

(i) The individual's full name, including any aliases or nicknames.

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12 consecutive months, during the previous 10-year period.

(iii) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The airport operator or the airport user must include on the application form a notification that the individual will be subject to an employment history verification and possibly a criminal records check.

(3) The airport operator or the airport user must verify the identity of the individual through the presentation of two forms of identification, one of which must bear the individual's photograph.

(4) The airport operator or the airport user must verify the information on the most recent 5 years of employment history required under paragraph (c)(1)(ii) of this section. Information must be verified in writing, by documentation, by telephone, or in person.

(5) If one or more of the conditions (triggers) listed in paragraphs (c)(5)(i) through (c)(5)(iv) of this section exist, the employment history investigation must not be considered complete unless Part 2 is accomplished. Only the airport operator may initiate Part 2 for airport users under this section. Part 2 consists of a comparison of the individual's fingerprints against the fingerprint files of known criminals maintained by the Federal Bureau of Investigation (FBI). The comparison of the individual's fingerprints must be processed through the FAA. The airport operator may request a check of the individual's fingerprint-based criminal record only if one or more of the following conditions exist:

(i) The individual does not satisfactorily account for a period of unemployment of 12 consecutive months or more during the previous 10-year period.

(ii) The individual is unable to support statements made on the application form.

(iii) There are significant inconsistencies in the information provided on the application.

(iv) Information becomes available to the airport operator or the airport user during the investigation indicating a possible conviction for one of the crimes listed in paragraph (b)(2) of this section.

(d) *Individual notification.* Prior to commencing the criminal records check, the airport operator must notify the affected individual and identify the ASC as a contact for follow-up. An individual, who chooses not to submit fingerprints, after having met a requirement for Part 2 of the employment investigation, may not be granted unescorted access privilege.

(e) *Fingerprint processing.* If a fingerprint comparison is necessary under paragraph (c)(5) of this section to complete the employment history investigation the airport operator must collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints must be recorded on fingerprint cards approved by the FBI, and distributed by the FAA for this purpose.

(2) The fingerprints must be obtained from the individual under direct observation by the airport operator or a law enforcement officer. Individuals submitting their fingerprints may not take possession of their fingerprint card after they have been fingerprinted.

(3) The identity of the individual must be verified at the time fingerprints are obtained. The individual must present two forms of identification, one of which must bear the individual's photograph.

(4) The fingerprint card must be forwarded to the FAA at the location specified by the Administrator.

(5) Fees for the processing of the criminal record checks are due upon application. Airport operators must submit payment through corporate check, cashier's check, or money order made payable to ''U.S. FAA,'' at the designated rate for each fingerprint card. Combined payment for multiple applications is acceptable. The designated rate for processing the fingerprint cards is available from the local FAA security office.

(f) *Determination of arrest status.* In conducting the criminal record checks required by this section, the airport operator must not consider the employment history investigation complete unless it investigates arrest information for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded and makes a determination that the arrest did not result in a disqualifying conviction.

(g) *Availability and correction of FBI records and notification of disqualification.* (1) At the time Part 2 is initiated and the fingerprints are collected, the airport operator must notify the individual that a copy of the criminal record received from the FBI will be made available to the individual if requested in writing. When requested in writing, the airport operator must make available to the individual a copy of any criminal record received from the FBI.

(2) Prior to making a final decision to deny authorization to an individual described in paragraph (a) of this section, the airport operator must advise the individual that the FBI criminal record discloses information that would disqualify him/her from receiving unescorted access and provide the individual with a copy of the FBI record if it has been requested.

(3) The airport operator must notify an individual that a final decision has been made to grant or deny authority for unescorted access.

(h) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his/her record before any final decision is made, subject to the following conditions:

(1) Within 30 days after being advised that the criminal record received from the FBI discloses disqualifying information, the individual must notify the airport operator, in writing, of his/

her intent to correct any information believed to be inaccurate.

(i) Upon notification by an individual that the record has been corrected, the airport operator must obtain a copy of the revised FBI record prior to making a final determination.

(ii) [Reserved]

(2) If no notification is received within 30 days, the airport operator may make a final determination.

(i) *Limits on dissemination of results.* Criminal record information provided by the FBI must be used solely for the purposes of this section, and no person may disseminate the results of a criminal record check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) Airport officials with a need to know; and

(3) Others designated by the Administrator.

(j) *Employment status while awaiting criminal record checks.* Individuals who have submitted their fingerprints and are awaiting FBI results may perform work within the SIDA when under escort by someone who has unescorted SIDA access privileges.

(k) *Recordkeeping.* (1) Except when the airport operator has received a certification under paragraph (n)(1) of this section, the airport operator must physically maintain and control the Part 1 employment history investigation file until 180 days after the termination of the individual's authority for unescorted access. The Part 1, employment history investigation file, must consist of the following:

(i) The application;

(ii) The employment verification information obtained by the employer;

(iii) The names of those from whom the employment verification information was obtained;

(iv) The date and the method of how the contact was made; and

(v) Any other information as required by the Administrator.

(2) The airport operator must physically maintain, control and when appropriate destroy Part 2, the criminal record, for each individual for whom a fingerprint comparison has been completed. Part 2 must be maintained for 180 days after the termination of the individual's authority for unescorted access. Only direct airport operator employees may carry out this criminal record file responsibility. The Part 2 criminal record file must consist of the following:

(i) The criminal record received from the FBI as a result of an individual's fingerprint comparison; or

(ii) Information that the check was completed and no record exists.

(3) The files required by this section must be maintained in a manner that is acceptable to the Administrator and in a manner that protects the confidentiality of the individual.

(l) *Continuing responsibilities.* (1) Any individual authorized to have unescorted access privileges or who may authorize others to have unescorted access, who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section must, within 24 hours, report the conviction to the airport operator and surrender the SIDA access medium to the issuer.

(2) If information becomes available to the airport operator or the airport user indicating that an individual with unescorted access has a possible conviction for one of the disqualifying crimes in paragraph (b)(2) of this section, the airport operator must determine the status of the conviction. If a disqualifying conviction is confirmed the airport operator must withdraw any authority granted under this section.

(m) *Exceptions.* Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access, or to authorize others to have unescorted access to the SIDA:

(1) An employee of the Federal government or a state or local government (including a law enforcement officer (LEO)) who, as a condition of employment, has been subjected to an employment investigation which includes a criminal record check.

(2) A crewmember of a foreign air carrier covered by an alternate security arrangement in the foreign air carrier's approved security program.

(3) An individual who has been continuously employed in a position requiring unescorted access by another airport operator, airport user or aircraft operator.

(4) Those persons who have received access to a U.S. Customs secured area prior to November 24, 1998.

(n) *Investigations by aircraft operators and airport users.* An airport operator is in compliance with its obligation under paragraph (b) of this section, as applicable, when the airport operator accepts for each individual seeking unescorted access one of the following:

(1) Certification from an aircraft operator subject to § 108.229 of this chapter indicating it has complied with § 108.229 of this chapter for the aircraft operator's employees and contractors seeking unescorted access; or

(2) Certification from an airport user indicating it has complied with and will continue to comply with the provisions listed in paragraph (p) of this section. The certification must include the name of each individual for whom the airport user has conducted an employment history investigation.

(o) *Airport operator responsibility.* The airport operator must:

(1) Prior to the acceptance of a certification from the airport user, the airport operator must conduct a preliminary review of the file for each individual listed on the certification to determine that Part 1 has been completed;

(2) Designate the ASC, in the security program, to be responsible for reviewing the results of the airport employees' and airport users' employment history investigations and for destroying the criminal record files when their maintenance is no longer required by paragraph (k)(2) of this section;

(3) Designate the ASC, in the security program, to serve as the contact to receive notification from individuals applying for unescorted access of their intent to seek correction of their FBI criminal record; and

(4) Audit the employment history investigations performed by the airport operator in accordance with this section and those investigations conducted by the airport users made by certification under paragraph (n)(2) of this section. The audit program must be set forth in the airport security program.

(p) *Airport user responsibility.* (1) The airport user is responsible for reporting to the airport operator information, as it becomes available, which indicates an individual with unescorted access may have a conviction for one of the disqualifying crimes in paragraph (b)(2) of this section.

(2) If the airport user offers certification to the airport operator under paragraph (n)(2) of this section, the airport user must for each individual for whom a certification is made:

(i) Conduct the employment history investigation, Part 1, in compliance with paragraph (c) of this section. The airport user must report to the airport operator if one of the conditions in paragraph (c)(5) of this section exist;

(ii) Maintain and control Part 1 of the employment history investigation file in compliance with paragraph (k) of this section, unless the airport operator decides to maintain and control Part 1 of the employment history investigation file;

(iii) Provide the airport operator and the FAA with access to each completed Part 1 employee history investigative

file of those individuals listed on the certification; and

(iv) Provide either the name or title of the individual acting as custodian of the files, and the address of the location and the phone number at the location where the investigative files are maintained.

§ 107.211 Identification systems.

(a) *Personnel identification system.* The personnel identification system under §§ 107.201(b)(3) and 107.205(b)(1) shall include the following:

(1) Personnel identification media that—

(i) Convey a full-face image, full name, employer, and identification number of the individual to whom the identification medium is issued;

(ii) Indicate clearly the scope of the individual's access and movement privileges;

(iii) Indicate clearly an expiration date; and

(iv) Are of sufficient size and appearance as to be readily observable for challenge purposes.

(2) Procedures to ensure that each individual in the secured area or SIDA continuously displays the identification medium issued to that individual on the outermost garment above waist level, or is under escort.

(3) Procedures to ensure accountability through the following:

(i) Retrieving expired identification media and media of persons who no longer have unescorted access authority.

(ii) Reporting lost or stolen identification media.

(iii) Securing unissued identification media stock and supplies.

(iv) Auditing the system at a minimum of once a year or sooner, as necessary, to ensure the integrity and accountability of all identification media.

(v) As specified in the security program, revalidate the identification system or reissue identification media if a portion of all issued, unexpired identification media are lost, stolen, or otherwise unaccounted for, including identification media that are combined with access media.

(vi) Ensure that only one identification medium is issued to an individual at a time, except for personnel who are employed with more than one company and require additional identification media to carry out employment duties. A replacement identification medium may only be issued if an individual declares in writing that the medium has been lost, stolen, or destroyed.

(b) *Temporary identification media.* Each airport operator may issue personnel identification media in accordance with its security program to persons whose duties are expected to be temporary. The temporary identification media system shall include procedures and methods to—

(1) Retrieve temporary identification media;

(2) Authorize the use of a temporary media for a limited time only;

(3) Ensure that temporary media are distinct from other identification media and clearly display an expiration date; and

(4) Ensure that any identification media also being used as an access media meet the criteria of § 107.207(d).

(c) *Airport-approved identification media.* The Administrator may approve an amendment to the airport security program that provides for the use of identification media meeting the criteria of this section that are issued by entities other than the airport operator, as described in the security program.

(d) *Challenge program.* Each airport operator shall establish and carry out a challenge program that requires each individual who has authorized unescorted access to secured areas and SIDA's to ascertain the authority of any individual who is not displaying an identification medium authorizing the individual to be present in the area. The challenge program shall include procedures to challenge individuals not displaying airport approved identification media. The procedure must—

(1) Apply uniformly in secured areas, SIDAs, and exclusive areas;

(2) Describe how to challenge an individual directly or report any individual not visibly displaying an authorized identification medium, including procedures to notify the appropriate authority; and

(3) Describe support of challenge procedures, including law enforcement and any other responses to reports of individuals not displaying authorized identification media.

(e) *Escorting.* Each airport operator shall establish and implement procedures for escorting individuals who do not have unescorted access authority to a secured area or SIDA that—

(1) Ensure that only individuals with unescorted access authority are permitted to escort;

(2) Ensure that the escorted individuals are continuously accompanied or monitored while within the secured area or SIDA in a manner sufficient to identify whether the escorted individual is engaged in activities other than those for which escorted access was granted, and to take action in accordance with the airport security program;

(3) Identify what action is to be taken by the escort, or other authorized individual, should individuals under escort engage in activities other than those for which access was granted;

(4) Prescribe law enforcement support for escort procedures; and

(5) Ensure that individuals escorted into a sterile area without being screened under § 108.201 of this chapter remain under escort until they exit the sterile area, or submit to screening pursuant to § 108.201 or part 129 of this chapter.

(f) *Effective date.* The identification systems described in this section shall be implemented by each airport operator not later than November 14, 2003.

§ 107.213 Training.

(a) Each airport operator shall ensure that individuals performing security-related functions for the airport operator are briefed on the provisions of this part, Security Directives, and Information Circulars, and the security program, to the extent that such individuals need to know in order to perform their duties.

(b) An airport operator may not authorize any individual unescorted access to the secured area or SIDA, except as provided in § 107.7, unless that individual has successfully completed training in accordance with the FAA-approved curriculum specified in the security program. This curriculum must detail the methods of instruction, provide attendees with an opportunity to ask questions, and include at least the following topics—

(1) The unescorted access authority of the individual to enter and be present in various areas of the airport;

(2) Control, use, and display of airport-approved access and identification media;

(3) Escort and challenge procedures and the law enforcement support for these procedures;

(4) Security responsibilities as specified in § 107.11;

(5) Restrictions on divulging sensitive security information as described in part 191 of this chapter; and

(6) Any other topics specified in the security program.

(c) An airport operator may not authorize any individual unescorted access to the AOA, except as provided in § 107.7, unless that individual has been provided information in accordance with the security program, including—

(1) The unescorted access authority of the individual to enter and be present in various areas of the airport;

(2) Control, use, and display of airport-approved access and identification media, if appropriate;

(3) Escort and challenge procedures and the law enforcement support for these procedures, where applicable;

(4) Security responsibilities as specified in § 107.11;

(5) Restrictions on divulging sensitive security information as described in part 191 of this chapter; and

(6) Any other topics specified in the security program.

(d) Each airport operator shall maintain a record of all training and information given to each individual under paragraphs (b) and (c) of this section for 180 days after the termination of that person's unescorted access authority.

(e) As to persons with unescorted access to the SIDA on November 14, 2001, training on responsibility under § 107.11 can be provided by making relevant security information available.

(f) Training described in paragraph (c) of this section shall be implemented by each airport operator not later than November 14, 2002.

§ 107.215 Law enforcement support.

(a) In accordance with § 107.217, each airport operator required to have a security program under § 107.103(a) or (b) shall provide:

(1) Law enforcement personnel in the number and manner adequate to support its security program.

(2) Uniformed law enforcement personnel in the number and manner adequate to support each system for screening persons and accessible property required under § § 108.201 or 129.25 of this chapter.

(b) Each airport required to have a security program under § 107.103(c) shall ensure that:

(1) Law enforcement personnel are available and committed to respond to an incident in support of a civil aviation security program when requested by an aircraft operator or foreign air carrier that has a security program under part 108 or § 129.25 of this chapter.

(2) The procedures by which to request law enforcement support are provided to each aircraft operator or foreign air carrier that has a security program under part 108 or § 129.25 of this chapter.

§ 107.217 Law enforcement personnel.

(a) Each airport operator shall ensure that law enforcement personnel used to meet the requirements of § 107.215, meet the following qualifications while on duty at the airport—

(1) Have arrest authority described in paragraph (b) of this section;

(2) Are identifiable by appropriate indicia of authority;

(3) Are armed with a firearm and authorized to use it; and

(4) Have completed a training program that meets the requirements of paragraphs (c) and (d) of this section.

(b) Each airport operator shall ensure that each individual used to meet the requirements of § 107.215 have the authority to arrest, with or without a warrant, while on duty at the airport for the following violations of the criminal laws of the State and local jurisdictions in which the airport is located—

(1) A crime committed in the presence of the individual; and

(2) A felony, when the individual has reason to believe that the suspect has committed it.

(c) The training program required by paragraph (a)(4) of this section shall—

(1) Meet the training standard for law enforcement officers prescribed by either the State or local jurisdiction in which the airport is located for law enforcement officers performing comparable functions.

(2) Specify and require training standards for private law enforcement personnel acceptable to the Administrator, if the State and local jurisdictions in which the airport is located do not prescribe training standards for private law enforcement personnel that meets the standards in paragraph (a) of this section.

(3) Include training in—

(i) The use of firearms;

(ii) The courteous and efficient treatment of persons subject to inspection, detention, search, arrest, and other aviation security activities;

(iii) The responsibilities of law enforcement personnel under the security program; and

(iv) Any other subject the Administrator determines is necessary.

(d) Each airport operator shall document the training program required by paragraph (a)(4) of this section and maintain documentation of training at a location specified in the security program until 180 days after the departure or removal of each person providing law enforcement support at the airport.

§ 107.219 Supplementing law enforcement personnel.

(a) When the Administrator decides, after being notified by an airport operator as prescribed in this section, that not enough qualified State, local, and private law enforcement personnel are available to carry out the requirements of § 107.215, the Administrator may authorize the airport operator to use, on a reimbursable basis, personnel employed by the Administrator, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality to supplement State, local, and private law enforcement personnel.

(b) Each request for the use of Federal personnel must be submitted to the Administrator and include the following information:

(1) The number of passengers enplaned at the airport during the preceding calendar year and the current calendar year as of the date of the request.

(2) The anticipated risk of criminal violence, sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

(3) A copy of that portion of the security program which describes the law enforcement support necessary to comply with § 107.215.

(4) The availability of law enforcement personnel who meet the requirements of § 107.217, including a description of the airport operator's efforts to obtain law enforcement support from State, local, and private agencies and the responses of those agencies.

(5) The airport operator's estimate of the number of Federal personnel needed to supplement available law enforcement personnel and the period of time for which they are needed.

(6) A statement acknowledging responsibility for providing reimbursement for the cost of providing Federal personnel.

(7) Any other information the Administrator considers necessary.

(c) In response to a request submitted in accordance with this section, the Administrator may authorize, on a reimbursable basis, the use of personnel employed by a Federal agency, with the consent of the head of that agency.

§ 107.221 Records of law enforcement response.

(a) Each airport operator shall ensure that—

(1) A record is made of each law enforcement action taken in furtherance of this part; and

(2) The record is maintained for a minimum of 180 days.

(b) Data developed in response to paragraph (a) of this section must include at least the following:

(1) The number and type of deadly or dangerous weapon, explosives, or incendiaries discovered during any passenger-screening process, and the method of detection of each.

(2) The number of acts and attempted acts of aircraft piracy.

(3) The number of bomb threats received, real and simulated bombs found, and actual detonations on the airport.

(4) The number of arrests, including—

(i) Name, address, and the immediate disposition of each individual arrested;

(ii) Type of deadly or dangerous weapon, explosive, or incendiary confiscated, as appropriate; and

(iii) Identification of the aircraft operators or foreign air carriers on which the individual arrested was, or was scheduled to be, a passenger or which screened that individual, as appropriate.

Subpart D—Contingency Measures

§ 107.301 Contingency plan.

(a) Each airport operator required to have a security program under § 107.103(a) and (b) shall adopt a contingency plan and shall:

(1) Implement its contingency plan when directed by the Administrator.

(2) Conduct reviews and exercises of its contingency plan as specified in the security program with all persons having responsibilities under the plan.

(3) Ensure that all parties involved know their responsibilities and that all information contained in the plan is current.

(b) The Administrator may approve alternative implementation measures, reviews, and exercises to the contingency plan which will provide an overall level of security equal to the contingency plan under 107.301(a).

§ 107.303 Security Directives and Information Circulars.

(a) The Administrator may issue an Information Circular to notify airport operators of security concerns. When the Administrator determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, the Administrator issues a Security Directive setting forth mandatory measures.

(b) Each airport operator shall comply with each Security Directive issued to the airport operator within the time prescribed in the Security Directive.

(c) Each airport operator that receives a Security Directive shall—

(1) Within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to the Administrator.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the airport operator is unable to implement the measures in the Security Directive, the airport operator shall submit proposed alternative measures and the basis for submitting the alternative measures to the Administrator for approval. The airport operator shall submit the proposed alternative measures within the time prescribed in the Security Directive. The airport operator shall implement any alternative measures approved by the Administrator.

(e) Each airport operator that receives a Security Directive may comment on the Security Directive by submitting data, views, or arguments in writing to the Administrator. The Administrator may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each airport operator that receives a Security Directive or an Information Circular and each person who receives information from a Security Directive or an Information Circular shall:

(1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with an operational need-to-know.

(2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those who have an operational need to know without the prior written consent of the Administrator.

§ 107.305 Public advisories.

When advised by the Administrator, each airport operator shall prominently display and maintain in public areas information concerning foreign airports that, in the judgment of the Secretary of Transportation, do not maintain and administer effective security measures. This information shall be posted in the manner specified in the security program and for such a period of time determined by the Secretary of Transportation.

§ 107.307 Incident management.

(a) Each airport operator shall establish procedures to evaluate bomb threats, threats of sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

(b) Immediately upon direct or referred receipt of a threat of any of the incidents described in paragraph (a) of this section, each airport operator shall—

(1) Evaluate the threat in accordance with its security program;

(2) Initiate appropriate action as specified in the Airport Emergency Plan under § 139.325 of this chapter; and

(3) Immediately notify the Administrator of acts, or suspected acts, of unlawful interference to civil aviation operations, including specific bomb threats to aircraft and airport facilities.

(c) Airport operators required to have a security program under § 107.103(c) but not subject to part 139 of this chapter, shall develop emergency response procedures to incidents of threats identified in paragraph (a) of this section.

(d) To ensure that all parties know their responsibilities and that all procedures are current, at least once every 12 calendar months each airport operator shall review the procedures required in paragraphs (a) and (b) of this section with all persons having responsibilities for such procedures.

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

2. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. 106 (g), 40113, 44701–44706, 44709, 44719.

3. Section 139.325 is amended by redesignating paragraph (h) as paragraph (i) and adding new paragraph (h) to read as follows:

§ 139.325 Airport emergency plan.

* * * * *

(h) Each airport subject to part 107 of this chapter, Airport Security, shall ensure that instructions for response to paragraphs (b)(2) and (b)(6) of this section in the airport emergency plan are consistent with its approved security program.

* * * * *

Issued in Washington, DC, on July 2, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–16994 Filed 7–10–01; 10:32 am]

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Federal Register

Tuesday,
July 17, 2001

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 108
Aircraft Operator Security; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. FAA–2001–8725; Formerly Docket No. 28978; Amendment No. 108–18]

RIN 2120–AD45

Aircraft Operator Security

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the existing airplane operator security rule. It revises the applicability section, definitions, and terms; reorganizes this part into subparts containing related requirements; and incorporates some requirements already implemented in the air carrier standard security program. Specifically, this final rule increases the number of aircraft operators that must have security programs, to include all that enplane from or deplane into a sterile area and certain helicopter operators. This final rule expands the training requirements for aircraft operator security personnel. Further, this final rule clarifies the procedures for carriage of prisoners under the control of armed law enforcement officers, procedures for carriage of weapons by law enforcement officers, and procedures for aircraft operators to comment on security directives issued by the FAA. This rule requires aircraft operators to participate in the airport sponsored contingency exercise or its equivalent. As part 108 applies to operators of rotorcraft as well as fixed-wing aircraft, this final rule changes the title of this part from ''Airplane Operator Security'' to ''Aircraft Operator Security.'' This final rule contains changes that are intended to enhance security for the traveling public, and aircraft operators.

EFFECTIVE DATE: This rule is effective November 14, 2001. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of November 14, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Valencia, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone 202–267–3413.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register's** web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail *us 9–AWA–SBREFA@faa.gov.*

Background

This final rule updates the overall regulatory structure for aircraft operator security. It is issued in conjunction with a companion rule revising 14 CFR part 107, Airport Security, published in today's issue of the **Federal Register**. This final rule is the result of a multi-year effort involving the FAA, airports and aircraft operators, and the Aviation Security Advisory Committee (ASAC). ASAC is a federal advisory committee sanctioned to develop recommendations for improvement of methods, equipment, and procedures to improve civil aviation security. The FAA invited ASAC to comment on the underlying issues, and potential solutions associated with the revision of part 108.

Several measures contained in this final rule have been previously implemented via amendments to the air carrier standard security program. These revisions are considered to be consistent with several of the recommendations of the White House Commission on Aviation Safety and Security and with the security mandates of the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264) signed on October 9, 1996.

Terrorism

The terrorist threat level in the United States over the next decade will remain at least as high as it is at present and, indeed, will probably rise. This judgement is based on consideration of a number of factors.

First, there are numerous unresolved conflicts across the globe, many of which show no sign of early resolution. While many of these do not involve the United States directly, the status of the United States as sole superpower means that parties to the conflict are prone to decry either US involvement or lack of involvement.

Second, since the United States is variously perceived as a supporter of unpopular regimes, an enemy of Islam, and an exponent of imperialism (whether political, economic, or cultural), any number of terrorist groups view the United States interests as fundamentally inimical to their own, and thus see attacks against US interests as justifiable, even meritorious.

Third, the expanding geographical range of terrorist activity is increasingly evident. Members of foreign terrorist groups, representatives from state sponsors of terrorism, and radical fundamentalist elements are present in the United States. The activities of some of these individuals and groups go beyond fund-raising to recruiting other persons (both foreign and US citizens) for terrorist-related activities that may include obtaining and training with weapons, providing safehaven for fugitives, and making bombs. A few foreign terrorist groups have supporters inside the United States who could be used to support terrorism.

Fourth, the vulnerabilities of the critical national infrastructure of the United States may prove inviting to foreign and domestic terrorists wishing to inflict damage on the US economy.

Fifth, although it remains to be seen what lessons terrorists will draw from the World Trade Center bombing in 1993 and the Oklahoma City bombing in 1995, a particularly worrisome development is the increasing

willingness on the part of various terrorists to carry out attacks intended to bring about indiscriminate casualties.

Finally, the phenomenon of ad hoc or non-traditional terrorists groups (such as the group responsible for the World Trade Center bombing) has become a primary concern to law enforcement. Difficulties exist in denying entry of such individuals (who are not members of any known terrorist group) into the United States, recognizing or identifying them as terrorists once they are here, or anticipating the timing or targets of their attacks.

With respect specifically to the threat to civil aviation in the United States, it must be seen in the context of the broader threat. The events in Asia in early 1995, showed that the terrorists persisted in planning to attack aviation even when there were other targets identifiable with the United States in the area and even when they knew that the security measures protecting aviation had been strengthened. Publicity about problems with US domestic civil aviation security measures increases the potential for attacks here. Civil aviation targets may be chosen by terrorists even if alternative, and (in their view) softer targets are available, especially since an attack on aviation seizes the public's imagination to a degree equaled by few other types of attack.

General Discussion of the Rule

On August 1, 1997 (62 FR 41730), the FAA published Notice 97–12 to revise part 108. Notice 97–12 proposed and requested comments by December 1, 1997.

Concurrent with the issuance of Notice 97–12, the FAA issued Notice 97–13 to revise part 107 on Airport Security (62 FR 41760; August 1, 1997), and held two public meetings. The first public meeting was held in Washington, DC on October 15, 1997, and the second was held on October 22, 1997, in Fort Worth, Texas.

On April 21, 1998, the FAA reopened the comment period and announced two public meetings on Notice 97–13 and Notice 97–12 (63 FR 19691, April 21, 1998). The public meetings were held on May 21, 1998, in Washington, DC, and on June 4, 1998, in Nashville, TN.

As of June 26, 1998, the closing of the second comment period, 160 comments were received addressing Notice 97–12. A majority of the comments were from law enforcement officers addressing the carriage of firearms onboard the aircraft. Comments were also received from specific aircraft operators, local airports, Transport Canada, State departments of transportation (DOT's), American Association of Airport Executives (AAAE), Airport Council International—North America (ACI–NA), Allied Pilots Association (APA), Air Transport Association (ATA), National Air Carrier Association (NACA), Regional Airline Association (RAA), Cargo Airline Association (CAA), Air Line Pilots Association (ALPA), and Helicopter Association International (HAI). The comments mostly address clarification of terms, carriage of weapons onboard the aircraft by law enforcement officers, transporting passengers under armed escort, and security operations. Generally, commenters suggest that the cost estimates to develop a security program were underestimated, however, no cost estimates were provided. A detailed discussion of the comments appears under ''Section by Section Analysis.''

On Tuesday, August 10, 1999, the FAA reopened the comment period to allow the public to submit additional comments on the compliance program proposed in Notice 97–12 (§ 108.103(b)(11) and (c)(6), 64 FR 43322). After considering all the written comments on the compliance program issue, the FAA will consider the need for amending part 108.

The revision of part 108 comprehensively updates the aircraft operator security regulations to more efficiently and effectively address terrorist and other criminal threats to civil aviation. This action incorporates both procedures currently in the air carrier standard security program and new security procedures, in a manner that is intended to allow regulated entities and individuals to understand their responsibilities more readily. Lastly, the revision incorporates certain new measures that provide for security enhancements.

Airport security programs required by part 107 also have been amended extensively since 1985. The FAA is revising part 107, which governs airport security, concurrently with this part. All references to part 107 in this preamble are intended to refer to part 107 as published in today's issue of the **Federal Register**.

The revisions of part 108 and part 107 represent a comprehensive approach toward upgrading the security requirements of the civil aviation system. The intent of these revisions is to foster consistency and standardization throughout the national civil aviation security program. Where possible, the revisions of parts 107 and 108 contain nearly identical language to enhance, clarify, or require new security measures for implementation by both aircraft and airport operators.

Significant changes between the final rule include the following: (1) Increases the number of aircraft operators who must have security programs; (2) Moves some sections from current 14 CFR part 107; (3) Clarifies procedures allowing law enforcement officers to fly armed; (4) Clarifies procedures for transporting prisoners under armed escort; (5) Holds individuals accountable for certain violations; (6) Acknowledges administrative procedures for a formal comment period for security directives.

The changes are discussed in more detail in the Section-by-Section Analysis below.

Section-by-Section Analysis

Title and Organization of Revised Part 108

In this final rule, the FAA revises existing § 108.1 through § 108.33, and adds several new sections. Also, the FAA reorganized some of the material in Notice 97–12 resulting in additional sections addressing specific requirements. These changes are discussed in more detail below. The title ''Airplane Operator Security'' has been changed to ''Aircraft Operator Security,'' as this part applies to operators of rotorcraft as well as fixed-wing aircraft. All references to ''airplane'' in this part are changed to ''aircraft.''

Subpart A—General

Section 108.1 Applicability

Proposal: The FAA proposed, in § 108.1(a)(1), to extend the application of part 108 to certain private charter operations, helicopter operations, and all-cargo carriers.

Comments: The FAA received comments identified as applicable to § 108.1, the comments appear to be directed toward the content of security programs. Accordingly, the FAA has chosen to place those comments and the FAA's response to them in the analysis section for § 108.101.

The ASAC Part 108 Working Group supports permitting helicopter operators to voluntarily participate in a security program. The Part 108 Working Group notes that some helicopter activities place operators in direct contact with large domestic flag carrier operations. When this occurs, helicopter passengers disembark into the secure areas of terminals. The recommendation by the Part 108 Working Group is to allow the expeditious handling of such passengers through secure areas without diminishing the security of the sterile area. In order to do so, the helicopter operators would require an FAA-approved security program.

FAA response: The FAA continues to believe that this action will enhance the security of the sterile area by minimizing the opportunity for transfer or introduction of dangerous or deadly weapons into the sterile area by unscreened persons disembarking from private charter or helicopter operations into the sterile area.

The FAA concurs with the opinion of the Part 108 Working Group. All aircraft operators that enter the secured areas, enplane from or deplane into a sterile area, or use screening checkpoints, impact the security of all operations, and should have written and approved security programs.

Accordingly, the final rule will extend the applicability of § 108.1 to private charter operations and, under certain specified conditions, will require helicopter operations to adopt and implement a security program.

Section 108.3 Definitions

Proposal: In Notice 97–12, the FAA proposed to add commonly used terms and to update current terms used in part 108. The FAA also proposed to make the definitions in proposed part 107 apply to part 108 as well.

The FAA proposed to add the following definitions: ''accepted security program,'' ''approved security program,'' ''Assistant Administrator,'' and ''principal security inspector.'' The FAA proposed to revise the following definitions: ''passenger-seating configuration,'' ''private charter,'' ''public charter,'' ''scheduled passenger operations,'' and ''sterile area.''

Comments: Alaska Airlines (AS), American Airlines (AA), United Parcel Service Airline (UPS), Cargo Airline Association (CAA), Air Transport Association of America (ATA), Regional Airline Association (RAA), and the National Air Carrier Association (NACA) recommend that terms applicable to airport or aircraft operating areas should be defined in both parts 108 and 107, instead of only being in part 107. In addition, AS, AA, Northwest Airlines (NW), Federal Express (FedEx), RAA, CAA, UPS, and ATA are in strong opposition to the replacement of several terms as proposed in part 107. All of the organizations indicated above recommend retention of the current terms for secured area and SIDA, since they are understood and used daily by regulated parties and the FAA.

The FAA also received several comments offering definitions for ''public charter,'' ''private charter,'' and ''person.''

FAA response: The FAA has decided to keep the definitions in the most applicable part, with cross references showing that the terms apply to other parts as well. Although it would be convenient for users to have definitions repeated in each part, there is a risk that the definitions would become inconsistent over time, as each part is amended from time to time. Further, it is the FAA's experience that aircraft operators generally provide written guidance to their personnel, not simply copies of part 108. Operators can easily include in their guidance pertinent portions of part 107, as well as parts 1, 109, 129, and 191 as needed.

The FAA's decision regarding definitions as applied to the airport environment are contained in the final rule for part 107.

In this final rule, the FAA has made several editorial changes to the definitions. The definitions for ''accepted security program'' and ''approved security program'' have been removed and replaced with a single term, ''aircraft operator security program.'' For the purposes of this final rule, the definition of ''accepted security programs'' will be unnecessary because the references to part 129 have been removed. The only security programs which will be discussed in this final rule are those that have been approved by the Administrator under part 108.

In the current part 108, the term ''Director of Civil Aviation Security'' is used to refer to the official who oversees civil aviation security operations and approves air carrier security programs. Under the internal FAA reorganization, the current title of this position is ''Associate Administrator for Civil Aviation Security;'' however, the statute refers to the ''Assistant Administrator for Civil Aviation Security.'' As such, paragraph (b) of this section will use the title ''Assistant Administrator for Civil Aviation Security.'' In addition, paragraph (b) will clarify that the Deputy Assistant Administrator for Civil Aviation Security, or any individual formally designated as Acting Assistant Administrator or Acting Deputy Administrator, could act in the capacity of the Assistant Administrator. In addition, the duties of the Assistant Administrator could be further delegated.

With regard to the proposed term ''principal security inspector,'' it has been determined that it would be best to use the general term ''Administrator'' rather than to name specific positions held by various employees working on behalf of the Administrator. As a result of that decision, the term ''principal security inspector'' has been removed.

The FAA considered the definitions offered by the commenters for ''public charter'' and ''rivate charter'' and determined that they did not meet FAA security needs. The FAA has determined the need to retain the proposed definitions for ''public charter'' and ''private charter,'' but is correcting an editorial mistake in the NPRM that gave the definition for ''public charter'' as the definition for the term ''private charter.'' The definitions in part 108 are based on the different security issues present when all passengers are affiliated (private charters) and when passengers may have little or no affiliation with each other (public charter). The definitions suggested by the commenters are based more on economic concerns.

Although commenters offered other definitions for the term ''person,'' the definition for ''person'' is contained in 14 CFR part 1, and applies to all FAA regulations. The term as used in this part is in concert with that definition and as such, this final rule will not introduce a new definition for the term ''person.''

The term ''scheduled passenger operations'' has been rewritten for clarity with no change from the intent of the current regulation.

Notice 97–12 proposed to define ''sterile area'' as ''a portion of an airport defined in the airport security program to which access generally is controlled by either the inspection of persons and property in accordance with an approved or accepted security program required under § 108.105 of this part or § 129.25 of this chapter, or an access control system meeting the requirements of § 107.207 of this chapter.''

The final rule simplifies this definition, by describing the function of the sterile area. It is defined as ''a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which access generally is controlled by an aircraft operator or foreign air carrier through the screening of persons and property in accordance with a security program.'' The reason the sterile area is needed, is to provide access to aircraft by passengers. Its use permits the screening of passengers well before the boarding of the aircraft, both in time and distance, so that screening can be accomplished more efficiently. In most cases, persons other than passengers may enter the sterile area, but sometimes such access is limited for security or crowd control purposes. The means by which access is controlled is not part of the definition, but is set out in § 108.201 and the security program.

The current rule refers to ''certificate holders.'' Notice 97–12 proposed to

change this term to ''air carriers,'' because there are many different kinds of certificate holders under FAA regulations, including airport operators (part 139). After further consideration, the term ''air carrier'' in part 108 is being changed to ''aircraft operator.'' There are some aircraft operators that will be required to hold security programs under part 108 that do not hold ''air carrier operating certificates,'' rather they hold ''operating certificates'' under part 119. For instance, those operators engaging in intrastate air transportation are not considered part of the air transportation industry, and are not required to hold air carrier operating certificates under part 119. However, they are required to screen their passengers in accordance with 49 U.S.C. 44901, and are required to hold a certificate under part 119.

In addition, some private charter operations may be conducted by those operators holding operating certificates, not air carrier operating certificates. Section 108.101 will require them to adopt a security program if they use a sterile area to enplane or deplane passengers, in order to protect the integrity of the sterile area.

Accordingly, ''aircraft operator'' is defined in § 108.3 as ''a holder of an air carrier operating certificate or an operating certificate under part 119 of this chapter that conducts operations described in § 108.101.'' This definition makes it clear that general aviation operators are not under part 108.

Two definitions that were not included in the NPRM, but will be added to the final rule are ''checked baggage'' and ''cargo.'' These terms will be added to help the reader understand two amended sections, which are numbered and entitled § 108.203, ''Acceptance and screening of checked baggage,'' and § 108.205, ''Acceptance and screening of cargo.'' The current rule also provides that one kind of private charter involves ''civil or military air movements.'' In Notice 97–12, this distinction was proposed to be termed ''civil or military air transportation.'' This final rule will use the term ''air movements.'' Air transportation has a particular meaning in the statute, and involves holding out to the public. Private charters may not involve holding out to the public and, therefore, to avoid confusion, the term will remain ''air movement.''

Further, Notices 97–12 and 97–13 proposed the use of the terms ''explosive, incendiary, deadly or dangerous weapon, or destructive substance'' in describing what items may not be permitted in sterile areas or onboard aircraft (see e.g., proposed §§ 107.101 and 108.201(b)). Some commenters request clarification of these terms, and question the meaning of the term ''destructive substance.'' They state that the term could be read as including various hazardous materials that are subject to extensive regulation under the Hazardous Materials Regulations (HMR), 49 CFR part 172, and that the terms ''explosive'' and ''incendiary'' are sufficient.

The FAA has decided not to use the term ''destructive substance'' as proposed. The term ''destructive substance'' is used in the statute, 49 USC 44902, however, the FAA believes the term is confusing and that its use would not add any benefits to this final rule. Aircraft operators will not be responsible for searching for substances other than by the means set forth in their security program, or any security directives that may be issued.

Section 108.5 Inspection Authority

Proposal: Notice 97–12 proposed to add a section on the inspection authority of the FAA. The authority of the Administrator to inspect for compliance with statutory and regulatory requirements is granted in 49 U.S.C. 40113. Proposed § 108.5(a) stated that the air carrier must allow the FAA to make inspections at any time or place to determine compliance with this rule, the statute, and the air carrier security program. This paragraph was largely based on § 119.59, which provides that the FAA may inspect air carriers and commercial operators for compliance with safety rules.

Proposed § 108.5(b) included the requirement found in current § 108.27 that on the request of the FAA, the air carrier must provide evidence of compliance with the rules and with its own security program. Proposed § 108.5(c) would have required air carriers to issue to any FAA Special Agent access and identification media to permit unescorted access to, and movement within, any exclusive area for which the air carrier has taken responsibility.

Comments: American Airlines, FedEx, UPS, and ATA believe the scope of proposed § 108.5(a) and (c) is too broad and could subject air carriers to unreasonable and frequent intrusions by FAA personnel, that off-airport inspections such as at corporate headquarters should not be permitted, and that unannounced inspections could result in unnecessary disruption. American Airlines states that the FAA should provide written notice of inspections so that management can observe and take immediate corrective action if needed. Continental Airlines (CO) states that the section should refer to inspections ''at any reasonable time or place.'' It notes that some inspections would be at corporate headquarters, which are closed during some hours. Northwest Airlines (NW) requests that the rule be modified to ensure air carriers are protected from unreasonable intrusion into their private corporate areas of business. Alaska Airlines states that not all FAA Special Agents are trained in dangerous goods, cargo security, and passenger security. Alaska Airlines also notes that the proposal did not address the timeframe of issuing the media. Alaska Airlines asks whether the special agents would have safety training in ramp safety. United Express states that the inspections should be performed only by FAA personnel trained to perform such inspections. Trans World Airlines states that there should be limitations to ensure air carrier operations are not unnecessarily interrupted. The RAA states that the proposal is written too broadly and should apply only to FAA inspectors trained in security inspections and states that non-security related surveillance should not be included in the security regulations.

FAA response: This section is intended to accomplish several important tasks. Paragraphs (a), (b), and (c) will provide information about the FAA's authority, which has existed since 1928, to conduct inspections and tests. Paragraphs (a) and (b) also will set forth affirmative duties on the aircraft operator to cooperate with and allow the inspections and tests, and its failure to do so could result in enforcement action against the aircraft operator. Paragraph (d) will require the aircraft operator to issue access and identification media to FAA special agents, which will assist them in carrying out their inspection duties.

The FAA agrees with the commenters that the FAA is required to conduct its investigations and tests in a reasonable manner, but does not believe that the words ''reasonable'' should be added to the regulation. The wording is similar to that used in a number of other FAA rules that have existed for years, including § 119.59 (aircraft operators and commercial operators), § 141.21 (pilot schools), § 145.23 (repair stations), and § 147.43 (aviation maintenance technician schools). The wording of these rules has not caused significant problems in the past. The FAA does not anticipate any change in its inspection procedures based on this new rule.

This new section will provide a basis for enforcement action in the event that an aircraft operator fails to allow the Administrator to conduct inspections

and tests as required under this section. While the Administrator has always had authority to conduct inspections and tests, there were not many options that the Administrator could take if the aircraft operator obstructed the inspection. This rule allows the FAA to take administrative action or civil penalty action if the aircraft operator fails to allow the inspection or test, or otherwise does not comply with the section.

As to the location of inspections, the FAA must be able to inspect each location at which regulated activity is being carried out. Regulated activity under part 108 is conducted primarily at airports, but there are other locations that the FAA must inspect. For example, off-airport baggage check-in locations such as hotels or cruise ships are subject to FAA inspection. In addition, some aircraft operators maintain required records of employment history, verification, and criminal history records checks (§ 108.229) at their corporate offices. These required records are periodically inspected by FAA Special Agents. It is FAA practice to make arrangements for a records review ahead of time, and to schedule the inspection for normal business hours, to ensure that aircraft operator personnel are available to assist and that the inspection does not cause undue disruption.

As to the timing of inspections, the FAA is aware of the need not to unduly interfere with operations. Often inspections are announced ahead of time to ensure that aircraft operator personnel are available to observe and assist. However, many inspections and tests can only be done effectively if unannounced, to determine whether the aircraft operator is in compliance when it does not know the FAA may be inspecting. Further, the FAA must sometimes inspect and test during peak traffic periods at the airport to ensure that even during the busiest times aircraft operators are in compliance with the security requirements. These peak periods are when the largest portion of the traveling public is being protected by the security procedures.

Regarding FAA personnel, the FAA takes care to only authorize trained personnel to conduct inspections. These individuals receive training (both classroom and on-the-job) on ramp safety and procedures, in addition to the training they receive on technical security requirements.

Several changes have been made in the final rule. Proposed § 108.5(a) referred to determining the compliance of the airport operator, aircraft operator, foreign air carrier operator, and other airport tenants. The final rule also will list the compliance of indirect air carriers, which must have security programs under part 109. Indirect air carriers have important security responsibilities, and the FAA must be able to inspect and test for their compliance. An inspection of an aircraft operator's cargo facility, for instance, reveals information about the compliance of both the aircraft operator being inspected and any indirect air carrier that has transferred cargo to that aircraft operator.

Section 108.5 only provides for inspection by the FAA. Unlike the Notice, it does not refer to inspection by other Federal government entities. The FAA has no authority to grant or to deny inspection authority to another agency. The section was changed to avoid any appearance that the FAA was purporting to grant such authority.

Proposed § 108.5(a)(1) and (2) referred to determining compliance with the aircraft operator security program and with part 108. The final rule in § 108.5(a)(1) also lists compliance with parts 107 (airport operators), 109 (indirect air carriers), 129 (foreign air carrier operations), and 191 (sensitive security information), and any security programs under those parts. In any given area of an airport, there may be duties which aircraft operators, airport operators, and the others must carry out. If a Special Agent is in an aircraft operator's exclusive area, for instance, he/she might also be inspecting access doors that are controlled, in whole or part, by the airport operator. This section will clarify that the Special Agent may be inspecting for compliance with one or all of these parts or security programs.

New § 108.5(a)(2) refers to 49 U.S.C. Subtitle VII. That subtitle, Aviation Programs, contains much of the enabling legislation for the FAA. Most of these provisions were in the Federal Aviation Act of 1958, as amended (49 U.S.C. appx. 1301 *et al.*), before that Act was recodified in 1994.

Proposed § 108.5(a)(3) referred to determining compliance with 49 CFR part 172, which provides requirements under the Hazardous Materials Transportation Act. This reference has been removed from the final rule. The FAA will continue to have authority to inspect for compliance with Hazardous Materials Regulations, but its authority is based on a different statute than that for civil aviation security. Part 108 is devoted to civil aviation security issues. To avoid misunderstanding, reference to hazardous materials inspections will be deleted.

Proposed § 108.5(a) referred to the Administrator making inspections and tests, and § 108.5(b) referred to the aircraft operator providing evidence of compliance to the Administrator. The final rule will add the clarification that these requirements include the FAA making copies of records or the aircraft operator providing copies. Obtaining copies of records is an inherent part of the FAA inspecting compliance with safety and security requirements. It is necessary to preserve the records for further review by the FAA, and on occasion, use as evidence. This situation is true for all FAA inspections, including those conducted by FAA Aviation Safety Inspectors (who look at compliance with operational and airworthiness rules) and FAA Special Agents. Often, the copying is done at the aircraft operator's or airport operator's office with their permission. Sometimes other arrangements are made, such as the FAA temporarily removing the records to copy them at a FAA office or a commercial service. The FAA has rarely encountered difficulty on this point, but includes these explicit statements in the final rule to avoid misunderstandings in the future.

This section refers to copying of records, not just documents. Records may be kept in a number of formats, such as paper, microfilm, and electronic. The FAA Special Agent may request copies of records in any of these formats, usually requesting that paper copies be made of the records. If another format is used more easily by the Special Agent, he/she may request records in that format.

New § 108.5(c) will state that FAA personnel may gain access to the SIDA and other controlled areas without holding access or identification media issued by the airport or aircraft operator, when it is necessary to conduct an inspection or investigation. This authority is not new. The FAA agrees that in most circumstances, FAA personnel should comply with the access and identification requirements in place at the airport, and it has been FAA practice to require that, when practicable, FAA personnel first obtain local media before conducting inspections. However, there are times when the FAA cannot adequately inspect and test compliance if its employees first obtain access and ID media from the airport or aircraft operator. The act of obtaining such media may provide an opportunity for the FAA representative to be recognized by personnel at the airport, thereby reducing or negating the value of the inspection. The FAA has in the past, and will continue, to make

unannounced, anonymous tests by entering the SIDA or other areas without first having obtained such media. Such tests are conducted under very controlled conditions, using personnel who are trained in safety and security. The FAA's Special Agents carry their FAA credentials for immediate display if they are challenged in order to establish their authority to conduct such inspections. FAA Special Agents only inspect without local ID's when obtaining local media before the inspection would greatly reduce, or even negate, the purpose of the inspection. In other circumstances, the FAA representatives have the appropriate access and/or ID media.

Notice 97–12 proposed in § 108.5(c) (§ 108.5(d) in the final rule) to require aircraft operators to issue identification and access media to FAA Special Agents upon their request and when they present FAA credentials issued by the Administrator. These media give Special Agents unescorted access to, and movement within, exclusive areas controlled by the aircraft operator. These exclusive areas may include portions of the airport secured area, SIDA, and AOA. While the FAA has the authority to inspect without local media, the FAA agrees that it is in the interest of security for all persons in the controlled areas to have locally issued or approved access and identification media. An undue number of different media makes the challenge system more difficult to carry out, and reduces the effectiveness of the challenge system. Therefore, the FAA's practice is for its agents to obtain local media when practicable. While the FAA rarely has had difficulty with the local authorities, there have been times when local authorities have resisted providing the media. This paragraph makes it clear that the aircraft operator is obligated to issue such media.

The FAA recognizes and concurs with the concerns that the number of people given unescorted access to the secured areas, SIDA's, and AOA's should be limited to those with a need to be there. For this reason, this particular provision is limited to FAA Special Agents. Other persons with inspection authority for other FAA programs may obtain limited access to perform their duties. Flight Standards Inspectors, for instance, may use their FAA Form 8000–39 to enable them to go to the aircraft that they intend to inspect or on which they intend to give a flight check. This authority is not the kind that Special Agents need to fully inspect secured areas, AOA's, and SIDA's. Therefore, this paragraph requires the aircraft operator only to give identification and access media to those individuals identified by the Administrator's Special Agent credentials.

The proposed rule stated that the media would be issued on request of the FAA Special Agent and presentation of his or her credentials. The final rule states that the media shall be issued upon request by the Administrator. As some commenters note, not all FAA Special Agents have duties and the type of training to conduct inspections at the airport, therefore, those agents do not need local media. The Administrator will provide the airport or aircraft operator with the names of Special Agents who require media.

The final rule states that the media shall be issued ''promptly.'' The FAA expects that the media will be issued without undue delay, generally within a similar timeframe that media are issued to airport, aircraft operator, and contractor employees who need the media. The particular procedures will be worked out at each airport with its FAA field office.

The FAA recognizes that, in most cases, it is important not to give unescorted access to those who have not had the specialized SIDA training required at that location. While all FAA Special Agents with the appropriate credentials have been given general training in access to and movement within the affected areas, each location has different layouts, ID media, and other systems. Accordingly, the final rule will provide that media are not issued to Special Agents until they complete the appropriate training, as stated in a security program. This practice will ensure that the agent is familiar with the procedures in place at that location, and will fully support the airport operator's and aircraft operator's training programs. Considering that the aircraft operator's procedures will be in an exclusive area agreement for the specific airport, the special procedures for issuing local media may be in either the airport or aircraft operator security program. These procedures will indicate when the training is given, including provisions for emergencies. In case of emergency, Special Agents may need the media without undergoing the full local SIDA training.

Section 108.7 Falsification

Proposal: The FAA proposed § 108.7 with no changes from the current § 108.4. The current section was adopted on November 27, 1996.

Comments: There were no comments on this section.

FAA response: Section 108.7 is not changed.

Section 108.9 Security Responsibilities of Employees and Other Persons

Proposal: The FAA proposed to prohibit persons from tampering or interfering with, compromising, or modifying any security system, or carrying a deadly or dangerous weapon, explosive, or incendiary into sterile areas, secured areas, or operations area.

Notice 97–12 proposed in § 108.9(b) to prohibit any deadly or dangerous weapons, explosives, incendiaries, or other destructive substances on or about the individual's person or accessible property when entering secured areas or the air operations areas of an airport governed by part 107. Proposed § 108.9(d) provided that this requirement would not apply to certain law enforcement personnel and other authorized persons.

Also proposed was the continuation of the current § 107.25(f) provision that no person could allow to be used or cause to be used any airport-approved access medium or identification medium that authorized access for a person or vehicle in any area controlled for security purposes in any other manner than that for which it was issued.

Comments: Denver International Airport, AS, AA, CO, ATA, and RAA, recommend incorporating specific parts of the law that identify penalties. American Airlines, FedEx, UPS, ATA, and RAA support the concept but request a clear distinction between the individual's actions and the air carrier's actions and want a distinction between intentional and unintentional noncompliance. American Airlines, FedEx, ATA, NACA, and RAA recommend that any FAA action could be in addition to or in lieu of any action by the air carrier against its employee or contractor. Three commenters suggest that language be incorporated to prevent testing of security operations by unauthorized persons or those who present false credentials. United Express, AA, ATA, FedEx, and RAA, oppose re-screening of employees entering the sterile area, who have access clearance from the airport to enter secured areas. Alaska Airlines, AA, ATA, UPS, and RAA recommend removal of the reference to ''other destructive substance.''

FAA response: In response to the comment to place civil penalties into the final rule, the FAA recommends that those seeking more information on this topic, refer to part 13. Potential penalties are addressed in part 13, which are not normally added to each part of Title 14.

Regarding the distinction between individual's actions and the aircraft operator's actions, it is not possible to state in the rule as to when enforcement action may be taken against just the individual, just the aircraft operator, or both. Aircraft operators are responsible for carrying out part 108 and their security program, which largely is done by making sure their employees, contractors, and agents carry them out. When an individual fails to do so, in each case the FAA will have to examine the facts and circumstances, and the parties' responsibilities under the statute, the regulations, and the security program, to determine what charges, if any, to bring against which persons. As to whether any FAA action would be in addition to, or in lieu of, any action by the aircraft operator, this determination also depends on the facts of each case.

The rule does not distinguish between intentional and unintentional noncompliance. However, it seems likely that in most cases, if a person violated § 108.9 the act would be intentional. If it appears that the violation was not intentional, the FAA would consider whether no enforcement action, or a mitigated penalty, was warranted.

The FAA considered whether to prohibit unauthorized testing of any security system. Such a blanket prohibition would be unduly broad, however, considering the uncertainty of what might be meant by ''testing'' the system. Section 108.9 does, in fact, prohibit some actions that persons might take to test the system that would unduly interfere with the proper operation of an air carrier. Deliberately entering a secured area without proper access or identification media would be a violation, for instance, whether the person was testing the system or had another reason for doing so.

As to the proposed prohibition of weapons in the secured areas or AOA in § 108.9(b), the FAA has determined that airport operators under § 107.11 are able to handle such occurrences through their local laws that control the presence of weapons and other deadly items on airport property. The law enforcement personnel who respond to incidents as described in the airport operator's security program, enforce such local laws. Therefore, proposed § 108.9(b) is not adopted. While the FAA will not take action at this time, it will continue to assess the need for any future comprehensive security enhancements regarding weapons and other destructive substances that may be detrimental to the flying public.

Section 108.9(d) (proposed § 108.9(c)), provides that this section does not apply to the FAA, or to aircraft operators, airport operators, or foreign air carriers while conducting inspections in accordance with their security program. These entities are expected to check their own compliance with the regulations by testing the system. However, not every breach by an employee can be characterized properly as an inspection. The security program will set out a regulated party's plan for conducting such inspections, including who may do them.

The FAA has also determined that proposed § 108.9(d), which indicates subsection (b) would not apply to persons authorized by the Federal government or the airport operator to carry weapons and other dangerous items on airport property, will also not be adopted. The FAA believes the local laws adequately address and recognize various persons who may have a need and the authority to carry weapons while on airport property. The FAA will also continue to assess these issues and address them as deemed appropriate in the future.

Subpart B—Security Program

Section 108.101 Adoption and Implementation

Proposal: In §§ 108.1 and 108.101, Notice 97–12 proposed to extend the application of part 108 to private charter and helicopter operations, as well as those air carriers that voluntarily hold security programs.

Current part 108 applies only to airplane operators, and therefore, does not apply to helicopter operators, which are specifically excluded under current § 108.1(b) and do not hold security programs. Current § 108.5(a) makes part 108 applicable to scheduled and public charter operators only, not private charters. Section 108.5, paragraphs (a)(1) and (a)(2) require a full security program to be carried out for operations with more than 60 seats and for operations with any size airplane deplaning through a sterile area. Passengers enplaning from or deplaning into sterile areas from private charters and helicopter operations currently are subject to the security program requirements of other air carriers responsible for the security of that sterile area. In such a case, the helicopter operator or private charter does not take responsibility for the security of that sterile area under a security program.

Current § 108.5(a)(3) requires some security procedures to be carried out for scheduled passenger and public charter operations with more than 30 but less than 61 seats, and requires the rest of the security program to be carried out if the FAA advises them that a threat exists. This practice is commonly called a ''partial program,'' because only part of the program routinely is carried out. Section 108.5(b) states that other certificate holders that have an approved security program shall carry out that program (commonly called a ''voluntary program''). Because the definition of ''certificate holder'' in current § 108.3 includes only passenger operations, some commenters have questioned the current practice of certain all-cargo carriers adopting a security program under part 108.

Notice 97–12 proposed not limiting part 108 to airplane operations, but to apply the same security requirements to all aircraft depending on passenger seating configuration and kind of operation. It proposed in § 108.101(a)(1) and (2) to require a full security program for scheduled and public charter operations with more than 60 seats, and for scheduled passenger and public charter operations with any size aircraft when enplaning from or deplaning into a sterile area. It proposed in § 108.101(a)(3) to require a full security program to be carried out for private charter operations when passengers are enplaned from or deplaned into a sterile area.

Notice 97–12 proposed in § 108.101(a)(4) to require a partial program for certain other scheduled, public charter, and private charter operations that do not enplane from or deplane into a sterile area. The operations include a private charter operation with an aircraft having a passenger seating configuration of more than 30 seats, a scheduled passenger or public charter operation with a passenger seating configuration of 31 to 60 seats, and a scheduled passenger, public charter, or private charter operation with a passenger seating configuration of less than 61 seats engaged in operations to, from, or outside of the United States.

In § 108.101(b), Notice 97–12 proposed that each air carrier that has a security program for other operations, shall carry out that program. Because part 108 would not use the term ''certificate holder'' and would not otherwise omit all-cargo operations from part 108, this paragraph would clarify that all-cargo operations may be under a security program.

Comments: American Airlines, CO, NW, TWA, United Express (Great Lakes Aviation), UPS, ATA, RAA, and NACA state that private charter operations should not be subject to part 108 requirements. They note that there is no history of such operations creating a

security problem. American Airlines, ATA, and TWA indicate that, if the FAA decides to regulate private charter operations under part 108, the only security requirement that is justified is the screening of passengers who deplane into a sterile area. The Regional Airline Association, UPS, and Era Aviation state that only screening of passengers who enplane from or deplane into a sterile area is justified. Continental Airlines does not object to screening passengers who enplane through a sterile area, but wishes to deplane private charter passengers into a sterile concourse. The NACA states that private charters should be able to escort passengers through the sterile area as an alternative to screening, and that there should be portions of the airport outside of the sterile area available for private charter enplaning and deplaning.

The City and County of Denver supports requiring private charter operations to have security programs, noting that an unscreened individual could deposit contraband for pick-up by another person or could return later himself or herself. This commenter states, ''with all of the technological advances and equipment being deployed, why would a private charter be allowed to compromise security?''

American Airlines, United Express, ATA, and RAA state (in their comments on proposed § 108.9(b)) that the rules should not be interpreted to prevent ''reverse screening,'' that is, screening upon deplaning at major airports as opposed to before boarding small commuter aircraft.

Northwest Airlines opposes applying part 108 to helicopter operations. The Helicopter Association International (HAI) supports permitting rotorcraft operators who want to interline with larger air carriers the ability to hold a part 108 security program and enplane from and deplane into a sterile area. The HAI also states that airports should have a place outside of the sterile area where rotorcraft may operate.

The United Parcel Service, FedEx, AA, RAA, ATA, and the Cargo Airline Association (CAA) support allowing other air carriers to voluntarily adopt a security program. The United Parcel Service, FedEx, and CAA would like the FAA to clarify that the air carrier operating under a voluntary program is required to comply with its particular program, not with the entire regulation. Federal Express also requests clarification that the primary objective of such programs is to protect large passenger aircraft and the passengers on them. Some commenters suggest that including voluntary programs in § 108.1 without a specific note that not all of part 108 applies to them, may imply that they must comply with the entire regulation.

The NACA recommends additional options for those aircraft operators conducting wet leases.

FAA response: Section 108.101(a)(1) in this final rule will maintain the current requirement in § 108.5(a)(1) that all scheduled passenger and public charter operations using aircraft with a passenger seating configuration of more than 60 seats have and carry out a full security program. Section 108.101(a)(2), as proposed, requires a full program for scheduled passenger and public charter operations using aircraft with a passenger-seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area. The FAA believes that preserving the integrity of the sterile area is critical for maintaining civil aviation security. Few additional security measures are applied to persons or property once they are in the sterile area. The FAA has determined, therefore, that it is essential that all persons who enter the sterile area be subject to security procedures, either by inspection of their person and property or by another means, such as verifying their status as an authorized aircraft operator employee or airport employee.

The FAA recognizes that the passengers in private charter operations have an affinity with each other, such as being on the same sports team and likely present little danger to one another. Permitting the passengers of private charter operations to enter the sterile area without being screened would compromise the sterile area. Screening persons entering the sterile area are intended not only to discover weapons, explosives, and incendiaries on individuals who intend to use them in a criminal manner, but also to find weapons carried by individuals with no criminal intent who forget they are carrying them. Each year at screening checkpoints, many weapons carried by such persons are prevented from entering the sterile area. If these weapons were brought into the sterile area, there is a risk that they could be used inappropriately by that person, or taken by another person and used. Any prohibited item that is introduced into the sterile area could be transferred to a scheduled or public charter flight. In addition, as Denver notes, an unscreened person on a private charter intentionally could transfer a weapon to another person, creating a danger to flights other than his or her own flight. For these reasons, the FAA continues to believe that all persons who enter the sterile area must be subject to security procedures.

Further, the FAA believes that aircraft operators that place passengers in the sterile area should be responsible for screening these passengers. Under part 108, this task is accomplished by the operator holding and carrying out a security program.

Accordingly, this final rule will require that all aircraft operators that enplane or deplane passengers through sterile areas, will be required to adopt and carry out a security program for those operations, regardless of the size or type of aircraft, or whether the flight is a scheduled, public charter, or private charter.

As to the type of aircraft being used, the FAA has found no reason to believe that there is any difference in the risk to air transportation depending on whether helicopters or airplanes are being operated. By changing the rule from applying to airplane operators to applying to aircraft operators, helicopter operators will be required to adopt and carry out a security program under the same circumstances as airplane operators. This practice will ensure that all operators of aircraft of the same passenger seating capacity and kind of operation maintain similar levels of security. Further, removing the exclusion of helicopters from part 108 that is in current § 108.1(b) may assist helicopter operators to transfer passengers, checked baggage, and cargo to other aircraft operators, because they can carry out the necessary security procedures.

After further evaluation, the FAA has determined that there is no need to require security procedures for private charters other than as needed to protect a sterile area. As noted, private charters, by definition, involve groups of passengers who are closely affiliated, and present little danger to one another. The FAA agrees with the commenters that further regulation of private charters is not warranted because there is insufficient evidence that these passengers pose a danger to air transportation. The final rule in § 108.101(b) requires private charter operators to have a security program (''Private Charter Program'') only if they enplane from or deplane into a sterile area. In that case, they need to carry out only the requirements related to protecting the sterile area.

Section 108.101(c)(2) will require scheduled and public charter operations using aircraft of less than 61 seats that operate to, from, or outside of the United States, and do not enplane from or deplane into a sterile area, to hold a ''Partial Program.'' The Partial Program

requires the aircraft operator to carry out portions of the security program for all operations and to carry out the remainder when the FAA informs the operator that a threat exists. Because the performance, including flight range, of such aircraft has increased and the potential threat to U.S. interests outside of the country has increased since part 108 was adopted, some additional security measures should be carried out for such operations.

The rule language will be amended for all Partial Programs. Section 108.101(c)(1)–(2) of the final rule will address operations to which this applies. These operations include scheduled passenger or public charter that do not enplane from or deplane into a sterile area, when such an operation either (1) involves an aircraft having a passenger seating capacity of more than 30 and less than 61 seats, or (2) involves an aircraft having a passenger seating configuration of less than 61 seats and is engaged in operations to, from, or outside of the United States (or both). The security measures that must be carried out by such operations are included in § 108.101(d). Section 108.101(d) will require the affected aircraft operators to comply with the requirements regarding security coordinators, law enforcement personnel, carriage of accessible weapons, carriage of prisoners, carriage of Federal Air Marshals, training, the contingency plan, bomb and air piracy threats, and security directives and information circulars. Section 108.101(d)(2) will require the aircraft operator to perform any other security measures that the FAA has approved upon request. This situation permits the aircraft operator to assume additional security responsibilities, such as exclusive areas. Section 108.101(d)(3) will require that aircraft operators implement the remainder of the security program requirements when the FAA informs them that a threat to that operation exists.

The FAA agrees that the final rule should not prohibit reverse screening. The FAA did not propose that reverse screening be eliminated. There are some operations that do no require screening for the flight itself, but the flight deplanes in a sterile area. This final rule will clarify that the operator of that flight must now have a security program. That program will include methods that the operator will use to ensure that passengers are not deplaned into the sterile area without having been screened.

The comments on providing other areas of the airport for enplaning and deplaning passengers, which would be located outside the sterile area, and the comments regarding special provisions for wet leases, are beyond the scope of Notice 97–12 and will not be addressed in this rulemaking.

Section 108.101(e) addresses ''voluntary programs'' for aircraft operators that are not required to have a security program but wish to have one to facilitate their operations. In response to comments, and after further evaluation, the final rule will provide further clarification. These programs will be referred to as ''Limited Programs'' in this final rule. The term ''voluntary'' might imply that the aircraft operator is not required to comply with the program. Although the aircraft operator is not required to adopt a ''Limited Program,'' once one is adopted, the aircraft operator is required to comply with it.

Typically, holders of Limited Programs are all-cargo carriers that are not required to have a security program because they do not carry passengers and do not use sterile areas. However, all-cargo carriers may wish to have an exclusive area on an airport, taking responsibility for the security of that area, which would leave the airport operator with less direct responsibility under part 107 for that particular area. Or they may choose to carry out certain security measures to facilitate the transfer of cargo to passenger carriers. Acquiring a security program allows the all-cargo operator to receive Security Directives from the FAA, which directly impact their operations.

The introductory text of § 108.101(e) will clarify that the FAA *may* approve such programs; however, it is not required to do so. In each case, the FAA will evaluate all of the circumstances, including the security implications of the program and the ability of the aircraft operator to carry out the program, to determine whether security and the public interest warrant approval of the program. This introductory text also indicates that the FAA approves such programs only after a request by the aircraft operator. The FAA *requires* programs only for the aircraft operators included in § 108.101(a), (b), and (c), and cannot require an aircraft operator to hold a security program under § 108.101(e). This text also emphasizes that a security program may be approved for an aircraft operator that has a certificate under part 119. This provision is not intended to permit general aviation operators to have security programs under part 108. General aviation operators, if they are tenants on the airport and wish to have a security program, may request a tenant security program from the airport operator under part 107.

Section 108.101(e) will require that the aircraft operator shall carry out selected provisions of Subparts C and D, and § 108.305, as specified in its security program. This section also will require that the aircraft operator shall adopt and carry out a security program that meets the applicable requirements of § 108.103(c). This requirement emphasizes that the security program is used only to permit aircraft operators to take on existing security responsibilities that are set out in part 108. Voluntary programs are not used to impose completely new security responsibilities. In determining which sections to include, the FAA will consider which responsibilities the aircraft operator is accepting, and will include in the security program all necessary requirements. In all cases, the aircraft operator will be subject to Security Directives under § 108.305 that relate to the responsibilities that operator is accepting.

Section 108.101(e) states that each aircraft operator that has adopted a security program under this paragraph shall carry out that program. Such an aircraft operator is not obligated to carry out other portions of part 108 that are not included in its security program. If an aircraft operator were to fail to carry out its program, the full range of actions would be available, including counseling, administrative action (warning notices and letters of correction), and civil penalties. In extreme cases, the FAA could withdraw approval of the security program.

The FAA believes, as a result of this final rule, that there will be aircraft operators who will encounter for the first time a need to apply for and implement a security program under part 108. A short explanation of the relationship between their security program and this final rule follows. The FAA is required to prescribe rules, as needed, to protect persons and property on aircraft against acts of criminal violence and aircraft piracy, and to prescribe rules for screening passengers and property for dangerous weapons, explosives, and destructive substances (see 49 U.S.C. 44901 through 44904).

To carry out the provisions of the statute, the FAA has adopted rules requiring aircraft operators to carry out various duties for civil aviation security. Title 14, Code of Federal Regulations, contains part 108, which is directed specifically toward aircraft operators. The part contains general requirements for promoting civil aviation security.

Aircraft operators, as required by § 108.101, have a security program that

is approved by the Administrator, containing information that specifies how they are to perform their regulatory and statutory responsibilities.

The security program contains sensitive security information and is available only to persons with the need-to-know. Each aircraft operator's security program is a comprehensive document that details the full range of security procedures and measures that they are required to perform under part 108. The program includes procedures for screening of passengers, carry-on baggage, checked baggage, and cargo; using screening devices (such as X-ray systems and metal detectors); controlling access to aircraft and aircraft operator facilities; reporting and responding to bomb threats, hijackings, and weapons discovered during screening; reporting and protecting bomb threat information; identifying special procedures required at airports with special security needs; and training and testing standards for crewmembers and security personnel.

Other security and information measures are contained in the Security Directives and Information Circulars, described in § 108.305. These sources address threats to civil aviation security as well as responsive measures to those threats. Additionally, these sources provide sensitive information concerning various security devices, such as metal detectors and X-ray machines.

The security program is far more detailed than the regulations, therefore, there will be items specifically addressed in detail that may be mentioned only in general terms in the rule language of part 108. The security program, once approved, has the force of law and is to be adhered to the same as the part 108 regulations.

In addition to including private charter and helicopter operations, this final rule now applies to all-cargo operations that adopt and implement security programs as described in § 108.101(e). Obtaining an approved security program permits these operators to enter into an exclusive area agreement with an airport operator in compliance with § 107.111.

Section 108.103 Form, Content, and Availability

P*roposal:* The FAA proposed in § 108.103 language describing the purpose of having air carrier security programs and described the requirements contained in § 108.101 for those security programs. The FAA also proposed the means by which the air carrier would acknowledge receipt from the FAA of either a security program or amendment.

Part of the proposed requirements included procedures and a curriculum to implement an individual accountability compliance program. The FAA proposed that the aircraft operator would have penalties imposed on persons who were not abiding with the security requirements. Penalties were to be levied per the standards contained within the air carrier's approved security program.

The FAA also proposed to require that the air carrier designate an Air Carrier Security Coordinator (ACSC) and indicate the means by which this person can be contacted on a 24-hour basis.

The proposal also contained language to permit the air carrier to have the necessary documents available for electronic transmission from another location or to have the necessary documents onboard the aircraft.

In the final rule, the sections pertaining to these requirements have been clarified.

Comments: The United Parcel Service, the Denver Airport, and ATA, agree that individuals should be held accountable, but strongly object to delegating enforcement authority to the air carrier. They prefer that the FAA take responsibility for such action.

Northwest Airlines (NW), United Express, UPS, RAA, and ATA, support the creation of the position of an ACSC, but oppose the 24-hour contact requirement, unless the air carrier is permitted to name an alternate person to be designated in the ACSC's absence. Northwest Airlines, UPS, and RAA, suggest the use of the air carrier operations centers, which are available on a 24-hour basis. The ATA recommends the designation of an individual at the corporate level, rather than at each station. Alaska Airlines (AS) asks whether an air carrier can have several ACSC's, and states that the duties and position are not defined.

Northwest Airlines and UPS state that the preamble acknowledges that the air carrier may have the necessary documents available for electronic transmission from another location or onboard the aircraft, but proposed §§ 108.103(c)(2) and (3) do not appear to include this allowance. The commenters believe that by using the word ''accessible,'' the regulation will convey more clearly the intent of the requirement.

The ATA and RAA urge that the FAA contact corporate headquarters to obtain implementing instructions. Additionally, RAA and UPS believe that the wording in § 108.103(c)(2) could be interpreted as requiring an onsite copy of 14 CFR part 108.

FAA response: The FAA has reopened the comment period requesting additional comments on the issue of security compliance programs (64 FR 43322, August 10, 1999). The FAA has deleted the language in proposed § 108.103(b)(11) and (c)(6) regarding security compliance programs. However, the omission of security compliance programs from the final rule does not stop an aircraft operator from voluntarily adopting a compliance program at any time.

The requirements regarding security programs and amendments are contained in § 108.105.

In keeping with the changed language from ''certificate holder'' to ''aircraft operator'' the coordinator title has been changed to ''Aircraft Operator Security Coordinator (AOSC)''. Final rule language has been incorporated in § 108.215(a) to allow for the designation of an alternate when the AOSC is absent. Also, § 108.215(a) has been changed in the final rule to clarify that the AOSC, or any alternate, is to be designated at the corporate level, and shall serve as primary contact for security related activities and communications with the FAA.

Section 108.103(b) is intended to permit the aircraft operator to have the necessary documents available for electronic transmission from another location or the necessary documents onboard the aircraft. To require that aircraft operators have a copy of the security program accessible conveys the intent of the requirement. The FAA has amended § 108.103(b) to require that each aircraft operator maintain an original copy of their security program at its corporate office. In addition, a complete copy, or the pertinent portions, of the aircraft operators' approved security program, or appropriate implementing instructions, should be accessible at each airport served. An electronic version of the program is adequate. The security program instructions may be site specific, and should be accessible at each airport location. The FAA agrees to change the word ''available'' to ''accessible'' in the final rule.

The purpose of having the security program or instructions accessible at each airport served is to ensure that personnel at each airport have the instructions on how to accomplish their security duties. The FAA checks compliance with this requirement by asking to see the instructions while at different airports. Asking for the instructions from corporate

headquarters would not adequately check for compliance with this rule.

Section 108.105 Approval and Amendments

Proposal: The FAA proposed to slightly modify the time elements regarding the approval and the obtaining of amendments for security programs. Further, the FAA proposed to place time elements on itself, which before had not been contained in the regulation. Additionally, it proposed to revise the procedures making the processes consistent for both parts 107 and 108. Codification of the existing practice of the Assistant Administrator for Civil Aviation Security approving security programs and amendments was also proposed. Time elements for the submission and disposition of amendments were also included in the proposal.

Comments: Northwest Airlines, UPS, FedEx, TWA, and ATA do not agree to increase the FAA timeframe for amendment approval from the current requirement of 15 days. One commenter, RAA, opposes any change in the current amendment process and states that proposed § 108.105(b)(1) and (2) appear to be inconsistent.

Two commenters, RAA and ATA, ask that the rule allow amendments to be approved for the air carrier and all similarly situated certificate holders.

FAA response: The FAA attempts to be realistic when determining timeframes needed to provide full consideration of all security issues. The FAA will process each amendment as quickly as possible. While it is the FAA's intent to meet the time elements listed within the regulation, it is incumbent on the FAA to take an appropriate amount of time to review all relevant issues affecting the requested amendment.

The final rule places in the regulation the existing practice of the Assistant Administrator for Civil Aviation Security, on behalf of the Administrator, issuing the approval for all security program amendments. In the final rules for parts 108 and 107, procedures for approval of security program amendments are identical.

The FAA believes there may be instances when proprietary information may be contained within the proposed amendment submitted by an aircraft operator. It is for this reason that the FAA has decided not to act on the recommendation submitted by the RAA and ATA. Section 108.105(b)(6) provides that any aircraft operator may submit a group proposal for an amendment that is on behalf of it and other aircraft operators that co-sign the amendment.

The FAA will establish internal procedures to periodically review amendments it initiates. The procedures will ensure that the amendment is in fact appropriately placed in the security program, as opposed to requiring an amendment to part 108. The FAA believes that the ASAC recommendation to include expiration dates on amendments, was directed toward the amendments issued by the FAA and not those amendments requested by aircraft operators. The FAA recognizes that there will be circumstances when information, due to its sensitivity, cannot be discussed in a public forum. In those instances, the amendment processes for security programs provide a means to impose and implement needed requirements.

The final rule will allow the FAA 45 days after receipt of a proposed amendment to approve or deny that amendment. The FAA maintains that the amendment process may take additional time if the proposed amendment is modified or denied.

In addition to retaining the 45-day submission requirement, the FAA will retain a 30-day timeframe for a FAA response to a proposed amendment. These timeframes do not address time requirements for emergency amendments issued by the FAA. The additional time required by the FAA is needed to complete the review process and to ensure a timely and efficient exchange of information. The exchange of information not only occurs between the FAA and the aircraft operator but between internal FAA offices as well. There are instances when threat analyses are needed, requiring additional time to process the requests. Therefore, the FAA has determined that it is necessary to retain the language as proposed in Notice 97–12.

The FAA has deleted the last sentence in proposed § 108.105(b)(1) because it is unnecessary and confusing.

Subpart C—Operations

Section 108.201 Screening of Persons and Accessible Property

Proposal: The FAA proposed that the title and section number of current § 108.9 ''Screening of passengers and property'' be changed to § 108.201, ''Screening of persons and property, and acceptance of cargo.'' Air carriers currently are required to screen all persons entering a sterile area through a screening checkpoint. By changing the title, the FAA proposed to more accurately reflect that all persons, not just passengers, are required to be screened as they enter the sterile area through a screening checkpoint.

Further, to facilitate the transit of air carrier employees who have already been subjected to other security systems, the proposal provided that persons who are authorized unescorted access to a SIDA, may enter a sterile area from a public area using security procedures. These security procedures were proposed in § 107.207, ''Access control systems'' under Notice 97–13 that revised part 107.

Proposed § 108.201(b) would have required that the air carrier ''detect and prevent'' the carriage of any explosive, incendiary, deadly or dangerous weapon, or destructive substance on or about individuals or their accessible property aboard an aircraft or upon entry into a sterile area. This proposed language change was based on current procedures under the air carrier approved security programs which require that the air carrier ''detect and prevent'' or be subject to enforcement action.

The requirements proposed in § 108.201(d), (e), and (f) would transfer unchanged from current § 107.20 and § 107.21. These current sections require that an individual submit to screening of their person and property, and restrict the carriage of firearms into sterile areas to those persons required to carry the weapons in performance of their duties. Those persons who are required to carry weapons in performance of their duties are generally law enforcement officers traveling armed aboard aircraft, and persons specifically authorized to do so under an approved security program. Since control of the sterile area, and performance of screening are the air carriers' responsibilities, these requirements are more appropriate to part 108 than to part 107.

Proposed § 108.201(h) would have required that air carriers prevent the carriage of any explosive or incendiary onboard an aircraft. Although current security procedures applicable to the acceptance of cargo and checked baggage for transport onboard passenger aircraft are contained in the air carrier's standard security program, the basic requirement to apply security measures to cargo and checked baggage was not set out in detail in the current rule.

Comments: Trans World Airlines, RAA, and ATA oppose any modification of the requirement to screen passengers only. The RAA states that expanding the requirement to include all persons, could limit the air carrier's ability to provide access to the sterile area and may result in it having to limit access to sterile areas to ticketed passengers

only (rather than to all persons) or to close a checkpoint when there are no departing flights.

Alaska Airlines, FedEx, UPS, United Express, CAA, RAA, and ATA state that the air carrier cannot ''detect'' introduction of deadly or dangerous items 100% of the time, they believe that ''deter'' should be substituted for ''detect'' in the General Requirements paragraph of § 108.201. Federal Express, UPS, NACA, ATA, and RAA oppose any modification of the FAA requirement to rescreen employees. The NACA suggests that the following language be added ''* * * inspect each person entering a sterile area who does not have approved access media.''

FAA response: The screening of all who wish to enter a sterile area has been in effect, under § 108.9 (c), for many years. All individuals, with limited exceptions, who enter the sterile area through the screening checkpoint must be screened.

Notice 97–12 proposed that each aircraft operator required to conduct screening, use the facilities, equipment, and procedures described in its security program to ''prevent or detect'' the carriage of any deadly or dangerous weapon, explosive, incendiary, or other destructive substance, on or about each person or the person's accessible property before boarding an aircraft or entering a sterile area. The current requirement in § 108.9(a) is to ''prevent or deter.'' The FAA has decided to accept the commenters'' suggestion so the language in § 108.201(a) remains ''prevent or deter.'' Both phrases adequately reflect the overall intent that aircraft operators must use the measures in their security programs to keep deadly or dangerous weapons, explosives, or incendiaries off the aircraft and out of the sterile area. Further, the phrase ''other destructive substances'' has been removed from the list of prohibited items.

The FAA does not agree with the suggestion to exempt from screening any employee who has been issued an identification medium who is entering a sterile area at a screening checkpoint. The FAA attempted such a system in the past and found that the security checkpoint was not equipped to handle the increased workload of checking ID's of employees. The aircraft operator may seek to have an alternate entry point at which employees can enter without being screened, but where other security measures are carried out.

As discussed above in the General Discussion of the Rule, the requirements that appeared in § 108.201 of Notice 97–12 are now in separate sections. The sections that appear in the final rule are § 108.201, ''Screening of persons and accessible property,'' § 108.203, ''Acceptance and screening of checked baggage,'' and § 108.205, ''Acceptance and screening of cargo.'' Requirements for acceptance and control of cargo and checked baggage that appeared in Notice 97–12 § 108.219, ''Security of aircraft and facilities,'' now appear in either § 108.203, ''Acceptance and screening of checked baggage,'' or § 108.205, ''Acceptance and screening of cargo.''

Section 108.203 Acceptance and Screening of Checked Baggage

Proposal: Under the proposal, these requirements were contained in § § 108.201, 108.219(c), 108.213(b) and 108.225.

Comments: No comments were received.

FAA response: This section combines the requirements for checked baggage into one section. The language clarifies that although this section prohibits loaded firearms in checked baggage, as stated in § 108.203(d)(4), this section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. It also refers to the additional requirements governing carriage of ammunition on aircraft in title 49 CFR part 175. The regulation refers to preventing or deterring ''unauthorized'' explosives or incendiaries. Some explosives or incendiaries may be shipped if they are labeled and marked in accordance with the Hazardous Materials Regulations. Any other materials either improperly packaged, marked, or labeled, or otherwise not permitted to be carried aboard passenger aircraft are ''unauthorized.''

Section 108.205 Acceptance and Screening of Cargo

Proposal: This section combines the requirements for transport of cargo into one section. Under the proposal, these requirements were contained in § § 108.201 and 108.219(c), (d) and (e). Although proposed § 108.201 addressed screening of persons and property and acceptance of cargo, no specific mention of cargo appears in this section, it is referred to instead as ''property.''

Comments: The United Parcel Service, ATA, CAA, and RAA believe that a threat does not exist to justify expanding the requirements to cargo acceptance at all locations. It is their belief that the requirements should only apply to cargo accepted at the ticket counter. The United Parcel Service and RAA believe that the improvements to the Air Carrier Standard Security Program (ACSSP) that the FAA Cargo Baseline Working Group suggested, are sufficient and that there is no need to expand the regulation.

FAA response: Cargo acceptance is addressed in the security programs; the acceptance is not just limited to the ticket counter but addresses all cargo that may be transported onboard an aircraft that is transporting passengers. The inclusion of a section on cargo in the regulation does not impose any further regulations beyond those currently in the security program. The FAA disagrees that the only security threat exists with cargo accepted at the ticket counters. The final rule addresses all cargo regardless of where it was accepted. The final rule does not expand cargo security requirements beyond those already existing in security programs.

Section 108.207 Use of Metal Detection Devices

Proposal: Metal detection devices (MDD's) (such as walk-through metal detectors) have long been an integral part of the passenger screening system. Testing, calibration, and operational requirements for MDD's are currently incorporated in the air carrier's security program. The FAA proposed a new section that would require the air carrier to use equipment that meets the calibration standard set by the FAA, and to conduct screening with MDD's in accordance with its approved security program. This section would not change the current security program requirements.

Comments: No comments were received.

FAA response: There are no changes to the final rule language, except that the section is renumbered from § 108.203 to § 108.207.

The aircraft operator shall apply the FAA calibration standard set by the FAA to conduct screening with metal detection devices in accordance with the operator's security program. This application applies to all domestic locations and at those locations outside of the United States where the aircraft operator has operational control of its screening process.

Section 108.209 Use of X-ray Systems

Proposal: In the proposal, current § 108.17 entitled ''Use of X-ray systems'' was renumbered as proposed § 108.205 and included under new Subpart C, ''Operations.'' In proposed § 108.205, the FAA would update the technical standards for X-ray systems. The reference incorporating American Society for Testing and Materials (ASTM) Standard F–792–82 would be updated to reflect the current ASTM Standard, F–792–88 (re-approved with

an amendment in 1993). In addition, references to the Food and Drug Administration regulations governing cabinet X-ray systems manufactured before April 25, 1974, are no longer necessary and, therefore, would be deleted.

Under this proposal, application of § 108.205 would be extended to X-ray systems under the air carrier's operational control at airports outside the United States as currently required in security programs. The X-ray systems used for this purpose should meet the same standards as X-ray systems used to inspect baggage in the United States to ensure that the prescribed security measures are equally effective. The X-ray systems owned and/or operated by government authorities or government-mandated security companies at foreign airports and not under the operational control of the air carrier would not be subject to the proposed regulation.

Notice 97–12 proposed to delete the term ''passengers'' under § 108.205(e) and substitute the term ''persons'' recognizing that, during daily operations, passengers are not the only category of individuals who enter a sterile area through a screening checkpoint with an X-ray system.

Additionally, in Notice 97–12, the FAA proposed to omit the requirement that the air carrier issue an individual dosimeter to each operator of an X-ray system.

Comments: Alaska Airlines, TWA, RAA, and ATA support deleting the dosimeter requirement. Alaska Airlines questions whether some of the new X-ray equipment does or will subject the items to more than one milloroentgen. The commenter believes that this requirement will confuse the public as to when film should be removed from items to be X-rayed.

FAA response: There are no substantive changes to the final rule language, except that the section is renumbered from proposed § 108.205 to § 108.209 in the final rule.

Most X-ray systems in use today emit less than one milloroentgen of radiation. The requirement to post a sign suggesting removal of all kinds of film applies only in those few situations where the equipment in use does emit more than one milloroentgen. Further this requirement is not new; it is in current § 108.17(e).

The FAA is not aware of any incident in which a person received excessive radiation from X-ray machines used for screening under an FAA-approved program. Due to this safety record and encouraged by today's technology, which uses lower levels of radiation for this equipment, the final rule eliminates the need for dosimeters. Aircraft operators would still be required to comply with requirements of other Federal agencies or State governments regarding the use of dosimeters.

The final rule changes the reference from ''carry-on bags'' to ''accessible property,'' which is consistent with § 108.201. At screening checkpoints, property that will be accessible in the sterile area or the aircraft or both are screened.

In the regulatory language, the FAA has removed the term ''dangerous articles.'' Instead, the FAA has inserted the words ''explosives, incendiaries, and deadly or dangerous weapons.'' The FAA believes the latter terms better describe the items for which the aircraft operators are carrying out the screening processes.

Section 108.211 Use of Explosives Detection Systems

Proposal: The FAA proposed renumbering current § 108.20 entitled ''Use of Explosives Detection Systems'' as § 108.207 and placing it in new Subpart C, ''Operations.''

Comments: No comments were received.

FAA response: In addition to the proposal, the FAA has added paragraph (b) due to the fact that explosive detection systems that use X-ray technology must comply with the requirements of § 108.209(e) regarding posting of signs. While this new paragraph clarifies the requirements for the use of explosive detection systems, it does not add any new compliance costs, since the requirement for posting signs where X-ray screening equipment is used has long been in the regulations. Further, manufacturers have already provided the required information on the machines. In the final rule, proposed § 108.207 is renumbered as § 108.211.

Section 108.213 Employment Standards for Screening Personnel

Proposal: The FAA proposed to renumber § 108.31 entitled, ''Employment standards for screening personnel'' to § 108.209 and place it in new Subpart C, ''Operations.'' The proposal provided that, in the event the air carrier is unable to implement this section for screening functions outside the United States, the air carrier must notify the Administrator of those air carrier stations so affected, to facilitate resolution of compliance issues.

Comments: The Denver International Airport comments that the FAA standards should not preclude any local licensing requirements for security or guard personnel that are more stringent than the FAA requirements. They also state that security or guard personnel should be tested for the ability to speak English, by the FAA.

FAA response: In the final rule, proposed § 108.209 is renumbered as § 108.213 with no additional changes.

The FAA cannot categorically state that all local licensing requirements for security personnel either are or are not preempted by the Federal government and part 108. Each case must be decided on its facts and circumstances.

The aircraft operators are responsible for ensuring that personnel meet all requirements, including requirements as contained in this regulation. The FAA does not have the operational capability to test the large numbers of screeners who qualify each year.

Section 108.215 Security Coordinators

Proposal: Notice 97–12 proposed to consolidate §§ 108.10 and 108.29, describing the duties and responsibilities of the Ground Security Coordinator (GSC) and the In-flight Coordinator, into one section. The FAA also proposed that the air carrier designate an Air Carrier Security Coordinator to ensure that the FAA had a security official to contact, at the corporate level, whenever the need arises.

Existing regulations provide for the GSC to immediately initiate corrective action for noncompliance with security regulations. At foreign airports, the air carrier may not be performing all security measures and may be unable to take corrective action. Therefore, Notice 97–12 proposed that when a host government agency or contractor provides security measures, the air carrier would notify the Administrator for assistance in resolving noncompliance issues. The Administrator could then work with the host government to address the issues.

The FAA also proposed to omit the distinction made in reference to ''direct employees'' versus ''contract employees.''

Comments: The United Parcel Service, FedEx, RAA, and ATA, state that ''daily'' requirements for GSC's should be replaced with ''routinely'' and that the wording ''departing flights'' should be added because many air carriers have late arrivals with no departure activity.

FAA response: Due to the change of terminology from ''air carrier'' to ''aircraft operator'' the FAA has determined that the new title of the proposed position will be changed to Aircraft Operator Security Coordinator (AOSC).

The Section-by-Section Analysis of Notice 97–12 explained the intent that

the AOSC be appointed at the corporate level. This language has been added to § 108.215(a) and clarifies that the AOSC is to be designated at the corporate level and shall serve as the primary contact for security-related activities and communications with the FAA. The FAA agrees with the need for the availability of an alternate AOSC to act in the AOSC's absence. The final rule requires that the alternate also shall be designated at the corporate level.

The FAA agrees with the comment regarding departing flights in connection with GSC duties. Therefore, in § 108.215(b) the word ''departure'' was inserted after ''domestic and international flight.''

The FAA did not agree with the suggestion to change the frequency of performance for the GSC's duties. The commenter suggested that the frequency be changed from ''daily'' to ''routinely''. The FAA believes that the routine performance of these functions leaves the frequency up to the individual and would be open to misinterpretation; therefore, the language has not been changed.

It is inherent that the aircraft operator is responsible for managing any employees carrying out various security duties whether they are direct or contract employees. Therefore, the FAA omitted the distinction between ''employee'' and ''contract employee.''

Section 108.217 Law Enforcement Personnel

Proposal: As in the past, Notice 97–12 proposed that part 108 air carriers operating passenger service or public charter passenger operations at airports not governed under proposed § 107.217 would be required, in the absence of the part 107 airport providing law enforcement support, to provide law enforcement personnel in a manner adequate to support its security program.

Comments: Commenters suggest using the term ''law enforcement officer'' or ''LEO,'' for consistency and providing a clear definition of ''LEO.'' These commenters also recommend that the rule make a clear distinction between a LEO and private security. The ATA and RAA suggest exempting non-scheduled charter operations from the requirement for law enforcement personnel.

FAA response: The FAA agrees that the term ''law enforcement officer'' should be used consistently throughout part 108. However, due to the allowances which are made for part 107, the term ''law enforcement personnel'' must be used in § 108.217. This requirement is different than the requirements of §§ 108.219 and 108.221 for the carriage of weapons and the escorting of prisoners. In those sections, the person is referred to as a ''law enforcement officer.'' In §§ 108.219 and 108.221, the FAA is referring to someone who is a Federal law enforcement officer or a full-time municipal, county, or State law enforcement officer who is the direct employee of a government entity. The FAA has the authority to establish such requirements for persons desiring to board the aircraft armed.

The FAA recognizes the authority of State and local governments to grant police-like privileges to persons other than commissioned law enforcement officers. The FAA is aware of at least one state that grants such powers to personnel of private security companies. The statute specifically provides that airports may meet their obligation to provide law enforcement support by providing for ''qualified State, local, and private law enforcement personnel'' (49 U.S.C. 44903(c)).

In light of this situation, the FAA must provide airport operators with the ability to use either commissioned law enforcement officers or any other persons who have been granted the authority set out in 49 U.S.C. 44903(c) and in § 107.217, by the State or local government, to react to specific situations as described in part 107.

Therefore, in both parts 107 and 108, the term ''law enforcement personnel'' is used to describe both the law enforcement officers and private persons who have been granted certain powers by the State or local government. An airport operator may use either type of personnel to meet the requirements of part 107. Training received by a security company employee, who is granted the appropriate authority by the State or local government, must be acceptable to the Administrator if the State or local jurisdiction does not prescribe training standards for them.

The FAA does not agree with the suggestion to exempt non-scheduled public charter operations from the requirement for law enforcement personnel. Depending on the size of aircraft used, the aircraft operator may need to screen passengers (§ 108.101(a)). Considering the incidents that can occur with screening (such as discovery of a weapon) it is important to have law enforcement support. For operators of smaller aircraft (§ 108.101(c)), it is important that employees know how to contact law enforcement support should that be needed (§ 108.217(a)(2)).

In the final rule, proposed § 108.211 is renumbered as § 108.217.

Section 108.219 Carriage of Accessible Weapons

Proposal: In Notice 97–12, § 108.213, the FAA proposed a revised procedure for carrying weapons in the cabin by authorized law enforcement officers. This proposal was intended to provide criteria for the carriage of firearms and to control the number of firearms in the cabin. The control of weapons topic was the impetus for the creation of the ASAC Carriage of Weapons Task Force in January 1992. The proposal was based on the Task Force recommendations where consensus was reached at the time the recommendations were developed. The proposed rule contained regulatory language specifically identifying the need for law enforcement officers to have their weapons available during a flight.

Comments: A majority of the comments responding to Notice 97–12 address the carriage of firearms onboard an aircraft. One commenter strongly supports restricting the carriage of firearms onboard aircraft by anyone. Many commenters strongly support allowing all Federal agents to carry their authorized firearms on aircraft.

The Allied Pilots Association (APA) and ALPA do not support changes that would modify proposed § 108.213(a)(2)(iv) to make it easier to board aircraft with firearms.

The most opposition to the restrictions came from U.S. Customs Service Agents. Many Customs agents, along with several other agents and officials from Federal agencies, recommend that all Federal agents authorized to carry firearms in the performance of their official duties be allowed to carry firearms onboard any aircraft. Furthermore, they believe that they should not be required to place firearms in checked baggage because of the greater risk of theft and consequent misuse of government-owned firearms.

Several commenters suggest that the FAA should not be in the position to restrict Federal LEOs from carrying their firearms onboard aircraft.

One commenter suggests that the proposed rule conflicts with 49 U.S.C. 46505. Another commenter notes that the authority to carry firearms is given to Federal agents by statute, therefore, it is inappropriate to limit by regulation.

One commenter proposes that Federal agents be allowed to carry their firearms in a locked container onboard or give their firearms to the captain prior to the flight. Another commenter opposes notifying ticket agents that LEOs are putting their firearms into the checked baggage system, which is not secure.

Another commenter suggests that armed LEO's should be advised of the identity of all other armed LEO's onboard a flight.

FAA response: Final rule § 108.219, which was proposed § 108.213, received a majority of the total comments addressing Notice 97–12. Final rule §§ 108.219–108.223 are revised, to some degree, based on comments received but continue to be structured largely from the recommendations of the Carriage of Weapons Task Force (CWTF) that has reviewed these issues since 1992.

The FAA has the authority and responsibility to ensure the safety and security of passengers within our national airspace system. The FAA has chosen, as one means of addressing that responsibility, to set controls on those persons who may carry a firearm in the cabin of an aircraft. The FAA has sought to meet the needs of law enforcement agencies.

One commenter suggests that the proposed rule conflicts with 49 U.S.C. 46505. Section 46505 provides for criminal penalties for persons who carry a concealed, accessible weapon. The criminal penalty does not apply to a law enforcement officer ''authorized to carry arms in an official capacity.'' This exception applies when the officer, in the performance of his or her duties, has a need to have the firearm accessible as defined in part 108.

It is the goal of both the FAA and the aviation industry to have as few weapons as possible carried onboard a flight. The FAA is aware that on a daily basis across the United States armed law enforcement officers board passenger carrying aircraft. The FAA recognizes the need for law enforcement officers to fly armed while in the performance of their duties, but has revised the rules to state more clearly when to permit this practice.

There appears to be a general misunderstanding by many commenters on the criteria necessary for flying armed, as detailed in the Notice. Neither this final rule nor the Notice limits the carriage of firearms to Federal agents. Likewise, neither this final rule nor the Notice limit the carriage of firearms specifically to the FBI. Federal agents and State and local officers who meet the criteria for law enforcement designation, regardless of the employing agency, may be permitted to fly armed for those duties as listed in this final rule.

This final rule clarifies FAA's very specific employment criteria needed for recognition as a law enforcement officer. Having met those criteria, having met the standards for a need to fly armed, and having received FAA's training program, the officer may, when permitted by the aircraft operator, fly armed.

The Notice provided a list of circumstances under which LEOs would be considered to have a need to travel armed as determined by the employing law enforcement agency.

New § 108.219(a)(2) provides that the LEO must have a need to fly armed, as determined by the LEO's employing agency. Section 108.219(a)(2)(i) provides for an LEO to carry a weapon when he or she is on protective duty, for instance, assigned to a principal or advance team, or on travel required to be prepared to engage in a protective function. Section 108.219(a)(2)(ii) provides for the conduct of a hazardous surveillance operation.

New § 108.219(a)(2)(iii) provides for carriage of weapons by an LEO who is on official travel required to report to another location, armed and prepared for duty. This includes reasonable allowances for delays that may occur in travel.

New § 108.219(a)(2)(iv) accommodates the needs of Federal LEO's who need to be armed and available for duty when they are traveling, even when not on official travel. Because Federal LEO's have jurisdiction throughout the country, their employing agency may call on them to return to duty at any place and time. This need is based on an agency-wide directive or policy statement of the employing agency. Not all Federal LEO's are authorized to fly armed, particularly when they are not on official travel at that time. Under this rule, Federal LEO's will not fly armed on non-official travel except in accordance with an agency-wide policy governing that type of travel.

Under § 108.219(a)(2)(v), control of a prisoner, in accordance with § 108.221, or an armed LEO on a round trip ticket returning from escorting, or traveling to pick up, a prisoner also constitutes a need to fly armed.

Federal Air Marshals are specifically permitted to fly armed while on duty status, as stated in § 108.219(a)(2)(vi). Given the purpose of the FAA's Federal Air Marshals' program, it is evident that they have a need to fly armed.

Bondsmen and bounty hunters, and law enforcement officers while they are serving as bondsmen or bounty hunters, are not authorized to travel armed. Similarly, private security guards serving as body guards or providing other protective services are not authorized to travel armed. These persons either do not meet the requirements for a law enforcement officer in § 108.219(a)(1), or the standards for a need to fly armed in § 108.219(a)(2), or both.

The descriptions of a need to fly armed have been altered to accommodate the law enforcement community's concern that the proposed rule would have unduly limited their legitimate law enforcement functions. While this may permit many of the nation's LEO's to fly armed, it greatly defines and controls the carriage of weapons compared with the current rule. We note that law enforcement agencies view very seriously any LEO's inappropriate conduct with a weapon. We also note that portions of this new rule make the LEO directly responsible to the FAA for complying with the requirements, including those regarding use of alcohol and the location of the weapon. The failure of the LEO to comply with these requirements could lead to civil penalty action by the FAA. The FAA believes that the limits on the need to carry weapons, and the personal accountability of the LEO to both the FAA and the employing agency, provide appropriate controls on the carriage of weapons without unduly interfering with legitimate law enforcement functions.

As to some LEO's comments that they need to travel armed so they are prepared to assist the pilot if needed, history shows that the need for the use of deadly force on a flight is extremely rare. Some commenters note that the pilot may seek assistance to restrain an unruly passenger. The FAA believes that all law enforcement officers, due to their training, are uniquely qualified to assist when there is a need to restrain an individual.

Regarding the concern expressed for placing firearms in checked baggage and having them stolen and subsequently misused, the FAA acknowledges that concern. However, the aircraft operators are responsible for the security of all checked bags and the incidents of theft of firearms from checked bags is low.

The concern expressed about notifying the ticket agent of an unloaded firearm placed in checked baggage has been brought up previously to the FAA. Law enforcement officers were concerned about the ''outside tagging'' of baggage when an unloaded firearm was declared. The FAA requirement remains that firearms placed in checked baggage will be declared as unloaded at the time the bag is checked. The FAA believes that this issue has been cleared up with the passage of Public Law 103–159, also known as the Brady Handgun Violence Prevention Act. This law prohibits the aircraft operator from tagging or labeling, on the outside, any

luggage or baggage indicating there is a firearm inside the container.

The CWTF explored the issue of having lockers onboard the aircraft for the storage of firearms. The task force found it would create far more problems than it would resolve (such as, location to unload/reload the firearm, adequate number of lock boxes per aircraft, and modification of the aircraft to accommodate the lock boxes). Due to all of the concerns expressed, no recommendation was forwarded to the FAA regarding this issue.

The FAA reiterates that any passenger may, upon notification to the aircraft operator, place an unloaded firearm in checked baggage provided the firearm is checked in a hard-sided, locking container and that the presence of the unloaded firearm is declared at the time the bag is checked. These same criteria apply to flight deck and cabin crewmembers should they wish to carry a firearm onboard the aircraft.

In Notice 97–12 and in this final rule there is a requirement for the aircraft operator to notify all armed LEO's onboard of the presence of all other armed LEO's who are passengers on that flight. In the Notice the one exception was that the aircraft operator would not notify other LEO's of the presence of a FAM, rather the FAM would notify the other LEO's. After further consideration the FAA has determined that having the aircraft operator notify other LEO's of FAM's on the flight will enhance coordination for the safety of all concerned. Therefore, under this rule the aircraft operator will notify all LEO's of the presence of all other LEO's, including FAM's. The new rule also requires that the aircraft operator must not close the doors until the notification is complete under circumstances described in the security program.

In response to a suggestion that there should be recurrent training for law enforcement officers flying armed, the FAA agrees that this suggestion would be an enhancement to the program. However, since it was not addressed in the Notice and would create an increased requirement on law enforcement, it cannot be addressed in this final rule. The FAA will issue an Advisory Circular that addresses the training program for law enforcement officers flying armed and recurrent training also will be addressed.

Law enforcement officers who are not in uniform are required under new § 108.219(d) to keep their weapons concealed and out of view. This is to avoid creating concern among other passengers who may see the weapon and not realize the person is a LEO authorized to carry it. LEO's are given the option of either keeping the weapon on their person or in immediate reach. However, the FAA recognizes that there may be a few instances when an armed officer will be in uniform while traveling. Since uniformed law enforcement officers are conspicuous, the FAA has added the stipulation that if an armed officer is traveling in uniform, the officer must maintain the weapon on their person at all times while aboard the aircraft. Because the officer is in uniform, other passengers will immediately recognize the LEO as having authority to be armed. All other restrictions concerning an armed law enforcement officer and the weapon apply. There is no economic impact on the aircraft operator or the officer by this addition.

In new § 108.219(a)(1), the FAA uses the phrase ''unless otherwise authorized by the Administrator.'' This phrase has been placed in the regulatory language to provide for those occasions when foreign officials may be traveling in the United States with their country's armed law enforcement or military personnel. In such cases, the carriage of weapons by these foreign officials will be handled in a manner in keeping with international protocol. Depending on the circumstances, the FAA or the U.S. State Department will be in contact with the aircraft operator when such needs arise.

Section 108.221 Carriage of Prisoners Under the Control of Armed Law Enforcement Officers

Proposal: In Notice 97–12 the FAA proposed § 108.215, ''Carriage of passengers under the control of armed law enforcement escorts,'' to provide more detailed requirements for escorting prisoners in part 108. In the final rule proposed § 108.215 is renumbered as § 108.221.

Comments: The APA suggests creating two sections to distinguish between ''prisoner'' and ''passenger.'' Several commenters recommend that all escorts (armed and unarmed) are trained and certified law enforcement officers and that this section should also apply to unarmed escorts. Another commenter recommends that the FAA establish a policy for restraints on prisoners.

One commenter suggests that the FAA develop regulations governing carriage of persons under escort by unarmed officers. Another commenter recommended that the FAA use consistent definitions to parallel definitions used by other agencies.

FAA response: The FAA finds no need to create two sections based on differences between the terms ''prisoners'' and ''passengers.'' The FAA decided to use the term ''prisoners'' in the final rule, because it is more appropriate. We note that the word ''prisoners'' is used for any person who is under armed escort (except for voluntary protective escort) even though the escorting agency may use another term, such as ''detainee.'' Additionally, the FAA determined that since all armed escorts must be trained and certified law enforcement officers the term used in this section must be ''officers,'' rather than ''escorts.''

Paragraph (a) now more clearly states the applicability of this section, and expressly excludes some persons and situations. For instance, the Immigration and Naturalization Service (INS) escorts detainees, some of whom require armed escort and therefore are subject to § 108.221. Many INS detainees are not violent and are not charged with or convicted of a crime, however, and do not require an armed escort. In that case this section does not apply. The INS escort may be armed in connection with other duties, and if so would be subject to the requirements of § 108.219, but the deportee would not be in hand restraints or otherwise be subject to § 108.221.

With regard to the comment requesting the requirements for unarmed escorts, this issue was not addressed in the NPRM, and is beyond the scope of this rulemaking.

A change was made in the final rule regarding the use of restraints on prisoners. Hand restraints are required in the final rule; however, the FAA has determined that it is not necessary to require that each prisoner have these hand restraints attached to a locked waist restraint. While the final rule provides in § 108.221(g) a standard indicating the extent of the restraint, the FAA prefers to allow the aircraft operator and the law enforcement officers to work out the specifics of the types of hand restraints to use.

With respect to the comments about the proposed definitions for ''high risk'' and ''low risk,'' the commenters offered no alternative definitions. The proposed definitions were created with input from the CWTF. After further consideration, however, it appears that the proposed definition of ''high risk'' may have been too stringent. It may have unduly limited the ability of law enforcement agencies to classify as ''low risk'' prisoners whom the agency believes, based on its review of the prisoners' histories and circumstances, do not warrant the more stringent limitations placed on high risk prisoners. Therefore the definition of ''high risk prisoner'' has been changed to mean both ''exceptional'' escape risk,

and charged with, or convicted of, a violent crime.

We have also added to paragraph (c)(2) that, if authorized by the FAA, more than one high risk prisoner may be carried on an aircraft. There are some circumstances where an aircraft operator and a law enforcement agency work out procedures to do so in a safe and secure manner. In such a case, new paragraph (d)(ii) requires that a minimum of at least one armed law enforcement officer for each prisoner and one additional armed law enforcement officer shall control the prisoners. This commonly is referred to as a ''one-to-one plus one'' escort. No other prisoners may be under the control of those armed law enforcement officers.

The FAA would like to clarify that the time restraints referred to in § 108.221 are for each segment of the trip. Therefore, if there are three flight ''legs'' required for the officer and the prisoner to reach their final destination, each ''leg'' must meet the appropriate time restraints as provided in this final rule.

New § 108.221(f)(1) refers to boarding a prisoner before, and deplaning the prisoner after, other passengers ''when practicable.'' This refers, for instance, to when there are passengers already on the aircraft from a previous flight, or when passengers are remaining onboard for another flight.

Section 108.223 Transportation of Federal Air Marshals

Proposal: The FAA proposed in § 108.217 to prohibit divulging the identity, seating, and purpose of Federal Air Marshals (FAM's) to any person who does not have an operational need-to-know. The onboard flight crew will be informed of the presence of any FAM's on a designated flight. The FAM's are made aware of all other law enforcement personnel flying armed on that flight. However, proposed § 108.213 paragraphs (a)(6) and (a)(7), do not require that the air carrier notify persons flying armed of the FAM's presence. This section has been renumbered as § 108.223 in the final rule.

Comments: Alaska Airlines, NW, ATA and RAA recommend that all LEO's onboard be notified of all other armed LEO's including FAM's.

FAA response: Active flight crews are informed by both the aircraft operator and the FAM(s) of the presence of any FAM(s) onboard a flight. A FAM(s) is made aware by the aircraft operator of all other law enforcement personnel flying armed on a flight. When a FAM(s) is on a flight where an armed LEO is present, a FAM will personally contact the armed LEO.

The FAA recognizes the vital need for coordination with an armed LEO when both a FAM and a LEO are onboard the same flight. The aircraft operator will notify each LEO of the presence of each other LEO, including a FAM. In addition the FAM will personally contact the LEO to promote full coordination.

The final rule continues the current requirement that each aircraft operator shall assign the specific seat requested by a FAM who is on duty status. The rule clarifies that, if another LEO is assigned to that seat or requests that seat, the aircraft operator shall inform the FAM. The FAM will coordinate seat assignments with the other LEO. The FAA notes that, if it is necessary for the FAM and one or more LEO's to coordinate under this section, they will consider each other's statutory authority and responsibility in deciding appropriate seating assignments.

Additionally, in this final rule the FAA states the specific information requirements placed on armed law enforcement officers will not apply to FAM's.

Section 108.225 Security of Aircraft and Facilities

Proposal: The proposal renumbered current § 108.13 entitled ''Security of Airplanes and Facilities'' as § 108.219 and placed it under new Subpart C, Operations.

The proposal addressed the current requirement which prohibits unauthorized access to aircraft, and also proposed that the air carrier prevent access to any area it controls for security purposes. The proposal incorporated requirements contained within, and implemented via, the security program. Accordingly, it was proposed that the air carrier must prevent, rather than prohibit, access to areas controlled by the air carrier under an approved airport security program.

The proposal also included language requiring the air carrier to prevent access by unauthorized persons to baggage or cargo tendered for transport aboard a passenger aircraft.

The proposed language required the air carrier to be in compliance with proposed § 107.209(b) which regulates the issuance and control of airport-approved vehicle identification systems.

In the final rule, the security measures regarding checked baggage appear in § 108.203 and security measures regarding cargo appear in § 108.205. In the final rule, proposed § 108.219 is renumbered as § 108.225.

Comments: One commenter states that ''safeguarded'' cargo and checked baggage should be changed to ''controlled cargo and checked baggage.'' United Express, RAA, UPS, and ATA stated that ''off road'' airline vehicles should not be required to display airport ID, just airline logos.

FAA response: The FAA traditionally uses, and has used, the word ''control,'' or ''controlled,'' relating to these measures, and has changed the word ''safeguarded'' to ''controlled.'' However, the FAA has decided to place the requirements for handling checked baggage and cargo in separate sections. Therefore, proposed § 108.219 paragraphs (c), (d), and (e) have been moved to new §§ 108.203 ''Acceptance and screening of checked baggage,'' and 108.205 ''Acceptance and screening of cargo.''

In Notice 97–12 § 108.219 was intended to impose similar requirements for both airport operators and aircraft operators regarding the responsibility for vehicles within certain areas of the airport. It was believed that this requirement would add to the overall security of the airport. Having reviewed the comments submitted for Notice 97–13, ''Airport Security,'' the FAA agrees that the proposed vehicle identification requirements are not necessary at each airport. As discussed further in the final rule for part 107, the FAA is withdrawing this portion of the proposal.

In Notice 97–12, the proposed regulatory language in § 108.219 discussed identification and certification relative to the shipment of cargo aboard a passenger aircraft. The FAA has determined the requirements for cargo acceptance are better left to the security program where they are discussed in detail.

New § 108.225(c) requires a security inspection of an aircraft if access has not been controlled as provided in the security program, or as otherwise required in the security program. For instance, there are special requirements for inspecting aircraft on certain international flights.

Section 108.227 Exclusive Area Agreement

This section was not proposed in the regulatory language in Notice 97–12, however, exclusive areas were discussed in the preamble to Notice 97–12, and the security measures for exclusive areas were to be in the aircraft operator security program under proposed § 108.103 (b)(1). Exclusive area agreements were directly dealt with under proposed § 107.111 in Notice 97–13. The ability of the aircraft operator to obtain from an airport operator the responsibility for controlling certain

access has been previously provided in § 107.13 (b), and Notice 97–13 proposed further requirements.

This section was added to part 108 to directly provide reference to exclusive area agreements. Under this final rule the security measures for exclusive area agreements are placed in the airport operator's security program. The aircraft operator would be required to list in its security plan those locations at which the aircraft operator has an exclusive area agreement. The aircraft operator is required under this section to carry out its agreement.

This inclusion of § 108.227 in the final rule does not adversely impact any aircraft operator who may have entered into an agreement with the airport operator. The aircraft operator will make its copy of the agreement available for FAA inspection. The FAA is not requiring that the aircraft operator give notice to the FAA that the agreement has been terminated. The reason for this decision is because the airport operator will have a changed condition to its security program both when it enters into an agreement or terminates it, and therefore, the FAA will have received notice of these changes through the airport operator.

New § 108.227 (c) provides a compliance due date one year after the effective date of the rule for existing exclusive area agreements to meet the new § 107.111. This will give aircraft operators and airport operators time to change existing agreements to conform to the new rules. Any new agreements after the effective date, however, will have to meet the new rules.

Section 108.229 Employment History, Verification, and Criminal History Records Checks

Proposal: The FAA published a final rule (63 FR 51204; September 24, 1998) addressing employment history verifications on individuals seeking unescorted access to a SIDA and to individuals performing screening functions. The rulemaking was in progress at the time Notice 97–12 was issued and therefore not addressed.

FAA response: This final rule includes the Employment History, Verification and Criminal History Records Check final rule and corrects an oversight that appeared in that final rule (63 FR 51204). Section § 108.229(b)(3) clarifies that when an individual has admitted to a conviction of a disqualifying crime, the investigative process ends and the individual is denied unescorted access and/or the privilege of performing any screening functions. Although this was the obvious implication of the section and the preamble, it was not clearly stated in the rule.

The FAA also clarified § 108.229 by stating that the section only applies to ''locations within the U.S.''

This added language will not have an economic impact on the regulated parties.

The FAA receives numerous calls requesting clarification on the use of automated telephone systems that provide employment information. The FAA has contacted several of these companies and found that the information being provided comes directly from the past employer.

These telephone services provide employment information that may be used to partially satisfy 14 CFR 108.33 regarding the employment history of those individuals seeking certain positions at an airport. The automated services provide the employment dates and does so only if the person calling has the past employer's company identification number and the specifically assigned identification number of the individual whose employment information is sought.

The use of the specifically assigned numbers reflects a level of security is being provided to the information contained within the system. The security is viewed as a means to protect the information from unauthorized changes. Since this method of providing past employment information is the ''current state of business'' the FAA will accept this method as an adequate means to verify past employment dates when the telephone services have security measures in place.

Therefore, the FAA interpretation of § 108.33(c)(4) includes the use of those automated telephone services that require the use of special information to access an individual's employment history. No language change is deemed necessary for this final rule.

Section 108.231 Airport-approved and Exclusive Area Personnel Identification Systems

Proposal: Notice 97–12 proposed that air carriers establish and implement a personnel identification system mirroring the standards for accountability of airport-issued identification media. A personnel identification system was proposed for flight and cabin crewmembers. The proposed system provided for the following: issuance of identification media after satisfactory completion of employment history and verification checks; and control and accountability standards for identification media. Additionally, the system provided a means to readily identify the currency of the medium. A method for providing the periodic review and re-certification of the identification medium for renewal or forfeiture was also needed.

Comments: Federal Express states that this could require one crewmember to have between 50 and 100 badges. A few commenters note that this proposal will require the manufacture and re-issuance of thousands of ID's at a considerable cost. Federal Express, Northwest, United Express, ATA, UPS, and RAA oppose including expiration dates on ID's issued to crewmembers and state that this requirement would necessitate issuing new badges to personnel. Federal Express suggests that establishing control and accountability standards is more important than an ID expiration date. All of the commenters request that the FAA allow a two-year phase-in period if this measure is implemented. Denver Airport supports the accountability that this requirement would provide, and supports the use of expiration dates for air carriers.

Continental Airlines comments that the proposed rule does not address the need for air carrier ground staff to have identification media to meet the proposed requirements of this section. The need for ground crews who are permanently stationed at certain airports to have the appropriate media exists and is usually dictated by the airport.

FAA response: The title of this section has been changed to clarify that the same requirements apply to ID media issued for use in exclusive areas as those issued by aircraft operators to flight crews and others who need media at different airports.

The intent of this proposal was to ensure that aircraft operator ID systems that are used by those with unescorted access to the SIDA meet the same requirements as systems used by airport operators under part 107. The same ID medium would be accepted by numerous airports, so the aircraft operator would not issue more than one to each person.

In Notice 97–12, the FAA clearly indicated its intent to mirror the standards for accountability that exists for airport-issued identification media. The regulatory language did not provide the amount of detail contained in part 107. The FAA has chosen to clarify the details in this final rule and believes that there will be no increased economic impact by adding this clarifying language. The intent is to minimize the opportunity for a breach of aircraft operator security procedures while in the airport environment.

The FAA agrees that the new ID requirements may present a challenge to

some aircraft operators and crewmembers, but believes that the requirements are necessary to ensure accountability and to minimize the opportunity for a breach of aircraft operator security procedures. Internal controls and accountability measures taken by the aircraft operator relative to identification media will certainly enhance the current system. The FAA sees no reason that aircraft operators' ID media should have fewer safeguards than airport-issued ID media that are used in the same manner.

The proposal referred to ID media used by cabin and flight crew, and these are the majority of personnel who receive such media from aircraft operators. However, there may be other aircraft operator personnel who travel frequently to various airports and need the aircraft operator ID media that will be accepted by airports for use in the SIDA. Therefore, the rule refers to a personnel identification system. Aircraft operator personnel who work at only one airport typically receive the necessary ID medium from the airport operator.

The FAA agrees that a 2-year phase-in period is reasonable for this requirement, and has changed the final rule to allow aircraft operators to present a plan to reach full implementation of this requirement.

Section 108.233 Security Coordinators and Crewmembers, Training

Proposal: Section 108.225 contained in Notice 97–12 has been changed to § 108.233 in the final rule. The proposal was based on current § 108.23. This section governs security training and knowledge of flight crewmembers and security coordinators.

Comments: Federal Express, UPS, ATA, and RAA state that applicability to all ''security related functions'' in proposed § 108.225(c) is too broad. These commenters suggest that the phrase ''appropriate to their job/classification'' be incorporated for clarification.

FAA response: The reference to security-related functions in proposed § 108.225(c) was only applicable to ground security coordinators. Such persons have important duties, and should be fully trained in all security duties with which they are charged. However, the FAA has omitted proposed § 108.225(c) because it is unnecessary. That paragraph stated that the duty to train applied whether the person is a direct employee or a contract employee. It is inherent that the responsibility rests with the aircraft operator, regardless if the person assigned those duties is an employee or contract employee.

Section 108.235 Training and Knowledge for Persons With Security-Related Duties

Proposal: Section 108.227 contained in Notice 97–12 has been changed to § 108.235 in the final rule. These requirements are largely in current § 108.29(a)(1). As proposed, the section would expand personnel training requirements in part 108 to require air carriers to train any person performing security functions in accordance with the air carrier's standard security program, as well as continuing the current requirement that such persons have knowledge of these provisions. The FAA proposed that required security training be approved by the Administrator.

Comments: Federal Express, UPS, ATA, and RAA state that applicability to all ''security related functions'' in proposed § 108.227(a) and (e) is too broad. These commenters suggest that the phrase ''appropriate to their job/classification,'' should be incorporated for clarification. This comment was provided in response to both proposed § § 108.225 and 108.227.

FAA response: The FAA requirements may periodically change via security program amendments or via the shorter notice of security directives. In either case, the requirements may involve anyone employed by the aircraft operator. In order to properly carry out any security-related function, the FAA believes that everyone, regardless of his or her primary job function for the aircraft operator, must be trained. The statement is broad for this reason. That training may not necessarily be formal classroom training, depending on the security duties involved. This rule leaves considerable latitude to the aircraft operator to determine what format the training will take.

The FAA does not agree that language addressing an individual's job or classification is needed. It seems plausible for an aircraft operator employee to have a security-related duty that is not clearly reflected in his or her formal job/classification position.

Subpart D

Section 108.301 Contingency Plan

Proposal: The FAA proposed in § 108.307 to require air carriers to adopt contingency measures in their security programs and implement them when directed by the Administrator. The FAA also proposed that air carriers test these contingency plans to ensure that all parties involved are aware of their responsibilities and that information contained in the plan is current. Furthermore, it was proposed to require air carriers to participate in any airport operator's sponsored exercise to ensure that they understand how to respond to incidents at each airport. Contingency plans contain security measures that can be immediately and flexibly applied to counter threats that arise quickly. The ''lessons learned'' from the Persian Gulf War threat, are a case-in-point on the need to retain this flexible response plan. Furthermore, it is an ICAO standard that the member states ensure that contingency plans are developed and tested.

Comments: Four commenters, TWA, UPS, ATA and RAA, state that contingency plans should be deleted entirely. Three of these four commenters state that the air carrier should not have to conduct and review exercises of its contingency plan if it participates in each airport operator's exercise. Two other commenters, AS and FedEx, support contingency plans, but do not think they should be addressed in the rule.

FAA response: The regulatory language pertaining to aircraft operator contingency plans has been moved to § 108.301 in the final rule.

The FAA will not delete this section, because it believes that contingency planning supports crisis management. The FAA and industry jointly developed the current contingency plan to ensure that the FAA, airport operators, and aircraft operators are able to respond on short notice to civil aviation threats. A well-exercised contingency plan ensures a timely response to these threats with temporary measures. The ASAC supported the codification of contingency plans.

The FAA has determined that individual testing, in isolation from the airport operator's testing, will not provide enough added benefit to offset the costs that might be incurred by the aircraft operator. Therefore, the FAA has decided not to include the proposed requirement for aircraft operators to independently conduct reviews and exercises of their contingency plans in the final rule. The final rule requires only that the aircraft operator participate in exercises sponsored by the airport. Such exercises are relatively low cost but ensure that the different entities understand their roles, know to whom to turn for assistance, and have current information, such as how to contact various agencies that may render assistance in an emergency.

Instead the details will be contained in the security program. The FAA has determined that it may be beneficial to

provide for reasonable alternatives, e.g., if measures were carried out in an actual event, to substitute elements of that incident for some portion or all of the exercises required within this section. What is determined to be a reasonable alternative will evolve as examples that come to the attention of the FAA on a case-by-case basis.

The FAA agrees with the commenters that in the interest of security, the security-sensitive details of the contingency plan cannot be included in a public regulation.

Section 108.303 Bomb or Air Piracy Threats

Proposal: Notice 97–12 proposed to expand the requirements in current § 108.19. To ensure proper coordination, the FAA proposed to include the existing air carrier security program requirement that the air carrier notify the airport operator immediately of a specific and credible bomb threat to its aircraft or ground facilities.

Additionally, the air carrier would be required to deplane all passengers from a specifically threatened aircraft to ensure their safety and a more effective search of the aircraft.

Comments: Several commenters submitted recommendations on how certain emergencies should be handled.

FAA response: The FAA will retain the proposed regulatory language in the final rule. The submitted comments are security specific and will not be addressed in this public rule.

Section 108.305 Security Directives and Information Circulars

Proposal: To ensure that Security Directives (SD) are received promptly, the FAA proposed to require air carriers to verbally acknowledge receipt of SD's immediately, and to follow up with written confirmation within 24 hours. The FAA also proposed that the air carrier submit to its Principal Security Inspectors (PSI) copies of written measures/implementing procedures issued to their stations. This latter requirement would assist the FAA in determining that the air carrier fully understands the security requirements in the SD and that the proposed implementation is correct.

Also proposed in Notice 97–12, within 72 hours after receipt of the SD, unless stated otherwise, the air carrier would give the FAA the implementation methods that are either in effect or will be in effect when the SD is implemented. In response, the FAA would either approve the air carrier's proposed alternative measures, or notify the air carrier to modify the alternative measures to comply with the requirements of the SD, within 48 hours after receiving proposed alternative measures.

Comments: Six commenters, AS, UPS, FedEx, United Express, RAA, and ATA, state that the requirement for submitting a written description within 72 hours of the issuance of a SD precludes the timely processing and implementation of this information. The commenters encourage the FAA to provide as much advance notice of potential SD issuance as possible. Additionally, the commenters support the sharing of threat information.

One commenter, RAA, strongly recommends a thorough briefing by the FAA to the affected carriers within an immediate timeframe of 12 to 24 hours after issuance of a SD, and urges the FAA to provide as much information on the threat as possible.

FAA response: Given that SD's are put in place when the FAA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, fast and thorough implementation is extremely important. The FAA supports the communication between the aircraft operators and their FAA contacts and believes that this communication appears to be going well in most cases. The FAA currently makes every effort to provide as much advance notification as possible.

The FAA found that in some instances, aircraft operators that do not receive SD's in a timely manner lose valuable time. The current 24-hour notification period needs to be shortened. However, the FAA has determined that all time requirements will be contained within each individual Security Directive. Depending on the individual circumstance, different time periods for acknowledging receipt of a SD may be acceptable. The final rule does not require the acknowledgement be followed up in writing, however. The final rule also omits the proposal to require that for each SD the aircraft operator provide the written implementing procedures to the FAA. This practice is not necessary in each case. The FAA may request copies of these procedures, if needed.

New § 108.305(a) sets out the practice of issuing a SD based either on a specific threat against aviation, or on a threat assessment. There are times when there is a threat assessment, but it is not known whether the specific target may be aviation. At such times it may be necessary to order measures to ensure the security of the traveling public.

The FAA also inserted a new paragraph (e) to clarify that aircraft operators may comment on SD's by submitting written data, views, or arguments to the FAA. Currently, the process entails ongoing verbal communications with the Administrator, which will not be discouraged. However, the FAA has chosen to add the language in the final rule to make it clear that the written comments are also acceptable for stating the aircraft operator's views or arguments. Submission of a comment, however, will not delay the effective date of the SD. As in the past, the FAA expects to continue to receive, and act as appropriate, verbal comments on SD's when the exigencies of the situation warrant.

Paperwork Reduction Act

Information collection requirements pertaining to this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0655. No comments were received on this information collection submission. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. This final rule is consistent with the ICAO security standards. The ICAO standards do not differentiate security requirements by aircraft seating capacity and they require the screening of passengers for all international flights.

Regulatory Evaluation Summary

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended in May 1996, requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget (OMB) directs agencies to assess the effect of regulatory changes on international trade.

This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) but is not considered to have a significant economic impact under Executive Order 12866. This rule is a significant action because of public interest rather than on the basis of economic impacts. This rule is not expected to have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. In addition, this rule does not contain Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses, available in the docket, are summarized below.

Costs

The total cost of compliance of this rule, over the next 10 years, is estimated to be $40 million (or $29 million, discounted, 7 percent) in 1998 dollars (rounded). Of the 29 sections amended by the rule, only five sections will result in cost impacts. The other 24 sections will not impose costs because they contain minor definitional, clarification, and procedural changes. They also will codify a number of existing practices as contained in the aircraft operator standard security program (AOSSP). Those sections that will potentially impose costs are discussed below.

Section 108.101—Adoption and Implementation

The rule changes to this section will increase the number of aircraft operators that must adopt and maintain security programs. Specifically, section 108.101 will require that the following types of aircraft operators adopt and implement security programs:

A Full Security Program

- Applies to any U.S. scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of more than 60 seats.
- Applies to any U.S. scheduled passenger or public charter passenger operation using an aircraft having a seating configuration of less than 61 passenger seats when passengers are enplaned from or deplaned into a sterile area.

A Partial Program

- Applies to any scheduled passenger or public charter operation with an aircraft having a passenger-seating configuration of more than 30 and less than 61 seats inclusive that does not enplane from or deplane into a sterile area.
- A scheduled passenger or public charter operation with an aircraft having a passenger-seating configuration of less than 61 seats engaged in operations to, from, or outside the United States that does not enplane from or deplane into a sterile area.

A Limited Program

- Applies to any other U.S. operator (such as an all-cargo carrier) holding a certificate under part 119 that chooses to have a security program. Such an operator shall carry out and meet the requirements of § 108.101(e).

A Private Charter Program

- Applies to any U.S. private charter operation (regardless of seating configuration) in which passengers are enplaned from or deplaned into a sterile area.

As the result of this rule, an estimated 51 existing operators will incur a potential cost of compliance of about $126,500 (or $91,700, discounted) over the next 10 years. Multiplying the one-time application cost of $239.50 and the recurring staff cost of $224 by the number of potentially impacted operators of 51 over the 10-year period derived this cost of about $126,500. Similarly, new applicants will also be impacted. This evaluation assumes that three to four new applicants will file for certification in this carrier or operator group annually. This action will result in an estimated potential cost of compliance of about $16,200 (or 11,400, discounted) over the next 10 years. This cost estimate of $16,200 was derived by multiplying the one-time application cost of $239.50 and the recurring staff cost of $224 by the number of potentially impacted new applicant operators of 35 (or 3 to 4 annually) over the 10-year period. Thus, the total potential cost of compliance (rounded) for this section is estimated to be about $142,700 ($126,500 + $16,200). Note: The cost estimates in this section and in each of the following sections may not add due to rounding.

Section 108.235—Training and Knowledge of Persons With Security-Related Duties

The FAA requires extensive training for personnel who perform extraordinary security procedures for aircraft operators under part 108, in accordance with their approved security programs. An instructor trained and approved by the Administrator will conduct security training. The potential incremental cost impact on this section is estimated to be about $14.1 million (or 10.6 million, discounted) over the next 10 years. This estimate of $14.1 million was derived in three steps. First, adding the cost of training employees ($4.7 million) to the cost for an instructor ($464,600) over the 10-year period derived in the Initial Aircraft Operator Training cost estimate of $5.2 million. Second, the cost estimate of $8.9 million for annual aircraft operator training requirements was derived by combining the employee training cost estimate ($8.1 million) with that for an instructor ($787,700) over the 10-year period. And last, both of these cost components were summed.

Section 108.301—Security Contingency Plan

This section will require aircraft operators to adopt contingency plans developed by the FAA to test them periodically in coordination with the respective airport operator testing of contingency plans. Based on the informed opinion of FAA security personnel, sixteen hours will be required for each test of the contingency plan each year; the new revisions to this section will impose an incremental cost of about $24 million (or $17 million, discounted) to operators over 10 years.

This estimate of $24 million to ensure conformity with airport plans was derived by a two-step process. The first step estimated the one-time cost for ensuring conformity by conducting aircraft operator initial review of contingency plans. In the first year (2000) only, cost for this step is estimated by multiplying the number of impacted aircraft operators (192) by the number of airports involved (25) by the number of hours of work required to review plan (16) by the hourly salary of aircraft operator security personnel ($28). For example, this computation will result in an estimated one-time compliance cost of $2,150,400 ($192 \times 25 \times 16 \times \$28$) for the initial review of contingency plans. And, the last step of ensuring conformity consists of testing the contingency plan. Over 10 years, cost estimation for this step represents multiplying the number of impacted aircraft operators ($1,920 = 192 \times 10$) by the number of airports involved (25) by the number of hours of work required to test plan (16) by the hourly salary of aircraft operator security personnel ($28). For example, this computation will result in an estimated compliance cost estimate of $21,504,000 ($1,920 \times 25 \times 16 \times \$28$), over the 10-year period, for testing of contingency plans. Thus, the total compliance cost estimate for this section was derived by summing the two cost components ($23,654,400 = $2,150,400 + $21,504,000).

Section 108.303—Bomb or Air Piracy Threats

Aircraft operators follow a set of standard procedures, mandated by the FAA, in the event that an operation is threatened by an act of terrorism (bomb threat, hijacking, etc.). Currently, this does not always require that the aircraft be cleared of passengers in the event of a terrorist threat. The FAA amends these procedures to require that an operator deplane all passengers onboard a threatened aircraft so that the appropriate security personnel may conduct a security inspection.

As the result of the anticipated delay imposed during the inspection period and associated with complete deplaning and subsequent reboarding of passengers and crew, the potential incremental cost of compliance for this rule change to section 108.303 is estimated to be $1.2 million over the next 10 years (or 850,000, discounted).

Estimating and summing the estimates for three cost components over the next 10 years derived this figure of $1.2 million. The first component is Value of Time for Aircraft ($151,500 = 100 × 4.5 × $336.75). This estimate represents the number of credible threats (100 over 10 years) multiplied by the average number of hours an aircraft is down due to a threat (4.5) by the cost per hour of downtime ($336.75). The second component is Value of Flight Crew Time estimate ($80,640 = 448 × 4.5 × $40). This estimate represents the number of aircraft flight crew employees delayed by a threat (448 over 10 years) multiplied by the average number of hours delayed due to a threat (4.5) times the average flight crew employee salary cost per hour ($40.00). The third component is the Value of Passenger Time estimate ($979,000). This estimate represents the number of passengers delayed by a threat (7,770 over 10 years) multiplied by the average number of hours delayed due to a threat (4.5) times the passenger value of time per hour ($28).

Section 108.305—Security Directives and Information Circulars

This revision will require that all aircraft operators develop and implement standardized procedures to deal with security directives and information circulars issued by the FAA. The affected aircraft operator shall specify the method by which the measures in the security directive have been implemented by providing the FAA a copy of the written measures and implementation procedures when required by the Security Directive or upon request by the Administrator. The potential incremental cost of this rule change is estimated to be $666,200 (or $468,000, discounted). This cost estimate will be imposed, as the result of the staff time required processing and responding to a directive. Thus, aircraft operators receive on average 30 directives a year. This estimate of $666,200 to notify the FAA, including acknowledgment and forwarding of results, was derived by combining the cost estimates for Staff to Process Directives ($349,400) with that for phone calls and faxes ($316,800).

Benefits

The rules to amend parts 107 and 108 are intended to enhance aviation safety for U.S. airports and aircraft operators in ways that are not currently addressed. The benefits of the rules will be a strengthening of both airport and aircraft operator security by adding to their effectiveness. Security is achieved through an intricate set of interdependent requirements.

It would be difficult to separate out any one change or set of changes in the rules to amend part 107 or part 108 and identify the extent that change or set of changes will have on preventing a criminal or terrorist act in the future. Nevertheless, these changes in both rules are an integral part of the total program needed by the airport operator, the aircraft operators, and the FAA to thwart such incidents.

It will also be extremely difficult to determine to what extent an averted terrorist incident can be credited to either airport operator security or to aircraft operator security. Accordingly, the benefits from the rules for parts 107 (airport operators) and 108 (aircraft operators) have been combined in this benefit-cost analysis. These benefits are comprised of the criminal and terrorist incidents that these rules are intended to prevent; hence, these benefits will be contrasted against the costs of the changes to parts 107 and 108. As shown in Table 1, the combined costs (rounded) of parts 107 and 108 sum to about $131 million (or $104 million, discounted).

TABLE 1.—COST SUMMARY OF PARTS 107 AND 108 FINAL RULES

[1998 dollars, rounded]

	Total costs	Discounted costs
Cost of rule for Part 107	$91.5	$74.9
Cost of rule for Part 108	39.8	29.2
Total cost of rules	131.3	104.1

Source: U.S. DOT, FAA, APO–310, June 1999.

Since 1987, the FAA has initiated rulemaking and promulgated 11 security-related amendments that have amended both parts 107 and 108. The amendments in these two rules combined with the previous rulemakings add to the effectiveness of both parts to augment aspects of the total security system to help prevent further criminal and terrorist activities.

Terrorism can occur within the United States. Members of foreign terrorist groups, representatives from state sponsors of terrorism, and radical fundamentalist elements from many nations are present in the United States. In addition, Americans are joining terrorist groups. The activities of some these individuals and groups go beyond fund raising to recruiting other persons (both foreign and U.S.) for activities that include training with weapons and making bombs. These extremists operate in small groups and can act without guidance or support from state sponsors. This makes it difficult to identify them or to anticipate and counter their activities. The following discussion outlines some of the concrete evidence of the increasing terrorist threat within the United States and to domestic aviation.

Investigation into the February 1993 attack on the World Trade Center (WTC) uncovered a foreign terrorist threat in the United States that is more serious than previously known. The WTC investigation disclosed that Ramzi Yousef had arrived in the United States

in September 1992 and had presented himself to immigration officials as an Iraqi dissident, seeking asylum. Yousef and a group of radicals in the United States then spent the next 5 months planning the bombing of the WTC and other acts of terrorism in the United States. Yousef returned to Pakistan on the evening of February 26, 1993, the same day that the WTC bombing took place. Yousef traveled to the Philippines in early 1994 and by August of the same year had conceived a plan to bomb as many as twelve U.S. airliners flying between East Asian cities and the United States.

Yousef and co-conspirators Abdul Murad and Wali Khan tested the type of explosive devices to be used in the aircraft bombings and demonstrated the group's ability to assemble such a device in a public place, in the December 1994 bombing of a Manila theater. Later the same month, the capability to get an explosive device past airport screening procedures and detonate it aboard an aircraft also was successfully tested when a bomb was placed by Yousef aboard the first leg of Philippine Airlines Flight 424 from Manila to Tokyo. The device detonated during the second leg of the flight, after Yousef had deplaned at an intermediate stop in the Philippine city of Cebu.

Preparations for executing the plan were progressing rapidly. However, the airliner-bombing plot was discovered in January 1995 by chance after a fire led Philippine police to the Manila apartment where the explosive devices were being assembled. Homemade explosives, batteries, timers, electronic components, and a notebook full of instructions for building bombs were discovered. Subsequent investigations of computer files taken from the apartment revealed the plan, in which 5 terrorists were to have placed explosive devices aboard United, Northwest, and Delta airline flights. In each case, a similar technique was to be used. A terrorist would fly the first leg of a flight out of a city in East Asia, planting the device aboard the aircraft and then deplane at an intermediate stop. The explosive device would then destroy the aircraft, continuing on a subsequent leg of the flight to the United States. It is likely that thousands of passengers would have been killed if the plot had been successfully carried out.

Yousef, Murad and Khan were arrested and convicted in the bombing of Philippine Airlines flight 424 and in the conspiracy to bomb U.S. airliners. Yousef was sentenced to life imprisonment for his role in the Manila plot, while the two other co-conspirators have been convicted. Yousef also was convicted and sentenced to 240 years for the World Trade Center bombing. However, there are continuing concerns about the possibility that other conspirators remain at large. The airline-bombing plot, as described in the files of Yousef's laptop computer, would have had 5 participants. This suggests that, while Yousef, Murad, and Khan are in custody, there may be others at large with the knowledge and skills necessary to carry out similar plots against civil aviation.

The fact that Ramzi Yousef was responsible for both the WTC bombing and the plot to bomb as many as twelve United States aircraft shows that: (1) foreign terrorists are able to operate in the U.S. and (2) foreign terrorists are capable of building and artfully concealing improvised explosive devices that pose a serious challenge to aviation security. This, in turn, suggests that foreign terrorists conducting future attacks in the U.S. may choose civil aviation as a target. Civil aviation's prominence as a prospective target is clearly illustrated by the circumstances of the 1995 Yousef conspiracy.

The bombing of a Federal office building in Oklahoma City, Oklahoma shows the potential for terrorism from domestic groups. While the specific motivation that led to the Oklahoma City bombing would not translate into a threat to civil aviation, the fact that domestic elements have shown a willingness to carry out attacks resulting in indiscriminate destruction is worrisome. At a minimum, the possibility that a future plot hatched by domestic elements could include civil aircraft among possible targets must be taken into consideration. Thus, an increasing threat to civil aviation from both foreign sources and potential domestic ones exists and needs to be prevented and/or countered.

That both the international and domestic threats have increased is undeniable. While it is extremely difficult to quantify this increase in threat, the overall threat can be roughly estimated by recognizing the following:

- U.S. aircraft and American passengers are representatives of the United States, and therefore are targets;
- Up to 12 airplanes could have been destroyed and thousands of passengers killed in the actual plot described above;
- These plots came close to being carried out; it was only through a fortunate discovery and then extra tight security after the discovery of the plot that these incidents were thwarted;
- It is just as easy for international terrorists to operate within the United States as domestic terrorists, as evidenced by the World Trade Center bombing; therefore,
- Based on these facts, the increased threat to domestic aviation could be seen as equivalent to some portion of 12 Class I Explosions on U.S. airplanes. (The FAA defines Class I Explosions as incidents that involve the loss of an entire aircraft and incur a large number of fatalities.)

In 1996, both Congress and the White House Commission on Aviation Safety and Security (Commission) recommended further specific actions to increase civil aviation security. The Commission stated that it believes that the threat against civil aviation is changing and growing, and recommended that the Federal Government commit greater resources to improving civil aviation security. President Clinton, in July 1996, declared that the threat of both foreign and domestic terrorism to aviation is a national threat. The U.S. Congress recognized this growing threat in the Federal Aviation Reauthorization Act of 1996 by: (1) authorizing money for the purchase of specific anti-terrorist equipment and the hiring of extra civil aviation security personnel; and (2) requiring the FAA to promulgate additional security-related regulations.

In the absence of increased protection for the U.S. domestic passenger air transportation system, it is conceivable that the system would be targeted for future acts of terrorism. If even one such act were successful, the traveling public would demand immediate increased security. Providing immediate protection on an ad hoc emergency basis would result in major inconveniences, costs, and delays to air travelers that may substantially exceed those imposed by the planned and measured steps contained in these rules.

Based on the above statement, the FAA concludes that these rules set forth the best method to provide increased security at the present time. The FAA considered to the limited extent possible, the benefits of these rules in reducing the costs associated with terrorist acts. The following analysis describes alternative assumptions regarding the number of terrorist acts prevented and potential market disruptions averted that result in these rules' benefits to be at least equal to these rules' costs. This is intended to allow the reader to judge the likelihood of benefits of these rules equaling or exceeding their cost.

The cost of a catastrophic terrorist act can be estimated in terms of lives lost, property damage, decreased public utilization of air transportation, etc.

Terrorist acts can result in the complete destruction of an aircraft with the loss of all onboard. The FAA considers a Boeing 737 as representative of a typical airplane flown domestically. The fair market value of a Boeing 737 is $16.5 million, and the typical 737 airplane has 113 seats. It flies with an average load factor of about 65 percent, which translates into 73 passengers per flight; the airplane will also have 2 pilots and 3 flight attendants.

A terrorist catastrophic event could also result in fatalities on the ground. There were 11 such fatalities in the Pan Am 103 explosion and 15 in a collision of an AeroMexico airplane with a Piper PA–28 airplane over Cerritos, California in 1986. However, looking at the number of accidents including aircraft covered by these rules and the number of fatalities on the ground over the last 10 years, the average fatality was less than 0.5 persons per accident. Therefore, the FAA will not assume any ground fatalities in this analysis.

In order to provide a benchmark comparison of the expected safety benefits of rulemaking actions with estimated costs in dollars, a minimum of $2.7 million is used as the value of avoiding an aviation fatality (based on the willingness to pay approach for avoiding a fatality). In these computations, the present value of each incident was calculated using the current discount rate of 7 percent. Applying this value, the total fatality loss of a single Boeing 737 is represented by a cost of about $211 million (78 x $2.7 million). The discounted cost of these final rules is $104 million, while the discounted benefits for each Class I Explosion averted comes to about $191 million. Hence, if these rules prevent one Class I explosion, the benefits of these rules will exceed their costs. In view of the recent history of terrorist incidents in the United States, a potential catastrophic loss of at least this magnitude is considered to be plausible in the absence of this rule.

The FAA also used the same set of benefits in two proposed rulemakings, *Security of Checked Baggage on Flights Within the United States and Certification of Screening Companies;* all these rulemakings have the same goal—to significantly increase the protection to U.S. citizens and other citizens traveling on U.S. domestic aircraft operator flights from acts of terrorism as well as also increase protection for those operating aircraft. Because the combined discounted costs of all of these rules exceeds $191 million, the cost of one Class I Explosion, the FAA calculated the economic impact and the potential averted market disruption sufficient, in combination with safety benefits, to justify all these rulemakings.

Certainly, the primary concern of the FAA is preventing loss of life, but there are other considerations as well. Another large economic impact is related to decreased airline travel following a terrorist event. A study performed for the FAA indicated that it takes about 9 to 10 months for passenger traffic to return to the pre-incident level after a single event. Such a reduction occurred immediately following the destruction of Pan Am Flight 103 over Lockerbie, Scotland in December 1988.

In general, 1988 enplanements were above 1987's. There was a dramatic fall-off in enplanement in the first 3 months of 1989 immediately following the Pan Am 103 tragedy, and it took until November 1989 for enplanements to approximate their 1987 and 1988 levels. By 1990, enplanements were at the level they were in 1988. Trans-Atlantic enplanements increased, from 1985 to 1988, at an annual rate of 10.7 percent. Projecting this rate to 1989 would have yielded 1989 enplanements of 8.1 million, or 1.6 million more than Pan Am actually experienced. This represents almost a 20 percent reduction in expected enplanements caused by the destruction of Pan Am 103 by terrorists.

The estimated effect of a successful terrorist act on the domestic market has not been studied. Although there are important differences between international and domestic travel (such as the availability of alternative destinations and means of travel), the FAA believes that the traffic loss associated with international terrorist acts is representative of the potential domestic disruption.

There is a social cost associated with travel disruptions and cancellations caused by terrorist events. The cost is composed of several elements. First is the loss associated with passengers opting not to fly—the value of the flight to the passenger (consumer surplus) in the absence of increased security risk and the profit that would be earned by the airline (producer surplus). Even if a passenger opts to travel by air, the additional risk may reduce the associated consumer surplus. Second, passengers who cancel plane trips would not purchase other goods and services normally associated with the trip, such as meals, lodging, and car rental, which would also result in losses of related consumer and producer surplus. Finally, although spending on air travel would decrease, pleasure and business travelers may substitute spending on other goods and services (which produces some value) for the foregone air trips. Economic theory suggests that the summation of the several societal value impacts associated with canceled flights would be a net loss. As a corollary, prevention of market disruption (preservation of consumer and producer welfare) through increased security created by these rules is a benefit.

The FAA is unable to estimate the actual net societal cost of travel disruptions and the corollary benefit gained by preventing the disruptions. However, there is a basis for judging the likelihood of attaining benefits by averting market disruption sufficient, in combination with safety benefits, to justify the rule. The discounted cost of these four rulemakings is $2.3 billion, while the discounted benefits for each Class I Explosion averted comes to $191 million. Hence, if one Class I Explosion is averted, the present value of losses due to market disruption must at least equal $3.1 billion ($3.3 billion less $191 million—one Class I Explosion). If two Class I Explosions are averted, the present value of losses due to market disruption must at least equal $2.9 billion ($3.3 billion less $400 million—two Class I Explosions).

The value of market loss averted is the product of the number of foregone trips and the average market loss per trip (combination of all impacts on consumer and producer surplus). If one uses an average ticket price of $160 as a surrogate of the combined loss, preservation of a minimum of 13.3 million lost trips would be suffered, in combination with the safety benefits of one averted Class I Explosion, for the benefits of these rulemakings to equal costs. This represents less than 5 percent of annual domestic trips (the traffic loss caused by Pan Am 103 on trans-Atlantic routes was 20 percent). Calculations can be made on the minimum number of averted lost trips needed if the net value loss was only 75 percent of the ticket price or exceeded the ticket price by 25 percent. If total market disruption cost was $130 or $200 per trip, a minimum retention of 16.3 and 10.6 million lost trips, respectively, would need to occur for the benefits to equal the costs of these rulemakings, assuming one Class I Explosion would be prevented. The FAA requests comments on the potential size of market loss per trip and number of lost trips averted.

Table 2 presents combinations of the total number of trips not taken as a result of one to four Class I Explosions at alternative values per lost trip that would be sufficient to generate

monetary benefits in excess of the estimated costs of these rulemakings.

TABLE 2.—NUMBER OF TRIPS NOT TAKEN AS A RESULT OF ONE TO FOUR CLASS I EXPLOSIONS AVOIDED

[For Benefits to Equal Costs]

Number of Class I explosions avoided	Assumed net market loss per trip (in 1998 dollars)		
	$130 (in millions)	$160 (in millions)	$200 (in millions)
1	16.3	13.3	10.6
2	14.8	12.1	9.6
3	13.4	10.9	8.7
4	11.9	9.7	9.7

Source: FAA, APO–310, June 1999.

The FAA stresses that the range of trips discussed in Table 2 should be looked upon as examples and does not represent an explicit endorsement that these would be the exact number of trips that would actually be lost. As noted above, it is important to compare, to the limited extent possible, the cost of these rulemakings to some estimate of the benefit of increased security it will provide as that level of security relates to the threat level.

Based on changes in the domestic security risk, the White House Commission recommendation, recent Congressional mandates, and the known reaction of Americans to any aircraft operator disaster, the FAA believes that pro-active regulation is warranted to prevent terrorist acts (such as Class I Explosions) before they occur.

Comparison of Costs and Benefits

This rule, combined with the part 107 rule, will cost $131 million ($104 million, discounted) over 10 years. This cost needs to be compared to the possible tragedy that could occur if a bomb or some other incendiary device was to get onto an airplane and cause an explosion. Recent history not only points to Pan Am 103's explosion over Lockerbie, Scotland, but also the potential of up to 12 American airplanes being blown up in Asia in early 1995.

Since the cost of a Class I Explosion on a large domestic airplane is approximately $272 million, coupled with the relative low cost of compliance ($131 million), this rule (and the rule for part 107) will need to prevent one Class I Explosion over the next 10 years in order for quantified benefits to exceed costs. In view of the recent history of terrorist incidents in the United States, a potential catastrophic loss of at least this magnitude is considered to be plausible in the absence of this rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the proposed rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals or rules and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration has defined small business entities relating to aircraft operators (Standard Industrial Codes 4512 and 4522) required to comply with part 108 as entities comprising 1,500 or fewer employees. These small entities include: (1) Scheduled aircraft operators whose fleet consists primarily (if not entirely) of aircraft with more than 60 passenger seats, (2) Other scheduled aircraft operators whose fleet consists primarily (if not entirely) of aircraft with less than 60 passenger seats (e.g., commuter operators and small majors/nationals types), and (3) Unscheduled aircraft operators. Unscheduled operators include primarily air taxi and charter types. These types of operators generally operate aircraft with less than 60 passenger seats.

The final rule will potentially impact small U.S. aircraft operators engaged in charter services and selected helicopter operators. These aircraft operators are engaged in services under parts 121 and 135. An examination of small entities under each of these parts, by size of aircraft, will be discussed by each amended change to a section as follows. Multiplying them by a capital recovery factor of .14238 [10 years, 7 percent], has annualized the non-annual costs of the rule.

For purposes of this evaluation, a significant economic impact refers to one percent of the annual median revenue ($222,200, at the 50th percentile, in 1998 dollars) of the small part 121 scheduled aircraft operators subject to part 108 requirements. In addition, a significant economic impact on unscheduled part 135 operators (2,718) refers to one percent their annual median revenue ($5,700, at the 50th percentile). The FAA has identified small operators ranging from 51 to 2,930 that may be impacted by this definition. Three of the five following sections impose potential costs only on scheduled operators. And the other two following sections impose costs on both groups of scheduled and non-scheduled aircraft operators.

Section 108.101—Adoption and Implementation

The rule change to Section 108.101 will only affect estimated 51 small aircraft operators. This estimate of 51 includes: 15 non-scheduled domestic service operators with greater than 60 seats, 11 scheduled international service

operators with fewer than 31 seats, and 25 non-scheduled international service operators (including air taxi operations). The rule change to this section will impose an annualized cost of compliance estimate of $288 for each of the 51 aircraft operators. Employing two steps derived the estimate of $288: First, by dividing the discounted cost of compliance estimate for this section ($103,100) by the number of potentially impacted aircraft operators (51). This calculation results in a discounted 10-year per entity cost estimate of $2,022. And last, the cost estimate of $2,022 was multiplied by the 10-year (7%) capital recovery factor of 0.14238. This same procedure was used for each of the following sections. This section of the rule will primarily impact small non-scheduled operators (40).

Given the nature of their operations (namely, private charters) and the size of their aircraft, each of these aircraft operators is considered to be a small entity. That is, each of these operators is assumed to have less than 1,500 employees. This same assessment applies equally to each of those aircraft operators discussed in the following sections, unless otherwise stated.

Section 108.235—Training and Knowledge of Persons with Security-related Duties

The rule change to Section 108.235 will affect an estimated 2,930 small aircraft operators. This estimate of 2,930 includes: 74 scheduled operators with between 31 and 60 passenger seats, 131 scheduled operators with less than 31 passenger seats, 15 non-scheduled operators with more than 60 passenger seats, and 2,710 non-scheduled operators with less than 61 passenger seats. This rule change to section 108.235 will impose an annualized cost of compliance estimate of $517 for each of the 2,930 small aircraft operators. This section of the rule will primarily impact non-scheduled operators (2,725).

Section 108.301—Contingency Plans

The rule change to Section 108.301 will affect an estimated 172 (192 less 20 large aircraft operators) small U.S. aircraft operators. This will impose an annualized cost of compliance estimate of $12,691 for each of the 172 small operators that will be affected by this section. This section of the rule will only impact domestic scheduled aircraft operators, regardless of the size of their aircraft (172).

Section 108.303—Bomb or Piracy Threats

The rule change to Section 108.303 will affect all 172 small U.S. aircraft operators. This rule change to section 108.303 will impose an annualized cost of compliance estimate of $629 for each of the 172 small aircraft operators.

Section 108.305—Information Circulars

The rule change to Section 108.305 will affect an estimated 172 U.S. aircraft operators. This rule change to section will impose an annualized cost of compliance of $347 for each of the 172 small operators that will be affected by this section.

The total annualized cost of compliance for each of the scheduled operators is expected to be nearly $14,470 and about $800 for each of the non-scheduled operators. Since the total annualized cost of compliance of about $14,470 is less than the significant economic impact amount of $222,200, this rule will not impose a significant economic impact on a substantial number of scheduled small entities. Similarly, the rule is not expected to impose a significant economic impact on a substantial number of small non-scheduled operators, since the annualized cost of compliance (about $800) for each operator will not exceed the significant economic impact amount ($5,700). In view of the aforementioned cost impact discussion and pursuant to the Regulatory Flexibility Act [5 U.S.C. 605(b)], the FAA certifies with reasonable certainty that the final rule will not impose a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

In accordance with the Office of Management and Budget memorandum dated March 1983, federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade.

The rule will have no impact on the competitive posture of either U.S. aircraft operators doing business in foreign countries or foreign aircraft operators doing business in the United States. This assessment is based on the fact that the rule will not have a significant economic impact on any of the potentially impacted operators. Most of the requirements imposed by this rule are aimed at strengthening the requirements of aircraft operators with existing full and partial security programs. However, this rule will require scheduled passenger or public charter aircraft operators, with more than 60 passenger seats, to adopt and implement full security programs. In addition, this rule will require those scheduled passenger or public charter aircraft operators, with less than 61 passenger seats, to adopt and implement security programs prior to enplaning or deplaning passengers into sterile areas at airports. Private charter aircraft operators will have to comply with a similar requirement. Those aircraft operators who do not routinely deplane or enplane passengers into sterile areas at airports will be the least impacted by this rule. Such operators will only have a partial security program. When engaged in foreign travel, these operators usually fly from the U.S. to a foreign destination and return. These operators do not have aircraft based in foreign countries for flights to the U.S. and other foreign countries. Thus, neither domestic nor foreign aircraft operators will be affected disproportionately by these new requirements. These new requirements, therefore, will not cause a competitive trade disadvantage for U.S. aircraft operators operating overseas or for foreign aircraft operators operating in the United States.

Federalism Implications

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. There are two sections that have an impact on the States, § 108.219, Carriage of accessible weapons, and § 208.221, Carriage of prisoners under the control of armed law enforcement officers. State and local law enforcement officers at times have a need to travel armed and to escort prisoners. The FAA has consulted extensively with representatives of State and local law enforcement agencies. In 1992 the carriage of Weapons Task Force was created as a committee within the Aviation Security Advisory Committee. The Task Force includes representatives from Federal, State, and local law enforcement, as well as aircraft operators and airport operators. Since that time the Task Force has met on many occasions. Their work includes a model training program developed in 1994 for the carriage of weapons and escort of prisoners, which most Federal and State agencies now use to train their personnel. The proposals in Notice 97–12 were based largely on Task Force recommendations, and the FAA continues to consult with them on these issues. The rules as adopted require little change from the practices that have been in place since the mid 1990's.

Accordingly, the FAA has determined that this action 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, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. In 1998 dollars, this estimate of $100 million translates into $105 million using the GDP implicit price deflators for 1995 and 1998. Section 204(a) of the Act, Title 2 of the United States Code 1534(a), requires the Federal agency to develop an effectiveness process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed or final rule ''significant intergovernmental mandate.'' A significant intergovernmental mandate under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. For the purpose of this evaluation, this estimate expressed in 1998 dollars translates into $105 million. Section 203 of the Act, Title 2 of the United States Code 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity any affected small governments to provide input in the development of rules.

Based on the evaluation and impacts reported herein, the final rule is not expected to meet the $100 million per year cost threshold ($105 million, in 1998 dollars). Consequently, it would not impose a significant cost on or uniquely affect small governments. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to the final rule.

Environmental Analysis

Federal Aviation Administration Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Distribution/Derivation Tables

The following distribution table is provided to illustrate how the current regulation relates to the revised part 108, and the derivation table identifies how the revised part 108 relates to the current rule.

DISTRIBUTION TABLE

Old Section	New Section
108.1(a)	108.1(a).
108.1(b)	Removed.
108.3	108.3.
108.4	108.7.
108.5(a)(1) and (2)	108.101(a)(1) and (2).
108.5(a)(3)	108.101(c)(1).
108.5(a)(4)	108.101(d)(3).
108.5(b)	108.101(d)(2) and (e).
108.7(a)	108.103(a).
108.7(b)	108.103(c).
108.7(c)	108.103(b).
108.9(a)	108.201(e).
108.9(b)	108.201(d) and 108.203(d).
108.9(c)	108.201(b).
108.9(d)	108.201(g).
108.10(a)(1)	108.215(b) and (c).
108.10(a)(2)	108.215(c).
108.10(b) and (c)	108.215(b) and (c).
108.11(a)	108.219(a)and (b).
108.11(a)(4)	108.223(e).
108.11(b)	108.219(a) and (b).
108.11(c) and (d)	108.203(e).
108.11(e)	108.219(c).
108.11(f)	Removed.
108.13 (introductory text).	108.225 (introductory text).
108.13(a)	108.225(b).
108.13(b) (first clause).	108.203.
108.13(b) (second clause).	Removed.
108.13(c)	108.203(c)(1) and 108.205(b)(1).
108.13(d)	108.225(c).
108.14(a)–(c)	108.223(b)–(d).
108.15(a) and (b)	108.217(a) and (b).
108.17(a)	108.209(a).
108.17(a)(1)	Removed.
108.17(a)(2) and (3)	108.209(a)(1) and (2).
108.17(a)(4)	Removed.
108.17(a)(5)	108.209(a)(3).
108.17(b)–(d)	108.209(b)–(d).
108.17(e)	108.211(b) and 108.209(e).
108.17(f)–(h)	108.209(f)–(h).

DISTRIBUTION TABLE—Continued

Old Section	New Section
108.18(a)–(c)	108.305(b)–(d).
108.18(d)	108.305(f).
108.19(a) and (b)	108.303(a) and (b).
108.19(c)	108.303(d).
108.20	108.211(a).
108.21 introductory text.	108.221(a)(1).
108.21(a)(1)	108.219(a)(1).
108.21(a)(2)	108.221(e)(1).
108.21(a)(3)	108.221(d)(3).
108.21(a)(4)	Removed.
108.21(a)(5)	108.221(d)(1) and (2).
108.21(a)(6)(i)	Removed.
108.21(a)(6)(ii)	108.221(e)(3).
108.21(a)(7)	108.221(f).
108.21(a)(8)	108.221(f).
108.21(a)(8)	108.221(e)(4).
108.21(b)(1) and (2)	108.221(h).
108.21(b)(2) clause on LEOs.	108.219(c)(1).
108.21(c)	108.221(e)(5).
108.21(d)	108.219(c)(2).
108.21(e)	108.221(a)(2).
108.23(a)	108.233(a) and 108.235(a).
108.23(b)	108.233(b).
108.25(a)	108.105(a).
108.25(b) introductory clause.	108.105(c).
108.25(b)(1) and (2)	108.105(c).
108.25(b)(3)	108.105(d).
108.25(c)	108.105(b).
108.27	108.5(b).
108.29(a)(1)	108.235(b).
108.29(a)(2)	108.215(b).
108.29(b)	108.235(a).
108.31	108.213.
108.33	108.229.

DERIVATION TABLE

New Section	Old Section
108.1(a)(1)–(3)	108.1(a)(1)–(3).
108.1(a)(4)	108.1(a)(5).
108.1(a)(5)	108.1(a)(4).
108.1(b)	New.
108.3	108.3.
108.5(a)	New.
108.5(b)	108.27.
108.5(c)	New.
108.5(d)	New
108.7	1108.4.
108.9	New.
108.101(a)	108.5(a)(1) and (2).
108.101(b)	New.
108.101(c)(1)	108.5(a)(3).
108.101(c)(2)	New.
108.101(d)(1)	108.5(a)(3).
108.101(d)(2)	108.5(b).
108.101(d)(3)	108.5(a)(4).
108.101(e)	108.5(b).
108.103(a)	108.7(a).
108.103(b)	108.7(c).
108.103(c)	108.7(b).
108.105(a)	108.25(a).
108.105(b)	108.25(c).
108.105(c)	108.25(b)(1) and (2).
108.105(d)	108.25(b)(3).
108.201(a)	108.9(a).
108.201(b)	108.9(c).

DERIVATION TABLE—Continued

New Section	Old Section
108.201(c)	107.20.
108.201(d)	108.9(b).
108.201(e)(1)	108.9(a).
108.201(e)(2)	107.21.
108.201(f)(1)	107.21(b)(1).
108.201(f)(2)	108.11(a).
108.201(f)(3)	New.
108.201(g)	108.9(d).
108.203(a)	108.9(a).
108.203(b)	108.13(b), first clause.
108.203(c)	108.13(c).
108.203(d)	108.9(b).
108.203(e)	108.11(c) and (d).
108.203(f)	108.11(c).
108.203(g)	New.
108.205(a)	Intent of 108.9(a).
108.205(b)	108.13 introductory text, (b) first clause, and (c).
108.205(c)	108.9(b).
108.207	New.
108.209(a)	108.17(a).
108.209(a)(1) and (2)	108.17(a)(2) and (3).
108.209(a)(3)	108.17(a)(5).
108.209(b)–(h)	108.17(b)–(h).
108.211(a)	108.20.
108.211(b)	108.17(e).
108.213	108.31.
108.215(a)	New.
108.215(b)	108.10(a)(1) and 108.29(a)(2).
108.215(b)(1) and (2)	108.10(b).
108.215(c)	108.10(a)(2) and (c).
108.217(a) and (b)	108.15(a) and (b).
108.219(a)	108.11(a) and (b).
108.219(b)	108.11(a) and (b).
108.219(c)	108.11(e).
108.219(d)	New.
108.221(a)(1)	108.21(a).
108.221(a)(2)	108.21(e).
108.221(a)(3)	New.
108.221(b)	New.
108.221(c)	New
108.221(d)(1) and (2)	108.21(a)(5).
108.221(d)(3)	108.21(a)(3).
108.221(e)(1)	108.21(a)(2).
108.221(e)(2)	New.
108.221(e)(3)	108.21(a)(6)(ii).
108.221(e)(4)	108.21(a)(8).
108.221(e)(5)	108.21(c).
108.221(f)	108.21(7).
108.221(g)	New.
108.221(h)	108.21(b).
108.223(a)	108.11(a).
108.223(b)–(d)	108.14(a)–(c).
108.223(e)	108.11(a)(4).
108.223(f)	New.
108.223(g)	108.7(c)(4).
108.223(h)	New.
108.225 introductory text.	108.13 introductory text.
108.225(a)	New.
108.225(b)	108.13(a).
108.225(c)	108.13(d).
108.227	New.
108.229	108.33.
108.231	New.
108.233(a)	108.23(a).
108.233(b) and (c)	108.23(b).
108.235(a)	108.23(a).
108.235(b)	108.29(a)(1).

DERIVATION TABLE—Continued

New Section	Old Section
108.301	New.
108.303(a)(1) and (2)	108.19(a).
108.303(a)(3)	New.
108.303(b)	108.19(b).
108.303(c)	New.
108.303(d)	108.19(c).
108.305(a)	New.
108.305(b)–(d)	108.18(a)–(c).
108.305(e)	New
108.305(f)	108.18(d).

List of Subjects in 14 CFR Part 108

Air carrier, Aircraft, Airmen, Airports, Arms and munitions, Explosives, Incorporation by reference, Law enforcement officers, Reporting and recordkeeping requirements, Security measures, X-rays.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration revises 14 CFR part 108 to read as follows:

PART 108—AIRCRAFT OPERATOR SECURITY

Subpart A—General

Sec.
108.1 Applicability.
108.3 Definitions.
108.5 Inspection authority.
108.7 Falsification.
108.9 Security responsibilities of employees and other persons.

Subpart B—Security Program

108.101 Adoption and implementation.
108.103 Form, content, and availability.
108.105 Approval and amendments.

Subpart C—Operations

108.201 Screening of persons and accessible property.
108.203 Acceptance and screening of checked baggage.
108.205 Acceptance and screening of cargo.
108.207 Use of metal detection devices.
108.209 Use of X-ray systems.
108.211 Use of explosives detection systems.
108.213 Employment standards for screening personnel.
108.215 Security coordinators.
108.217 Law enforcement personnel.
108.219 Carriage of accessible weapons.
108.221 Carriage of prisoners under the control of armed law enforcement officers.
108.223 Transportation of Federal Air Marshals.
108.225 Security of aircraft and facilities.
108.227 Exclusive Area Agreement.
108.229 Employment history, verification, and criminal history records checks.
108.231 Airport-approved and exclusive area personnel identification systems.
108.233 Security coordinators and crewmembers, training.
108.235 Training and knowledge for persons with security-related duties.

Subpart D—Threat and Threat Response

108.301 Contingency plan.
108.303 Bomb or air piracy threats.
108.305 Security Directives and Information Circulars.

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

Subpart A—General

§ 108.1 Applicability.

(a) This part prescribes aviation security rules governing the following:

(1) The operations of aircraft operators holding operating certificates for scheduled passenger operations, public charter passenger operations, private charter passenger operations, and other aircraft operators adopting and obtaining approval of an aircraft operator security program.

(2) Each person aboard an aircraft operated by an aircraft operator described in paragraph (a)(1) of this section.

(3) Each person at an airport at which the operations described in paragraph (a) (1) of this section are conducted.

(4) Each person who files an application or makes entries into any record or report that is kept, made, or used to show compliance under this part, or to exercise any privileges under this part.

(5) Each aircraft operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by the Assistant Administrator for Civil Aviation Security.

(b) Except as provided in § 108.105, the authority of the Administrator under this part is also exercised by the Assistant Administrator for Civil Aviation Security and the Deputy Assistant Administrator for Civil Aviation Security, and any individual formally designated to act in their capacity. The authority of the Assistant Administrator, including matters under § 108.105, may be further delegated.

§ 108.3 Definitions.

The definitions in part 107 of this chapter apply to this part. For purposes of this part, part 107 of this chapter, and security programs under parts 107 and 108 of this chapter, the following definitions also apply:

Aircraft operator means a holder of an air carrier operating certificate or an operating certificate under part 119 of this chapter that conducts operations described in § 108.101 (a), (b), (c), and (e).

Aircraft operator security program means a security program approved by the Administrator under this part.

Assistant Administrator means the FAA Assistant Administrator for Civil Aviation Security as described in 49 U.S.C. 44932.

Cargo means property tendered for air transportation accounted for on an air waybill. All accompanied commercial courier consignments, whether or not accounted for on an air waybill, are also classified as cargo. Aircraft operator security programs further define the term cargo.

Checked baggage means property tendered by or on behalf of a passenger and accepted by an aircraft operator for transport, which is inaccessible to passengers during flight. Accompanied commercial courier consignments are not classified as checked baggage.

Passenger seating configuration means the total maximum number of seats for which the aircraft is type certificated that can be made available for passenger use aboard a flight, regardless of the number of seats actually installed, and includes that seat in certain aircraft which may be used by a representative of the Administrator to conduct flight checks but is available for revenue purposes on other occasions.

Private charter means any aircraft operator flight—

(1) For which the charterer engages the total passenger capacity of the aircraft for the carriage of passengers; the passengers are invited by the charterer; the cost of the flight is borne entirely by the charterer and not directly or indirectly by any individual passenger; and the flight is not advertised to the public, in any way, to solicit passengers.

(2) For which the total passenger capacity of the aircraft is used for the purpose of civilian or military air movement conducted under contract with the Government of the United States or the government of a foreign country.

Public charter means any charter flight that is not a private charter.

Scheduled passenger operation means an air transportation operation (a flight) from identified air terminals at a set time, which is held out to the public and announced by timetable or schedule, published in a newspaper, magazine, or other advertising medium.

Sterile area means a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by an aircraft operator or foreign air carrier through the screening of persons and property in accordance with a security program.

§ 108.5 Inspection authority.

(a) Each aircraft operator shall allow the Administrator, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This part, parts 107, 109, 129, and 191 of this chapter and any security program approved under those parts; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of the Administrator, each aircraft operator shall provide evidence of compliance with this part and its security program, including copies of records.

(c) The Administrator may enter and be present within secured areas, AOA's, and SIDA's without access media or identification media issued or approved by an airport operator or aircraft operator, in order to inspect or test compliance, or perform other such duties as the Administrator may direct.

(d) At the request of the Administrator and the completion of SIDA training as required in a security program, each aircraft operator shall promptly issue to a FAA Special Agent access and identification media to provide the FAA Special Agent with unescorted access to, and movement within, areas controlled by the aircraft operator under an exclusive area agreement.

§ 108.7 Falsification.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this part, or to exercise any privileges under this part.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued under this part.

§ 108.9 Security responsibilities of employees and other persons.

(a) No person may tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this part.

(b) No person may enter, or be present within, a secured area, AOA, SIDA, or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence in, such areas.

(c) No person may use, allow to be used, or cause to be used any airport-approved or aircraft operator-issued access medium or identification medium that authorizes the access, presence, or movement of persons or vehicles in secured areas, AOA's, or SIDA's, in any other manner than that for which it was issued by the appropriate authority under this part, or part 107 or part 129 of this chapter.

(d) The provisions of this section do not apply to persons authorized by an airport operator, aircraft operator, or foreign air carrier in accordance with its security program, or by the Administrator to conduct inspections for compliance with this part, part 107, or part 129 of this chapter, or 49 U.S.C. Subtitle VII, while they are conducting inspections.

Subpart B—Security Program

§ 108.101 Adoption and implementation.

(a) *Full program.* Each aircraft operator shall carry out Subparts C and D of this part and shall adopt and carry out a security program that meets the requirements of § 108.103 for any of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of more than 60 seats.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area.

(b) *Private charter program.* Each aircraft operator shall carry out § § 108.201, 108.207, 108.209, 108.213, 108.215, 108.217, 108.219, 108.229, 108.233, 108.235, 108.303, and 108.305 and shall adopt and carry out a security program that meets the applicable requirements of § 108.103 for any private charter operation in which passengers are enplaned from or deplaned into a sterile area.

(c) *Partial program—adoption.* Each aircraft operator shall carry out the requirements specified in paragraph (d) of this section for any of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of more than 30 and less than 61 seats that does not enplane from or deplane into a sterile area.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of less than 61 seats engaged in operations to, from, or outside the United States that does not enplane from or deplane into a sterile area.

(d) *Partial program—content.* For operations described in paragraph (c) of this section, the aircraft operator shall carry out the following, and shall adopt and carry out a security program that meets the applicable requirements of § 108.103(c):

(1) The requirements of § § 108.215, 108.217, 108.219, 108.235, 108.301, 108.303, and 108.305.

(2) Such other provisions of Subparts C and D of this part as the Administrator has approved upon request.

(3) The remaining requirements of Subparts C and D of this part when the Administrator notifies the aircraft operator in writing that a security threat exists concerning that operation.

(e) *Limited program.* The Administrator may approve a security program after receiving a request by an aircraft operator, holding a certificate under part 119 of this chapter other than one identified in paragraphs (a), (b), or (c) of this section. The aircraft operator shall—

(1) Carry out selected provisions of Subparts C and D of this part,

(2) Carry out § 108.305, as specified in its security program, and

(3) Adopt and carry out a security program that meets the applicable requirements of § 108.103(c).

§ 108.103 Form, content, and availability.

(a) *General requirements.* Each security program shall:

(1) Provide for the safety of persons and property traveling on flights provided by the aircraft operator against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, or deadly or dangerous weapons aboard an aircraft.

(2) Be in writing and signed by the aircraft operator or any person delegated authority in this matter.

(3) Be approved by the Administrator.

(b) *Availability.* Each aircraft operator having a security program shall:

(1) Maintain an original copy of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at each airport served. An electronic version of the program is adequate.

(3) Make a copy of the security program available for inspection upon request of the Administrator.

(4) Restrict the distribution, disclosure, and availability of information contained in the security program to persons with a need-to-know as described in part 191 of this chapter.

(5) Refer requests for such information by other persons to the Administrator.

(c) *Content.* The security program shall include, as specified for that aircraft operator in § 108.101, the following:

(1) The procedures and description of the facilities and equipment used to perform screening functions specified in § 108.201 regarding persons and their accessible property.

(2) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.203 regarding the acceptance and screening of checked baggage.

(3) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.205 regarding the acceptance and screening of cargo.

(4) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.207 regarding the use of metal detection devices.

(5) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.209 regarding the use of x-ray systems.

(6) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.211 regarding the use of explosives detection systems.

(7) The procedures used to comply with the requirements of § 108.213 regarding standards for screening personnel.

(8) The procedures used to comply with the requirements of § 108.215 regarding the responsibilities of security coordinators. The names of the Aircraft Operator Security Coordinator (AOSC) and any alternate, and the means for contacting the AOSC(s) on a 24-hour basis, as provided in § 108.215.

(9) The procedures used to comply with the requirements of § 108.217 regarding the requirements for law enforcement personnel.

(10) The procedures used to comply with the requirements of § 108.219 regarding carriage of accessible weapons.

(11) The procedures used to comply with the requirements of § 108.221 regarding carriage of prisoners under the control of armed law enforcement officers.

(12) The procedures used to comply with the requirements of § 108.223 regarding transportation of Federal Air Marshals.

(13) The procedures and description of the facilities and equipment used to perform the aircraft and facilities control function specified in § 108.225.

(14) The specific locations where the air carrier has entered into an exclusive area agreement under § 108.227.

(15) The procedures used to comply with the applicable requirements of § 108.229 regarding employment history investigations.

(16) The procedures used to comply with the requirements of § 108.231 regarding personnel identification systems.

(17) The procedures and syllabi used to accomplish the training required under § 108.233.

(18) The procedures and syllabi used to accomplish the training required under § 108.235.

(19) An aviation security contingency plan as specified under § 108.301.

(20) The procedures used to comply with the requirements of § 108.303 regarding bomb and air piracy threats.

§ 108.105 Approval and amendments.

(a) *Initial approval of security program.* Unless otherwise authorized by the Assistant Administrator, each aircraft operator required to have a security program under this part shall submit its proposed security program to the Assistant Administrator for approval at least 90 days before the date of intended passenger operations. The proposed security program shall meet the requirements applicable to its operation as described in § 108.101. Such requests will be processed as follows:

(1) The Assistant Administrator, within 30 days after receiving the proposed aircraft operator security program, will either approve the program or give the aircraft operator written notice to modify the program to comply with the applicable requirements of this part.

(2) The aircraft operator may either submit a modified security program to the Assistant Administrator for approval, or petition the Administrator to reconsider the notice to modify within 30 days of receiving a notice to modify. A petition for reconsideration shall be filed with the Assistant Administrator.

(3) The Assistant Administrator, upon receipt of a petition for reconsideration, either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either

directing the Assistant Administrator to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) *Amendment requested by an aircraft operator.* An aircraft operator may submit a request to the Assistant Administrator to amend its security program as follows:

(1) The request for an amendment shall be filed with the Assistant Administrator at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Assistant Administrator.

(2) Within 30 days after receiving a proposed amendment, the Assistant Administrator, in writing, either approves or denies the request to amend.

(3) An amendment to an aircraft operator security program may be approved if the Assistant Administrator determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the aircraft operator may petition the Administrator to reconsider the denial. A petition for reconsideration shall be filed with the Assistant Administrator.

(5) Upon receipt of a petition for reconsideration, the Assistant Administrator either approves the request to amend or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to approve the amendment, or affirm the denial.

(6) Any aircraft operator may submit a group proposal for an amendment that is on behalf of it and other aircraft operators that co-sign the proposal.

(c) *Amendment by the FAA.* If safety and the public interest require an amendment, the Assistant Administrator may amend a security program as follows:

(1) The Assistant Administrator notifies the aircraft operator, in writing, of the proposed amendment, fixing a period of not less than 30 days within which the aircraft operator may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the Assistant Administrator notifies the aircraft operator of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 days after the aircraft operator receives the notice of amendment, unless the aircraft operator petitions the Administrator to reconsider no later than 15 days before the effective date of the amendment. The aircraft operator shall send the petition for reconsideration to the Assistant Administrator. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the Assistant Administrator either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the amendment, or by affirming the amendment.

(d) *Emergency amendments.* If the Assistant Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the Assistant Administrator may issue an amendment, without the prior notice and comment procedures in paragraph (c) of this section, effective without stay on the date the aircraft operator receives notice of it. In such a case, the Assistant Administrator will incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The aircraft operator may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the emergency amendment.

Subpart C—Operations

§ 108.201 Screening of persons and accessible property.

(a) *General requirements.* Each aircraft operator shall use the facilities, equipment, and procedures described in its security program to prevent or deter the carriage of any explosive, incendiary, or deadly or dangerous weapon on or about each individual's person or accessible property before boarding an aircraft or entering a sterile area.

(b) *Screening of persons and accessible property.* Except as provided in its security program, each aircraft operator shall use the procedures included, and the facilities and equipment described, in its security program for detecting explosives, incendiaries, and deadly or dangerous weapons to inspect each person entering a sterile area at each preboard screening checkpoint in the United States for which it is responsible, and to inspect all accessible property under that person's control.

(c) *Submission to screening.* No person may enter a sterile area without submitting to the screening of his or her person and accessible property in accordance with the procedures being applied to control access to that area under this section.

(d) *Refusal to transport.* Each aircraft operator shall deny entry into a sterile area and shall refuse to transport—

(1) Any person who does not consent to a search or inspection of his or her person in accordance with the screening system prescribed in this section; and

(2) Any property of any person who does not consent to a search or inspection of that property in accordance with the screening system prescribed by this section.

(e) *Explosive, incendiary, deadly or dangerous weapon: Prohibitions.* (1) Except as provided in § § 108.219, 108.221, and 108.223, no aircraft operator may permit any person to have an explosive, incendiary, or deadly or dangerous weapon, on or about the individual's person or accessible property when onboard an aircraft.

(2) Except as provided in paragraph (f) of this section, no person may have an explosive, incendiary, or deadly or dangerous weapon, on or about the individual's person or accessible property—

(i) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area;

(ii) When entering or in a sterile area; or

(iii) When attempting to board or onboard an aircraft identified in § 108.101.

(f) *Explosive, incendiary, deadly or dangerous weapon: Exceptions.* The provisions of paragraph (d)(2) of this section with respect to firearms and weapons does not apply to the following:

(1) Law enforcement personnel required to carry a firearm or other weapons while in the performance of their duty at the airport.

(2) Persons authorized to carry a weapon in accordance with § § 108.219, 108.221, 108.223, or 129.27.

(3) Persons authorized to carry a weapon in a sterile area under a security program.

(g) *Staffing.* Each aircraft operator shall staff its security screening checkpoints with supervisory and non-supervisory personnel in accordance with the standards specified in its security program.

§ 108.203 Acceptance and screening of checked baggage.

(a) *General requirements.* Each aircraft operator shall use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of unauthorized explosives or incendiaries on board aircraft in checked baggage.

(b) *Acceptance.* Each aircraft operator shall ensure that checked baggage carried in the aircraft is received by its authorized aircraft operator representative.

(c) *Control.* Each aircraft operator shall use the procedures in its security program to control checked baggage that it accepts for transport on an aircraft, in a manner that:

(1) Prevents the unauthorized carriage of any explosive or incendiary aboard the aircraft.

(2) Prevents access by persons other than an aircraft operator employee or its agent.

(d) *Refusal to transport.* Each aircraft operator shall refuse to transport any person's checked baggage or property if the person does not consent to a search or inspection of that checked baggage or property in accordance with paragraph (a) of this section.

(e) *Firearms in checked baggage.* No aircraft operator may knowingly permit any person to transport, nor may a person transport or offer for transport in checked baggage:

(1) Any loaded firearm(s);

(2) Any unloaded firearm(s) unless—

(i) The passenger declares to the aircraft operator, either orally or in writing before checking the baggage that any firearm carried in the baggage is unloaded;

(ii) The firearm is carried in a hard-sided container;

(iii) The container in which it is carried is locked, and only the person checking the baggage retains the key or combination; and

(iv) The baggage containing the firearm is carried in an area, other than the flightcrew compartment, that is inaccessible to passengers;

(3) Any unauthorized explosive or incendiary.

(f) *Loaded firearm.* For the purpose of this section, a loaded firearm means a firearm, which has a live round of ammunition, or any component thereof, in the chamber or cylinder or in a magazine inserted in the firearm.

(g) *Ammunition.* This section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. Title 49 CFR part 175 provides additional requirements governing carriage of ammunition on aircraft.

§ 108.205 Acceptance and screening of cargo.

(a) *General requirements.* Each aircraft operator shall use the procedures, facilities and equipment described in its security program to prevent or deter the carriage of unauthorized explosives or incendiaries on board a passenger aircraft in cargo.

(b) *Control.* Each aircraft operator shall use the procedures in its security program to control cargo that it accepts for transport on an aircraft in a manner that:

(1) Prevents the carriage of any unauthorized explosive or incendiary aboard the aircraft.

(2) Prevents access by persons other than an aircraft operator employee or its agent.

(c) *Refusal to transport.* Each aircraft operator shall refuse to transport any cargo if the shipper does not consent to a search or inspection of that cargo in accordance with paragraph (a) of this section.

§ 108.207 Use of metal detection devices.

(a) No aircraft operator may use a metal detection device within the United States or under the aircraft operator's operational control outside the United States to inspect persons, unless specifically authorized under a security program under this part. No aircraft operator may use such a device contrary to its security program.

(b) Metal detection devices shall meet the calibration standards established by the FAA.

§ 108.209 Use of X-ray systems.

(a) No aircraft operator may use any X-ray system within the United States or under the aircraft operator's operational control outside the United States to inspect accessible property or checked baggage, unless specifically authorized under a security program under this part. No aircraft operator may use such a system in a manner contrary to its security program. The Administrator authorizes aircraft operators to use X-ray systems for inspecting accessible property or checked baggage under a security program if the aircraft operator shows that—

(1) The system meets the standards for cabinet X-ray systems primarily for the inspection of baggage issued by the Food and Drug Administration (FDA) and published in 21 CFR 1020.40;

(2) A program for initial and recurrent training of operators of the system is established, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of explosives, incendiaries, and deadly or dangerous weapons; and

(3) The system meets the imaging requirements set forth in its security program using the step wedge specified in American Society for Testing Materials (ASTM) Standard F792–88 (Reapproved 1993). This standard is incorporated by reference in paragraph (g) of this section.

(b) No aircraft operator may use any X-ray system unless, within the preceding 12 calendar months, a radiation survey is conducted that shows that the system meets the applicable performance standards in 21 CFR 1020.40.

(c) No aircraft operator may use any X-ray system after the system has been installed at a screening point or after the system has been moved unless a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40. A radiation survey is not required for an X-ray system that is designed and constructed as a mobile unit and the aircraft operator shows that it can be moved without altering its performance.

(d) No aircraft operator may use any X-ray system that is not in full compliance with any defect notice or modification order issued for that system by the FDA, unless the FDA has advised the FAA that the defect or failure to comply does not create a significant risk of injury, including genetic injury, to any person.

(e) No aircraft operator may use any X-ray system to inspect accessible property or checked baggage unless a sign is posted in a conspicuous place at the screening checkpoint or where checked baggage is accepted which notifies individuals that such items are being inspected by an X-ray and advises them to remove all X-ray, scientific, and high-speed film from accessible property and checked baggage before inspection. This sign shall also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any accessible property or checked baggage to more than one milliroentgen during the inspection, the aircraft operator shall post a sign that advises individuals to remove film of all kinds from their articles before inspection. If requested by individuals, their photographic equipment and film packages shall be inspected without exposure to an X-ray system.

(f) Each aircraft operator shall maintain at least one copy of the results of the most recent radiation survey conducted under paragraph (b) or (c) of this section and shall make it available

for inspection upon request by the Administrator at each of the following locations—

(1) The aircraft operator's principal business office; and

(2) The place where the X-ray system is in operation.

(g) The American Society for Testing and Materials (ASTM) Standard F792–88 (Reapproved 1993), ''Standard Practice for Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas,'' was approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. ASTM Standard F792–88 may be examined at the Department of Transportation (DOT) Docket, 400 Seventh Street SW, Room Plaza 401, Washington, DC 20590, or on DOT's Docket Management System (DMS) web page at *http://dms.dot.gov/search* (under docket number FAA–2001–8725). Copies of the standard may be examined also at the Office of the Federal Register, 800 North Capitol St., NW, Suite 700, Washington, DC. In addition, ASTM Standard F792–88 (Reapproved 1993) may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(h) Each aircraft operator shall comply with the X-ray operator duty time limitations specified in its security program.

§ 108.211 Use of explosives detection systems.

(a) If the Administrator so requires by an amendment to an aircraft operator's security program, each aircraft operator required to conduct screening under a security program shall use an explosives detection system approved by the Administrator to screen checked baggage on international flights.

(b) No aircraft operator may use an explosives detection system that uses X-ray technology to inspect checked baggage unless a sign is posted in a conspicuous place where checked baggage is accepted, which notifies individuals that such items are being inspected by an explosives detection system and advises them to remove all X-ray, scientific, and high-speed film from checked baggage before inspection. This sign shall also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an explosives detection system. If the explosives detection system exposes any checked baggage to more than one milliroentgen during the inspection the aircraft operator shall post a sign which advises individuals to remove film of all kinds from their articles before inspection. If requested by individuals, their photographic equipment and film packages shall be inspected without exposure to an explosives detection system.

§ 108.213 Employment standards for screening personnel.

(a) No aircraft operator may use any person to perform any screening function, unless that person has:

(1) A high school diploma, a General Equivalency Diploma, or a combination of education and experience that the aircraft operator has determined to have equipped the person to perform the duties of the position.

(2) Basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

(i) Screeners operating X-ray equipment shall be able to distinguish on the X-ray monitor the appropriate imaging standard specified in the aircraft operator's security program. Wherever the X-ray system displays colors, the operator shall be able to perceive each color;

(ii) Screeners operating any screening equipment shall be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies;

(iii) Screeners shall be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment;

(iv) Screeners performing physical searches or other related operations shall be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing; and

(v) Screeners who perform pat-downs or hand-held metal detector searches of persons shall have sufficient dexterity and capability to thoroughly conduct those procedures over a person's entire body.

(3) The ability to read, speak, and write English well enough to—

(i) Carry out written and oral instructions regarding the proper performance of screening duties;

(ii) Read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

(iii) Provide direction to and understand and answer questions from English-speaking persons undergoing screening; and

(iv) Write incident reports and statements and log entries into security records in the English language.

(4) Satisfactorily completed all initial, recurrent, and appropriate specialized training required by the aircraft operator's security program, except as provided in paragraph (b) of this section.

(b) The aircraft operator may use a person who has not completed the training required by paragraph (a)(4) of this section during the on-the-job portion of training to perform security functions provided that the person:

(1) Is closely supervised; and

(2) Does not make independent judgments as to whether persons or property may enter a sterile area or aircraft without further inspection.

(c) No aircraft operator shall use a person to perform a screening function after that person has failed an operational test related to that function until that person has successfully completed the remedial training specified in the aircraft operator's security program.

(d) Each aircraft operator shall ensure that a Ground Security Coordinator conducts and documents an annual evaluation of each person assigned screening duties and may continue that person's employment in a screening capacity only upon the determination by the Ground Security Coordinator that the person:

(1) Has not suffered a significant diminution of any physical ability required to perform a screening function since the last evaluation of those abilities;

(2) Has a satisfactory record of performance and attention to duty based on the standards and requirements in its security program; and

(3) Demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

(e) Paragraphs (a) through (d) of this section do not apply to those screening functions conducted outside the United States over which the aircraft operator does not have operational control. In the event the aircraft operator is unable to implement paragraphs (a) through (d) of this section for screening functions outside the United States, the aircraft operator shall notify the Administrator of those aircraft operator stations so affected.

(f) At locations outside the United States where the aircraft operator has operational control over a screening function, the aircraft operator may use screeners who do not meet the requirements of paragraph (a)(3) of this section, provided that at least one representative of the aircraft operator who has the ability to functionally read and speak English is present while the

aircraft operator's passengers are undergoing security screening.

§ 108.215 Security coordinators.

(a) *Aircraft Operator Security Coordinator.* Each aircraft operator shall designate and use an Aircraft Operator Security Coordinator (AOSC). The AOSC and any alternates shall be appointed at the corporate level and shall serve as the aircraft operator's primary contact for security-related activities and communications with the FAA, as set forth in the security program. Either the AOSC, or an alternate AOSC, shall be available on a 24-hour basis.

(b) *Ground Security Coordinator.* Each aircraft operator shall designate and use a Ground Security Coordinator for each domestic and international flight departure to carry out the Ground Security Coordinator duties specified in the aircraft operator's security program. The Ground Security Coordinator at each airport shall conduct the following daily:

(1) A review of all security-related functions for effectiveness and compliance with this part, the aircraft operator's security program, and applicable Security Directives.

(2) Immediate initiation of corrective action for each instance of noncompliance with this part, the aircraft operator's security program, and applicable Security Directives. At foreign airports where such security measures are provided by an agency or contractor of a host government, the aircraft operator shall notify the Administrator for assistance in resolving noncompliance issues.

(c) *In-flight Security Coordinator.* Each aircraft operator shall designate and use the pilot in command as the In-flight Security Coordinator for each domestic and international flight to perform duties specified in the aircraft operator's security program.

§ 108.217 Law enforcement personnel.

(a) The following applies to operations at airports within the United States not required to hold a security program under part 107 of this chapter:

(1) For operations described in § 108.101(a) each aircraft operator shall provide for law enforcement personnel meeting the qualifications and standards specified in §§ 107.215 and 107.217 of this chapter.

(2) For operations described in § 108.101(b) or (c) each aircraft operator shall—

(i) Arrange for law enforcement personnel meeting the qualifications and standards specified in § 107.217 of this chapter to be available to respond to an incident; and

(ii) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

(b) The following applies to operations at airports required to hold security programs under part 107 of this chapter. For operations described in § 108.101(c), each aircraft operator shall—

(1) Arrange with the airport operator for law enforcement personnel meeting the qualifications and standards specified in § 107.217 of this chapter to be available to respond to incidents; and

(2) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

§ 108.219 Carriage of accessible weapons.

(a) *Flights for which screening is conducted.* The provisions of § 108.201(e), with respect to accessible deadly or dangerous weapons, do not apply to a law enforcement officer (LEO) aboard a flight for which screening is required if the requirements of this section are met. This paragraph (a) does not apply to a Federal Air Marshal on duty status under § 108.223.

(1) Unless otherwise authorized by the Administrator, the armed LEO shall meet the following requirements:

(i) Be a Federal law enforcement officer or a full-time municipal, county, or state law enforcement officer who is a direct employee of a government agency.

(ii) Be sworn and commissioned to enforce criminal statutes or immigration statutes.

(iii) Be authorized by the employing agency to have the weapon in connection with assigned duties.

(iv) Has completed the training program ''Law Enforcement Officers Flying Armed.''

(2) In addition to the requirements of paragraph (a)(1) of this section, the armed LEO must have a need to have the weapon accessible from the time he or she would otherwise check the weapon until the time it would be claimed after deplaning. The need to have the weapon accessible shall be determined by the employing agency, department, or service and be based on one of the following:

(i) The provision of protective duty, for instance, assigned to a principal or advance team, or on travel required to be prepared to engage in a protective function.

(ii) The conduct of a hazardous surveillance operation.

(iii) On official travel required to report to another location, armed and prepared for duty.

(iv) Employed as a Federal LEO, whether or not on official travel, and armed in accordance with an agency-wide policy governing that type of travel established by the employing agency by directive or policy statement.

(v) Control of a prisoner, in accordance with § 108.221, or an armed LEO on a round trip ticket returning from escorting, or traveling to pick up, a prisoner.

(vi) FAA Federal Air Marshal on duty status.

(3) The armed LEO shall comply with the following notification requirements:

(i) All armed LEOs shall notify the aircraft operator of the flight(s) on which he or she needs to have the weapon accessible at least 1 hour, or in an emergency as soon as practicable, before departure.

(ii) Identify himself or herself to the aircraft operator by presenting credentials that include a clear full-face picture, the signature of the armed LEO, and the signature of the authorizing official of the agency, service, or department or the official seal of the agency, service, or department. A badge, shield, or similar device may not be used, or accepted, as the sole means of identification.

(iii) If the armed LEO is a State, county, or municipal law enforcement officer, he or she shall present an original letter of authority, signed by an authorizing official from his or her employing agency, service or department, confirming the need to travel armed and detailing the itinerary of the travel while armed.

(iv) If the armed LEO is an escort for a foreign official then this paragraph (a)(3) may be satisfied by a State Department notification.

(4) The aircraft operator shall do the following:

(i) Obtain information or documentation required in paragraphs (a)(3)(ii), (iii), and (iv) of this section.

(ii) Advise the armed LEO, before boarding, of the aircraft operator's procedures for carrying out this section.

(iii) Have the LEO confirm he/she has completed the training program ''Law Enforcement Officers Flying Armed'' as required by the FAA, unless otherwise authorized by the Administrator.

(iv) Ensure that the identity of the armed LEO is known to the appropriate personnel who are responsible for security during the boarding of the aircraft.

(v) Notify the pilot in command and other appropriate crewmembers, of the location of each armed LEO aboard the

aircraft. Notify any other armed LEO of the location of each armed LEO, including FAM's. Under circumstances described in the security program, the aircraft operator must not close the doors until the notification is complete.

(vi) Ensure that the information required in paragraphs (a)(3)(i) and (ii) of this section is furnished to the flight crew of each additional connecting flight by the Ground Security Coordinator or other designated agent at each location.

(b) *Flights for which screening is not conducted.* The provisions of § 108.201(e), with respect to accessible deadly or dangerous weapons, do not apply to a LEO aboard a flight for which screening is not required if the requirements of paragraphs (a)(1), (3), and (4) of this section are met.

(c) *Alcohol.* (1) No aircraft operator may serve any alcoholic beverage to an armed LEO.

(2) No armed LEO may:

(i) Consume any alcoholic beverage while aboard an aircraft operated by an aircraft operator.

(ii) Board an aircraft armed if they have consumed an alcoholic beverage within the previous 8 hours.

(d) *Location of weapon.* (1) Any person traveling aboard an aircraft while armed shall at all times keep their weapon:

(i) Concealed and out of view, either on their person or in immediate reach, if the armed LEO is not in uniform.

(ii) On their person, if the armed LEO is in uniform.

(2) No person may place a weapon in an overhead storage bin.

§ 108.221 Carriage of prisoners under the control of armed law enforcement officers.

(a) This section applies as follows:

(1) This section applies to the transport of prisoners under the escort of an armed law enforcement officer.

(2) This section does not apply to the carriage of passengers under voluntary protective escort.

(3) This section does not apply to the escort of non-violent detainees of the Immigration and Naturalization Service. This section does not apply to persons who may be traveling with a prisoner and armed escort, such as the family of a deportee who is under armed escort.

(b) For the purpose of this section:

(1) *High risk prisoner* means a prisoner who is an exceptional escape risk, as determined by the law enforcement agency, and charged with, or convicted of, a violent crime.

(2) *Low risk prisoner* means any prisoner who has not been designated as ''high risk.''

(c) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless, in addition to the requirements in § 108.219, the following requirements are met:

(1) The agency responsible for control of the prisoner has determined whether the prisoner is considered a high risk or a low risk.

(2) Unless otherwise authorized by the Administrator, no more than one high risk prisoner shall be carried on the aircraft.

(d) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless the following staffing requirements are met:

(1) A minimum of one armed law enforcement officer shall control a low risk prisoner on a flight that is scheduled for 4 hours or less. No more than two low risk prisoners may be carried under the control of any one armed law enforcement officer.

(2) A minimum of two armed law enforcement officers shall control a low risk prisoner on a flight that is scheduled for more than 4 hours. No more than two low risk prisoners may be carried under the control of any two armed law enforcement officers.

(3) For high-risk prisoners:

(i) For one high-risk prisoner on a flight: A minimum of two armed law enforcement officers shall control a high risk prisoner. No other prisoners may be under the control of those two armed law enforcement officers.

(ii) If the Administrator has authorized more than one high-risk prisoner to be on the flight under paragraph (c)(2) of this section, a minimum of at least one armed law enforcement officer for each prisoner and one additional armed law enforcement officer shall control the prisoners. No other prisoners may be under the control of those armed law enforcement officers.

(e) An armed law enforcement officer who is escorting a prisoner—

(1) Shall notify the aircraft operator at least 24 hours before the scheduled departure, or, if that is not possible as far in advance as possible of the following—

(i) The identity of the prisoner to be carried and the flight on which it is proposed to carry the prisoner; and

(ii) Whether or not the prisoner is considered to be a high risk or a low risk.

(2) Shall arrive at the check-in counter at least 1 hour before to the scheduled departure.

(3) Shall assure the aircraft operator, before departure, that each prisoner under the control of the officer(s) has been searched and does not have on or about his or her person or property anything that can be used as a deadly or dangerous weapon.

(4) Shall be seated between the prisoner and any aisle.

(5) Shall accompany the prisoner at all times, and keep the prisoner under control while aboard the aircraft.

(f) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft unless the following are met:

(1) When practicable, the prisoner shall be boarded before any other boarding passengers and deplaned after all other deplaning passengers.

(2) The prisoner shall be seated in a seat that is neither located in any passenger lounge area nor located next to or directly across from any exit and, when practicable, the aircraft operator should seat the prisoner in the rearmost seat of the passenger cabin.

(g) Each armed law enforcement officer escorting a prisoner and each aircraft operator shall ensure that the prisoner is restrained from full use of his or her hands by an appropriate device that provides for minimum movement of the prisoner's hands, and shall ensure that leg irons are not used.

(h) No aircraft operator may provide a prisoner under the control of a law enforcement officer—

(1) With food or beverage or metal eating utensils unless authorized to do so by the armed law enforcement officer.

(2) With any alcoholic beverage.

§ 108.223 Transportation of Federal Air Marshals.

(a) A Federal Air Marshal on duty status may have a deadly or dangerous weapon accessible while aboard an aircraft for which screening is required.

(b) Each aircraft operator shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled passenger operation, and public charter passenger operation designated by the Administrator.

(c) Each Federal Air Marshal shall be carried on a first priority basis and without charge while on duty, including positioning and repositioning flights. When a Federal Air Marshal is assigned to a scheduled flight that is canceled for any reason, the aircraft operator shall carry that Federal Air Marshal without charge on another flight as designated by the Administrator.

(d) Each aircraft operator shall assign the specific seat requested by a Federal Air Marshal who is on duty status. If another LEO is assigned to that seat or

requests that seat, the aircraft operator shall inform the Federal Air Marshal. The Federal Air Marshal will coordinate seat assignments with the other LEO.

(e) The Federal Air Marshal identifies himself or herself to the aircraft operator by presenting credentials that include a clear, full-face picture, the signature of the Federal Air Marshal, and the signature of the Administrator. A badge, shield, or similar device may not be used or accepted as the sole means of identification.

(f) The requirements of § 108.219(a) do not apply for a Federal Air Marshal on duty status.

(g) Each aircraft operator shall restrict any information concerning the presence, seating, names, and purpose of Federal Air Marshals at any station or on any flight to those persons with an operational need to know.

(h) Law enforcement officers authorized to carry a weapon during a flight will be contacted directly by a Federal Air Marshal who is on that same flight.

§ 108.225 Security of aircraft and facilities.

Each aircraft operator shall use the procedures included, and the facilities and equipment described, in its security program to perform the following control functions with respect to each aircraft operation:

(a) Prevent unauthorized access to areas controlled by the aircraft operator under an exclusive area agreement in accordance with § 107.111 of this chapter.

(b) Prevent unauthorized access to each aircraft.

(c) Conduct a security inspection of each aircraft before placing it into passenger operations if access has not been controlled in accordance with the aircraft operator security program and as otherwise required in the security program.

§ 108.227 Exclusive Area Agreement.

(a) An aircraft operator that has entered into an exclusive area agreement with an airport operator, under § 107.111 of this chapter shall carry out that exclusive area agreement.

(b) The aircraft operator shall list in its security program the locations at which it has entered into exclusive area agreements with an airport operator.

(c) The aircraft operator shall provide the exclusive area agreement to the Administrator upon request.

(d) Any exclusive area agreements in effect on November 14, 2001 shall meet the requirements of this section and § 107.111 of this chapter no later than November 14, 2002.

§ 108.229 Employment history, verification, and criminal history records checks.

(a) *Scope.* The following persons are within the scope of this section:

(1) Each employee or contractor employee covered under a certification made to an airport operator, pursuant to § 107.209(n)(1) of this chapter, made on or after November 24, 1998.

(2) Each individual issued aircraft operator identification media that one or more airports accept as airport approved media for unescorted access within a security identification display area (SIDA) as described in § 107.205 of this chapter.

(3) Each individual assigned, after November 24, 1998, to perform at locations within the United States the following functions:

(i) Screen passengers or property that will be carried in a cabin of an aircraft of an aircraft operator required to screen passengers under this part.

(ii) Serve as an immediate supervisor (checkpoint security supervisor (CSS)), or the next supervisory level (shift or site supervisor), to those individuals described in paragraph (a)(3)(i) of this section.

(b) *Employment history investigations required.* Each aircraft operator shall ensure that, for each individual described in paragraph (a) of this section, the following requirements are met:

(1) The individual has satisfactorily undergone Part 1 of an employment history investigation. Part 1 consists of a review of the previous 10-years of employment history and verification of the 5 employment years preceding the date the employment history investigation is initiated as provided in paragraph (c) of this section; and

(2) If required by paragraph (c)(5) of this section, the individual has satisfied Part 2 of the employment history investigation. Part 2 is the process to determine if the individual has a criminal record. To satisfy Part 2 of the investigation the criminal records check shall not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years ending on the date of such investigation, of any of the crimes listed as follows:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306;

(ii) Interference with air navigation, 49 U.S.C. 46308;

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312;

(iv) Aircraft piracy, 49 U.S.C. 46502;

(v) Interference with flightcrew members or flight attendants, 49 U.S.C. 46504;

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506;

(vii) Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505;

(viii) Conveying false information and threats, 49 U.S.C. 49 46507;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b);

(x) Lighting violations involving transporting controlled substances, 49 U.S.C. 46315;

(xi) Unlawful entry into an aircraft or airport area that serves aircraft operators or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314;

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson; or

(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

(3) If an individual admits to a conviction, or to having been found not guilty by reason of insanity, in any jurisdiction within the preceding ten years of a crime listed in paragraph (b)(2) of this section, the investigative process shall end and the individual shall not be granted unescorted access or assigned to any functions listed in paragraph (a)(3) of this section.

(c) *Investigative steps.* Part 1 of the employment history investigations shall be completed on all persons described in paragraph (a) of this section. If required by paragraph (c)(5) of this section, Part 2 of the employment history investigation shall also be completed on all persons listed in paragraph (a) of this section.

(1) The individual shall provide the following information on an application:

(i) The individual's full name, including any aliases or nicknames;

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12

consecutive months, during the previous 10-year period;

(iii) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The aircraft operator shall include on the application form a notification that the individual will be subject to an employment history verification and possibly a criminal records check.

(3) The aircraft operator shall verify the identity of the individual through the presentation of two forms of identification, one of which shall bear the individual's photograph.

(4) The aircraft operator shall verify the information on the most recent 5 years of employment history required under paragraph (c)(1)(ii) of this section. Information shall be verified in writing, by documentation, by telephone, or in person.

(5) If one or more of the conditions (triggers) listed in paragraphs (c)(5)(i) through (iv) of this section exist, the employment history investigation shall not be considered complete unless Part 2 is accomplished. Only the aircraft operator may initiate Part 2. Part 2 consists of a comparison of the individual's fingerprints against the fingerprint files of known criminals maintained by the Federal Bureau of Investigation (FBI). The comparison of the individual's fingerprints shall be processed through the FAA. The aircraft operator may request a check of the individual's fingerprint-based criminal record only if one or more of the following conditions exist:

(i) The individual does not satisfactorily account for a period of unemployment of 12 consecutive months or more during the previous 10-year period.

(ii) The individual is unable to support statements made on the application form.

(iii) There are significant inconsistencies in the information provided on the application.

(iv) Information becomes available to the aircraft operator during the investigation indicating a possible conviction for one of the crimes listed in paragraph (b)(2) of this section.

(d) *Individual notification.* Prior to commencing the criminal records check, the aircraft operator shall notify the affected individuals and identify a point of contact for follow-up. An individual who chooses not to submit fingerprints may not be granted unescorted access privilege and may not be allowed to hold screener or screener supervisory positions.

(e) *Fingerprint processing.* If a fingerprint comparison is necessary under paragraph (c)(5) of this section to complete the employment history investigation the aircraft operator shall collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints shall be recorded on fingerprint cards approved by the FBI and distributed by the FAA for this purpose.

(2) The fingerprints shall be obtained from the individual under direct observation by the aircraft operator or a law enforcement officer. Individuals submitting their fingerprints shall not take possession of their fingerprint card after they have been fingerprinted.

(3) The identity of the individual shall be verified at the time fingerprints are obtained. The individual shall present two forms of identification, one of which shall bear the individual's photograph.

(4) The fingerprint card shall be forwarded to FAA at the location specified by the Administrator.

(5) Fees for the processing of the criminal records checks are due upon application. Aircraft operators shall submit payment through corporate check, cashier's check, or money order made payable to ''U.S. FAA,'' at the designated rate for each fingerprint card. Combined payment for multiple applications is acceptable. The designated rate for processing the fingerprint cards is available from the local FAA security office.

(f) *Determination of arrest status.* In conducting the criminal record checks required by this section, the aircraft operator shall not consider the employment history investigation complete unless it investigates arrest information for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded and makes a determination that the arrest did not result in a disqualifying conviction.

(g) *Availability and correction of FBI records and notification of disqualification.* (1) At the time Part 2 is initiated and the fingerprints are collected, the aircraft operator shall notify the individual that a copy of the criminal record received from the FBI will be made available to the individual if requested in writing. When requested in writing, the aircraft operator shall make available to the individual a copy of any criminal record received from the FBI.

(2) Prior to making a final decision to deny authorization to an individual described in paragraph (a) of this section, the aircraft operator shall advise the individual that the FBI criminal record discloses information that would disqualify him/her from positions covered under this rule and provide him/her with a copy of their FBI record if requested.

(3) The aircraft operator shall notify an individual that a final decision has been made to forward or not forward a letter of certification for unescorted access to the airport operator, or to grant or deny the individual authority to perform screening functions listed under paragraph (a)(3) of this section.

(h) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his/her record before the aircraft operator makes any decision to withhold his/her name from a certification, or not grant authorization to perform screening functions subject to the following conditions:

(1) Within 30 days after being advised that the criminal record received from the FBI discloses disqualifying information, the individual shall notify the aircraft operator, in writing, of his/her intent to correct any information believed to be inaccurate.

(2) Upon notification by an individual that the record has been corrected, the aircraft operator shall obtain a copy of the revised FBI record prior to making a final determination.

(3) If no notification is received within 30 days, the aircraft operator may make a final determination.

(i) *Limits on dissemination of results.* Criminal record information provided by the FBI shall be used solely for the purposes of this section, and no person may disseminate the results of a criminal record check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) Aircraft operator officials with a need to know; and

(3) Others designated by the Administrator.

(j) *Employment status while awaiting criminal record checks.* Individuals who have submitted their fingerprints and are awaiting FBI results may perform work details under the following conditions:

(1) Those seeking unescorted access to the SIDA shall be escorted by someone who has unescorted SIDA access privileges;

(2) Those applicants seeking positions covered under paragraph (a)(3)(i) of this section, may not exercise any independent judgments regarding those functions.

(k) *Recordkeeping.* (1) The aircraft operator shall physically maintain and control Part 1 employment history

investigation file until 180 days after the termination of the individual's authority for unescorted access or termination from positions covered under paragraph (a)(3) of this section. Part 1 of the employment history investigation, completed on screening personnel shall be maintained at the airport where they perform screening functions. Part 1 of the employment history investigation file shall consist of the following:

(i) The application;

(ii) The employment verification information obtained by the employer;

(iii) The names of those individuals from whom the employment verification information was obtained;

(iv) The date and the method of how the contact was made; and

(v) Any other information as required by the Administrator.

(2) The aircraft operator shall physically maintain, control, and when appropriate, destroy Part 2 the criminal record file, for each individual for whom a fingerprint comparison has been made. Part 2 shall be maintained for 180 days after the termination of the individual's authority for unescorted access or after the individual ceases to perform screening functions. Only direct aircraft operator employees may carry out Part 2 responsibilities. Part 2 shall consist of the following:

(i) The results of the record check; or

(ii) Certification from the aircraft operator that the check was completed and did not uncover a disqualifying conviction.

(3) The files required by this paragraph shall be maintained in a manner that is acceptable to the Administrator and in a manner that protects the confidentiality of the individual.

(l) *Continuing responsibilities.* (1) Any individual authorized to have unescorted access privilege to the SIDA or who performs functions covered under paragraph (a)(3) of this section, who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section shall, within 24 hours, report the conviction to the aircraft operator and surrender the SIDA access medium or any employment related identification medium to the issuer.

(2) If information becomes available to the aircraft operator indicating that an individual has a possible conviction for one of the disqualifying crimes in paragraph (b)(2) of this section, the aircraft operator shall determine the status of the conviction and, if the conviction is confirmed:

(i) Immediately revoke access authorization for unescorted access to the SIDA; or

(ii) Immediately remove the individual from screening functions covered under paragraph (a)(3) of this section.

(m) *Aircraft operator responsibility.* The aircraft operator shall:

(1) Designate an individual(s) to be responsible for maintaining and controlling the employment history investigation for those whom the aircraft operator has made a certification to an airport operator under § 107.209(n)(1) of this chapter and for destroying the criminal record files when their maintenance is no longer required by paragraph (k)(2) of this section.

(2) Designate an individual(s) to maintain and control Part 1 of the employment history investigations of screeners whose files shall be maintained at the location or station where the screener is performing his or her duties.

(3) Designate an individual(s) to serve as the contact to receive notification from an individual applying for either unescorted access or those seeking to perform screening functions of his/her intent to seek correction of his/her criminal record with the FBI.

(4) Designate an individual(s) to maintain and control Part 2 of the employment history investigation file for all employees, contractors, or others who undergo a fingerprint comparison at the request of the aircraft operator.

(5) Audit the employment history investigations performed in accordance with this section. The audit process shall be set forth in the aircraft operator security program.

§ 108.231 Airport-approved and exclusive area personnel identification systems.

(a) Each aircraft operator shall establish and carry out a personnel identification system for identification media that are airport-approved, or identification media that are issued for use in an exclusive area. The system shall include the following:

(1) Personnel identification media that—

(i) Convey a full face image, full name, employer, and identification number of the individual to whom the identification medium is issued;

(ii) Indicate clearly the scope of the individual's access and movement privileges;

(iii) Indicate clearly an expiration date; and

(iv) Are of sufficient size and appearance as to be readily observable for challenge purposes.

(2) Procedures to ensure that each individual in the secured area or SIDA continuously displays the identification medium issued to that individual on the outermost garment above waist level, or is under escort.

(3) Procedures to ensure accountability through the following:

(i) Retrieving expired identification media.

(ii) Reporting lost or stolen identification media.

(iii) Securing unissued identification media stock and supplies.

(iv) Auditing the system at a minimum of once a year, or sooner, as necessary to ensure the integrity and accountability of all identification media.

(v) As specified in the aircraft operator security program, revalidate the identification system or reissue identification media if a portion of all issued, unexpired identification media are lost, stolen, or unretrieved, including identification media that are combined with access media.

(vi) Ensure that only one identification medium is issued to an individual at a time. A replacement identification medium may only be issued if an individual declares in writing that the medium has been lost or stolen.

(b) The aircraft operator may request approval of a temporary identification media system that meets the standards in § 107.211(b) of this chapter, or may arrange with the airport to use temporary airport identification media in accordance with that section.

(c) Each aircraft operator shall submit a plan to carry out this section to the Administrator no later than May 13, 2002. Each aircraft operator shall fully implement its plan no later than November 14, 2003.

§ 108.233 Security coordinators and crewmembers, training.

(a) No aircraft operator may use any person as a Ground Security Coordinator unless, within the preceding 12-calendar months, that person has satisfactorily completed the security training as specified in the aircraft operator's security program.

(b) No aircraft operator may use any person as an in-flight security coordinator or crewmember on any domestic or international flight unless, within the preceding 12-calendar months or within the time period specified in an Advanced Qualifications Program approved under SFAR 58, that person has satisfactorily completed the security training required by § 121.417(b)(3)(v) or § 135.331(b)(3)(v) of this chapter, and as specified in the aircraft operator's security program.

(c) With respect to training conducted under this section, whenever a person completes recurrent training within one

calendar month earlier, or one calendar month after the date it was required, that person is considered to have completed the training in the calendar month in which it was required.

§ 108.235 Training and knowledge for persons with security-related duties.

(a) No aircraft operator may use any direct or contractor employee to perform any security-related duties to meet the requirements of its security program unless that person has received training as specified in its security program including their individual responsibilities in § 108.9.

(b) Each aircraft operator shall ensure that individuals performing security-related duties for the aircraft operator have knowledge of the provisions of part 108, applicable Security Directives and Information Circulars, the approved airport security program applicable to their location, and the aircraft operator's security program to the extent that such individuals need to know in order to perform their duties.

Subpart D—Threat and Threat Response

§ 108.301 Contingency plan.

Each aircraft operator shall adopt a contingency plan and shall:

(a) Implement its contingency plan when directed by the Administrator.

(b) Ensure that all information contained in the plan is updated annually and that appropriate persons are notified of any changes.

(c) Participate in an airport operator-sponsored exercise of the airport contingency plan or its equivalent, as provided in its security program.

§ 108.303 Bomb or air piracy threats.

(a) *Flight: Notification.* Upon receipt of a specific and credible threat to the security of a flight, the aircraft operator shall—

(1) Immediately notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any measures to be applied;

(2) Ensure that the in-flight security coordinator notifies all crewmembers of the threat, any evaluation thereof, and any measures to be applied; and

(3) Immediately notify the appropriate airport operator.

(b) *Flight: Inspection.* Upon receipt of a specific and credible threat to the security of a flight, each aircraft operator shall attempt to determine whether or not any explosive or incendiary is present by doing the following:

(1) Conduct a security inspection on the ground before the next flight or, if the aircraft is in flight, immediately after its next landing.

(2) If the aircraft is on the ground, immediately deplane all passengers and submit that aircraft to a security search.

(3) If the aircraft is in flight, immediately advise the pilot in command of all pertinent information available so that necessary emergency action can be taken.

(c) *Ground Facility.* Upon receipt of a specific and credible threat to a specific ground facility at the airport, the aircraft operator shall:

(1) Immediately notify the appropriate airport operator.

(2) Inform all other aircraft operators and foreign air carriers at the threatened facility.

(3) Conduct a security inspection.

(d) *Notification.* Upon receipt of any bomb threat against the security of a flight or facility, or upon receiving information that an act or suspected act of air piracy has been committed, the aircraft operator also shall notify the Administrator. If the aircraft is in airspace under other than U.S. jurisdiction, the aircraft operator shall also notify the appropriate authorities of the State in whose territory the aircraft is located and, if the aircraft is in flight, the appropriate authorities of the State in whose territory the aircraft is to land. Notification of the appropriate air traffic controlling authority is sufficient action to meet this requirement.

§ 108.305 Security Directives and Information Circulars.

(a) The Administrator may issue an Information Circular to notify aircraft operators of security concerns. When the Administrator determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, the Administrator issues a Security Directive setting forth mandatory measures.

(b) Each aircraft operator required to have an approved aircraft operator security program shall comply with each Security Directive issued to the aircraft operator by the Administrator, within the time prescribed in the Security Directive for compliance.

(c) Each aircraft operator that receives a Security Directive shall—

(1) Within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to the Administrator.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the aircraft operator is unable to implement the measures in the Security Directive, the aircraft operator shall submit proposed alternative measures and the basis for submitting the alternative measures to the Administrator for approval. The aircraft operator shall submit the proposed alternative measures within the time prescribed in the Security Directive. The aircraft operator shall implement any alternative measures approved by the Administrator.

(e) Each aircraft operator that receives a Security Directive may comment on the Security Directive by submitting data, views, or arguments in writing to the Administrator. The Administrator may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each aircraft operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular shall:

(1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with an operational need-to-know.

(2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those with an operational need-to-know without the prior written consent of the Administrator.

Issued in Washington, DC, on July 2, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–16995 Filed 7–10–01; 10:32 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
July 17, 2001

Part IV

Department of the Treasury

Customs Service

19 CFR Part 177
Administrative Rulings; Proposed Rule

DEPARTMENT OF THE TREASURY

CUSTOMS SERVICE

19 CFR Part 177

RIN 1515–AC56

Administrative Rulings

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed amendments to those provisions of the Customs Regulations that concern the issuance of administrative rulings and related written determinations and decisions on prospective and current transactions arising under the Customs and related laws. The proposed regulatory changes include amendments to Customs procedures in response to statutory changes made to the administrative ruling process by section 623 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, as well as organizational changes to clarify current administrative practice and otherwise improve the layout and readability of the present regulatory texts. The proposed changes involve principally the following areas: The issuance of rulings and other written advice on prospective transactions; the appeal of prospective rulings after issuance; the modification or revocation of prospective rulings or of protest review decisions or of treatment previously accorded by Customs to substantially identical transactions; the limitation of court decisions; the issuance, appeal, and modification or revocation of internal advice decisions on current transactions; and the treatment of requests for confidential treatment of business information submitted to Customs in connection with a request for written advice.

DATES: Comments must be received on or before September 17, 2001.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Elkins, Textiles Branch, Office of Regulations and Rulings (202–927–2380).

SUPPLEMENTARY INFORMATION:

Background

Part 177 of the Customs Regulations (19 CFR part 177) contains general provisions regarding the issuance of binding administrative rulings to importers and other interested persons with regard to prospective and current transactions arising under the Customs and related laws and also contains provisions covering the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement. The provisions regarding binding rulings under the Customs and related laws, which constitute the primary focus of this document, are currently set forth in subpart A of part 177 and do not include rulings, determinations, or decisions under specific statutory authorities provided for elsewhere in the Customs Regulations (for example, in part 133 for enforcement actions regarding intellectual property rights, in part 174 for protests, and in part 181 for advance rulings under the North American Free Trade Agreement). The provisions regarding Government procurement country-of-origin advisory rulings and final determinations are set forth in Subpart B of Part 177 and are not dealt with in this document.

On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057). Title VI of that Act contained provisions pertaining to Customs Modernization and thus is commonly referred to as the Customs Modernization Act or ''Mod Act.'' The Mod Act included two statutory amendments that have particular relevance to the part 177 regulatory provisions.

Section 640 of the Mod Act amended section 502 of the Tariff Act of 1930, as amended (19 U.S.C. 1502), which, in paragraph (a), sets forth the authority of the Secretary of the Treasury to promulgate rules and regulations for the appraisement and classification of merchandise. The Mod Act amendment involved the insertion of the following parenthetical expression in the paragraph (a) text: ''(including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned).''

Section 623 of the Mod Act extensively amended section 625 of the Tariff Act of 1930 as described above. The Mod Act amendment involved the following specific changes:

1. The then-existing text was designated as paragraph (a) and the following substantive changes were made within that text: the ''120 days'' time limit was replaced by ''90 days''; and the reference to ''any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision)'' was replaced by a reference to ''any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision.''

2. A new paragraph (b) was added to provide that a person may appeal an adverse interpretive ruling, and any interpretation of any regulation prescribed to implement such ruling, to a higher level of authority within Customs for de novo review. The new paragraph (b) text further provides that, upon a reasonable showing of business necessity, the appeal must be considered and decided no later than 60 days following the date on which the appeal was filed.

3. A new paragraph (c) was added to require publication, in the *Customs Bulletin* and with opportunity for public comment, of a proposed interpretive ruling or decision which would modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days or which would have the effect of modifying the treatment previously accorded by Customs to substantially identical transactions. This new paragraph (c) text further provides: That interested parties must be given not less than 30 days after the date of publication to submit comments on the proposed ruling or decision; that, after consideration of any comments received, a final ruling or decision must be published in the *Customs Bulletin* within 30 days after the closing of the comment period; and that the final ruling or decision will become effective 60 days after the date of its publication.

4. A new paragraph (d) was added to provide that a decision that proposes to limit the application of a court decision must be published in the Customs Bulletin together with notice of opportunity for public comment prior to a final decision.

5. Finally, a new paragraph (e) was added to provide that the Secretary of the Treasury may make available in writing or through electronic media all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations, subject to any exemption from disclosure provided by the Freedom of Information Act (5 U.S.C. 552).

With regard to the amendment made by section 640 of the Mod Act, Customs does not believe that it is necessary to amend the existing part 177 regulatory texts to implement this statutory amendment. Rather, Customs believes that it would be sufficient, as a matter of editorial clarity, to expressly refer to 19 U.S.C. 1502 in the authority citation for part 177.

On the other hand, the amendment of section 625 effected by section 623 of the Mod Act clearly requires extensive modifications to the part 177 texts, particularly to reflect requirements and procedures for the appeal and modification or revocation of rulings and for the limitation of court decisions. In addition, Customs has performed a detailed, overall review of the existing provisions within subpart A of part 177 and has concluded as a result of that review that a number of additional organizational and editorial changes should be made in order to update and otherwise enhance the clarity, application, and organization of those regulatory texts. The proposed changes set forth in this document, other than those involving minor wording or other editorial changes, are discussed in more detail below.

Overview of Proposed Changes

The principal proposed organizational changes set forth in this document involve the following:

1. Present § 177.0 (Scope) would be eliminated and its terms would be included as part of a new § 177.1 (a general overview of the part) which, together with new § 177.2 (definitions) would comprise new subpart A (general provisions). These changes are primarily intended to better explain the purpose and content of part 177 and to facilitate the division of present subpart A as described below.

2. Present subpart B (country-of-origin advisory rulings and final determinations relating to Government procurement) would be redesignated as subpart E, and present subpart A would be divided into three new subparts B (advice on prospective transactions), C (internal advice procedure) and D (disclosure of confidential business information). The division of present subpart A is intended to achieve the following:

a. By treating the internal advice procedure (set forth at present in § 177.11) separately in subpart C, the contextual and procedural distinctions between that current transaction procedure and the prospective advice procedure under subpart B should be clearer; and

b. By covering the issue of confidential treatment of business information separately in subpart D, those provisions can be expanded to reflect current Treasury and Customs procedures and practice and can apply equally and without unnecessary repetition to information submitted to Customs either under subpart B or under subpart C.

The principal proposed changes set forth in this document involve the following: 1. The following proposed changes would address statutory changes made by section 623 of the Mod Act as mentioned above:

a. Inclusion of appeal provisions for adverse prospective rulings (§ 177.20) and adverse internal advice decisions (§ 177.33);

b. Inclusion of a provision (§ 177.21) covering the modification or revocation of prospective rulings, internal advice decisions, protest review decisions, and treatment previously accorded by Customs to substantially identical transactions; and

c. Inclusion of a provision (§ 177.23) regarding publication of decisions that propose to limit the application of court decisions.

2. It is proposed to eliminate the principle of detrimental reliance (which was a purely regulatory creation) from the part 177 texts because the Mod Act statutory amendments regarding the modification or revocation of rulings and previous treatment (including the provision for a delayed effective date) accomplish essentially the same purpose and therefore should be viewed as replacing it. However, some aspects of the detrimental reliance concept have been retained (see the discussion of § 177.21 below).

3. Except in the case of § 177.22 (established and uniform practice) where the regulatory text is directly based on 19 U.S.C. 1315(d), it is proposed to remove all references to ''uniform practice'' or ''practice'' from the part 177 texts, because the statutory and regulatory modification/revocation standards and the proposed regulatory provisions regarding third party reliance have rendered these provisions redundant or otherwise unnecessary.

4. It is proposed to eliminate the provision regarding inconsistent Customs decisions (present § 177.12) because other procedures (including the proposed modification/revocation and internal advice procedures as set forth in this document) would accomplish much of the same purpose. Moreover, elimination of this provision will avoid any potential conflict with those statutory modification/revocation publication and effective date provisions.

5. Under the proposed subpart B prospective transaction provisions:

a. General reference is made to prospective ''advice'' in order to accommodate not only binding rulings but also written advice in the form of non-binding information letters;

b. The concept of Customs-initiated prospective rulings has been clarified, and procedural safeguards have been included that provide (1) that the involved private person in most cases will be afforded a 30-day period in which to present his written views to Customs before issuance of the ruling and (2) that the ruling may not be prepared below the level of a Field National Import Specialist; and

c. The list of circumstances in which a prospective ruling will not be issued has been expanded. One of these circumstances would include a case in which the ruling requester has previously received a ruling on an identical or similar transaction and that previous ruling has been the subject of an appeal under § 177.20 or a modification or revocation under § 177.21. The purpose of this provision is to limit a ruling requester to no more than ''two-bites-at-the-apple.'' It has been included by Customs as a matter of administrative necessity in order to set an appropriate limit to the number of times that a private party may avail himself of administrative ruling and related procedures involving the same issue.

6. Under the proposed subpart C internal advice provisions:

a. A Customs field office will have discretion in most cases on whether to seek internal advice except where the regulatory text specifically mandates, or specifically precludes, use of the procedure. Thus, as a general rule, an importer or other interested person will not have an absolute right to initiate the internal advice procedure;

b. Similar to the approach that has been used for applications for further review of protests under part 174 of the Customs Regulations (19 CFR part 174), one of several specific criteria would have to be met in order to request internal advice;

c. Similar to the approach followed for the issuance of prospective rulings under subpart B, the proposed text sets forth specific circumstances in which internal advice may not be requested, including where the interested person has already received a prospective ruling on the same issue (the two-bites-at-the-apple limitation would apply, and thus either an appeal of the ruling under subpart B or the allowing of an

application for further review of a protest under part 174 would constitute the permissible second bite); and

d. As in the case of Customs-initiated prospective rulings under subpart B, the importer or other interested person will have an opportunity to present his written views to Customs before issuance of the internal advice decision, even when the internal advice procedure is initiated within Customs rather than at the request of the interested person.

7. Under the proposed subpart D confidential treatment provisions:

a. A failure to request confidential treatment at the time the information is submitted to Customs will constitute a waiver of confidential treatment of that information, and no request for confidential treatment will be entertained by Customs if the information covered by the request was previously submitted to Customs without a request for confidential treatment;

b. A request for confidential treatment may cover any information submitted to Customs under subpart B or subpart C, including information submitted with an appeal or in connection with a Customs-initiated ruling or in connection with a request for internal advice initiated by Customs;

c. In the case of an appeal of a ruling or when a ruling or an internal advice request is initiated by an importer or other interested person, a failure of Customs and the submitting person to reach agreement on a request for confidential treatment either will cause Customs to close the case file without action (that is, without issuing the requested ruling or internal advice decision or appeal decision) or, if the information at issue is contained in a further submission, will cause Customs to proceed with the ruling or internal advice decision or appeal decision without considering the further submission. In either case the appeal or the ruling or internal advice request or the further submission normally will be returned to submitting person; and

d. A grant of confidential treatment generally would be valid for a period of 3 years and may be renewed for additional periods of up to 3 years each.

Section-by-Section Discussion of Proposed Changes

Subpart A (General Provisions)

Section 177.1

This section provides a general overview of part 177, in question-and-answer (Q&A) format, and includes the terms of present § 177.0 (scope) and present § 177.1(a)–(c) regarding general ruling practice, a general description of the structure and content of the Part, and more specific details regarding the operation of the prospective advice and internal advice programs under subparts B and C.

The Q&A format was chosen in order to make the provisions more accessible and understandable to the average reader, in particular for purposes of alerting the prospective reader up front as to what benefits part 177 may offer, without requiring the reader to read through all of the considerable technical detail that of necessity must be contained in the part. The information provided in this Q&A format is intended to complement, and not replace, the more detailed corresponding proposed regulatory provisions set forth later in the part. Accordingly, each reader is ultimately responsible for consulting the specific, detailed provision in question and therefore should not place sole reliance on a statement made in the Q&A text.

Section 177.2

This definitions section replaces present § 177.1(d) and applies only for purposes of subparts A through D (the country-of-origin Government procurement provisions in redesignated Subpart E include a separate definitions section).

This section includes new definitions of ''National Commodity Specialist Division'' and ''person.'' These new definitions are self-explanatory.

The following changes are proposed for the definitions contained in present § 177.1(d):

1. The definition of ''authorized agent'' has been modified to specify only attorneys at law, licensed customs brokers, and any other persons who are not representing a principal under part 177 in regard to a matter that constitutes ''customs business'' as defined in 19 U.S.C. 1641(a)(2). Customs has reexamined the statutory definition of ''customs business'' and has concluded that requesting rulings and making representations under part 177 will, in the great majority of cases, involve matters that fall within the definition of ''customs business'' and that should be left to those classes of persons who are specially qualified (for attorneys by virtue of admission to the bar and for customs brokers by virtue of being licensed to transact customs business pursuant to 19 U.S.C. 1641 and 19 CFR part 111) to make those requests and representations. The third class of authorized agent mentioned in the proposed text recognizes, however, that there are some matters that arise under part 177 that do not constitute ''customs business'' and therefore should not be so restricted (for example, issues involving marine transactions or transportation of merchandise in bond—see 19 CFR 111.2(a)(2)(iii) and (iv)).

2. The definition of ''Customs transaction'' has been modified to more clearly distinguish between the three types of Customs transactions and to ensure that a ''current'' or a ''completed'' Customs transaction is not interpreted to include the filing of a ruling request under part 177.

3. The definition of ''ruling'' has been modified:

a. To include a reference to issuance by the National Commodity Specialist Division which is an organizational part of the Office of Regulations and Rulings but is physically separate from the Headquarters Office;

b. To refer to issuance under subpart B and subpart C to reflect the move of the internal advice procedure provisions to subpart C; and

c. To refer to the fact that a ruling may be issued in the absence of a specific request (Customs-initiated ruling).

Subpart B (Advice on Prospective Transactions)

Section 177.11

This section concerns the preparation and submission of ruling requests involving prospective Customs transactions and replaces present § 177.2. The following points are noted regarding the changes reflected in the proposed new text:

1. In paragraph (a):

a. Specific provision is made for submission of the request in the English language, because Customs does not have the resources needed to translate requests prepared in other languages; and

b. For purposes of submitting a ruling request to Customs, a clearer and more specific subject matter jurisdictional division between the National Commodity Specialist Division and the Headquarters Office has been provided.

2. In paragraph (b) which concerns the content of ruling requests:

a. Statements have been added to remind the reader that a ruling is issued on the facts presented and that a ruling based on inaccurate or incomplete information will not be applied to the transaction for which it was intended;

b. The requirement to identify the port where the prospective transaction will take place has been removed, because it is unnecessarily burdensome and has minimal legal relevance or utility;

c. The specifications for the description of specific types of

transactions for which rulings may be requested have been updated and otherwise revised, and specifications for additional types of transactions have been included, in order to provide more effective and precise guidance for the potential ruling requester;

d. The paragraph concerning samples submitted in connection with a ruling request has been modified to provide that samples will be returned only at the expense of the ruling requester and to provide that samples not returned or retained by Customs or consumed during examination will be disposed of according to law 90 days after disposition of the ruling request;

e. The paragraph requiring a statement concerning the existence of prior or current transactions has been revised to require submission of the statement in the form of a signed certification;

f. The paragraph regarding privileged or confidential information has been revised to provide that the ruling requester who wants confidential treatment of information must make a written request for that treatment when the information is submitted to Customs and in conformity with the provisions of Subpart D; and

g. A new paragraph has been added to require inclusion of a statement in the ruling request if the ruling requester wants to have a conference when issuance of an adverse ruling is contemplated.

3. Present paragraph (d), which concerns requests for immediate consideration, has been transferred, with textual changes, to new § 177.17 because it appears to relate more directly to the rulings issuance process. Of course, there is nothing that would preclude a ruling requester from including a request for expedited consideration in his ruling request, and Customs would consider it in accordance with the principles stated in new § 177.17.

Section 177.12

This section concerns nonconforming requests for rulings and replaces present § 177.3. The only changes of note involve (1) providing for closing the Customs file in the case of a nonconforming request sent to the Headquarters Office that is not brought into conformity within the prescribed period, (2) providing for the immediate return of the request to the requester and closing of the file without further action in the case of a nonconforming request sent to the National Commodity Specialist Division but without prejudice to resubmission, and (3) inclusion of a statement that if a ruling request is sent to the wrong office, there will be a delay in processing the request while it is forwarded to the correct office (but the request would not be treated as a nonconforming request under the section).

Section 177.13

This section concerns conferences on issues raised in ruling requests and replaces present § 177.4. The following points are noted regarding changes reflected in the proposed new text:

1. Conferences may be held only at the Headquarters Office and only in connection with rulings to be issued by that office. If a request for a conference (see proposed § 177.11(b)(9)) is made in a ruling request submitted to the National Commodity Specialist Division and an adverse ruling is contemplated and the matter cannot be resolved informally by the ruling requester and that office, the ruling request will be forwarded to the Headquarters Office for processing (forwarding to the Headquarters Office is simply intended to preserve the ruling requester's right to have a conference in the described circumstances).

2. Although a ruling requester will retain the right to have a conference if requested and provided that an adverse ruling is contemplated, under the revised text a conference also may be held whenever the Headquarters Office believes that a conference is necessary.

3. The paragraph regarding representation has been modified to clarify that while there is no restriction regarding who may accompany a ruling requester at a conference, only an ''authorized agent'' may appear at the conference in place of the ruling requester.

4. If additional information is to be provided after a conference, the new text prescribes a 30-day period (or longer period as may be specified by the Headquarters Office) for submission of that information.

Section 177.14

This section concerns changes in the status of transactions (in particular when a prospective transaction described in a ruling request becomes a current transaction or when the ruling requester learns that a summons involving the same issue has been filed in the Court of International Trade) and replaces present § 177.5. The text has been simplified to specify two basic circumstances in which a person must advise Customs of a change and the possible consequences for failing to do so.

Section 177.15

This section concerns the withdrawal of ruling requests and replaces present § 177.6. The text has been modified (1) to require that the withdrawal be in writing, (2) to refer to an exception under the new Subpart D texts to the normal rule that Customs will retain the ruling request and related materials in its file after a withdrawal, and (3) to more clearly state that Customs may issue a ruling on the matter on its own initiative notwithstanding the withdrawal if it is believed necessary for the sound administration of the Customs and related laws.

Section 177.16

This section specifies situations in which a ruling will not be issued and replaces present § 177.7. The list of situations has been significantly expanded and includes, among other things, the two-bites-at-the-apple principle discussed above in the overview of the changes to the prospective ruling provisions.

Section 177.17

This section concerns the issuance of rulings and replaces those portions of present § 177.8 that specifically concern the issuance process. Paragraph (a) covers the issuance of rulings in response to requests and includes, in paragraph (a)(3), a simplified text taken from present § 177.2(d) regarding the handling of requests for immediate consideration. It should also be noted that the provision in paragraph (a)(2) for issuance of ruling request responses by the National Commodity Specialist Division within 30 days is not intended to be mandatory because in some cases a longer period may be necessary. Paragraph (b) deals with the issuance of Customs-initiated rulings (as already discussed above in the overview of the changes to the prospective ruling provisions). It should be noted that an exception to the 30-day written submission period will apply to Customs-initiated rulings involving admissibility issues, because admissibility issues often involve time-sensitive enforcement considerations requiring immediate action on the part of Customs.

Section 177.18

This section sets forth the requirement of recipients to bring prospective rulings to the attention of Customs field offices and to use positions set forth in those rulings when completing entry documentation. It in effect replaces present § 177.8(a)(2).

Section 177.19

This section concerns the effect of prospective rulings and in effect replaces present § 177.9(a)–(c).

Section 177.20

This section sets forth procedures regarding the appeal of adverse prospective rulings issued under subpart B. This section is entirely new and implements the terms of 19 U.S.C. 1625(b) as added by section 623 of the Mod Act. The following points are noted regarding the proposed text which is otherwise self-explanatory:

1. Although the statute refers to the appeal of an adverse ''interpretive'' ruling, the proposed text refers to ''prospective'' rulings to ensure coverage of all rulings issued under subpart B.

2. Although the proposed text makes provision for conferences at the Headquarters Office, it differs from the initial prospective ruling procedure by providing for conferences not as a matter of right but rather only if the Headquarters Office believes that a conference is necessary.

3. An appeal under this section would constitute a second bite under the two-bites-at-the-apple principle discussed above.

4. With regard to rulings that are modified or revoked on appeal, the effective date provisions in paragraph (g)(4) of the proposed text must reflect a distinction between rulings that have been in effect for less than 60 days and those that have been in effect for 60 or more days because, in the latter case, the publication and effective date requirements of 19 U.S.C. 1625(c) and proposed new § 177.21 will control.

Section 177.21

This section implements the modification and revocation provisions of 19 U.S.C. 1625(c) as added by section 623 of the Mod Act and it also in effect replaces present § 177.9(d) and (e). The following points are noted regarding this proposed text:

1. The proposed text reflects a decision Customs has taken to use a prospective ruling as the means for carrying out a modification or revocation referred to in the statute or in the present regulatory text. Therefore, under the general statement in paragraph (a) of the proposed text a prospective ruling issued under subpart B of part 177 can (1) modify or revoke a previously issued prospective ruling, (2) modify or revoke a previously issued internal advice decision, (3) modify or revoke a holding or principle covered by a protest review decision issued previously under part 174, or (4) have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions. The following additional points are noted regarding the general content of this section:

a. The text reflects the statutory requirement of *Customs Bulletin* publication and thus ensures that the modification or revocation procedure will be controlled by the Headquarters Office;

b. The text refers to the modification or revocation of a ''prospective'' ruling (rather than an ''interpretive'' ruling) because, similar to the case of appeals under proposed § 177.20, this will ensure coverage of all rulings issued under subpart B; and

c. The text refers to the modification or revocation of a ''holding or principle covered by'' a protest review decision rather than using only the term ''protest review decision'' that appears in 19 U.S.C. 1625. Customs notes in this regard that protests and protest review decisions arise under a separate statutory and regulatory framework (19 U.S.C. 1514 and 1515 and 19 CFR part 174) and involve Customs decisions taken on current transactions. A previously issued protest review decision may already have resulted in an action (for example, reliquidation of an entry) that has become final and therefore is not technically susceptible to modification or revocation. On the other hand, a holding or principle reflected in a protest review decision can always be modified or revoked for purposes of applying the new position to prospective or current transactions.

Customs also notes that protests, by virtue of their separate statutory and regulatory framework, represent an exception to the rule that applies when a ruling issued under part 177 is modified or revoked pursuant to 19 U.S.C. 1625(c), because the statutory right to file a protest cannot be infringed by an action taken by Customs under another statutory authority. Therefore, when the same issue is involved in a pending protest and in a proposed modification or revocation under 19 U.S.C. 1625(c), Customs will first conclude the 19 U.S.C. 1625(c) procedure and then issue a decision on the protest consistent with the position taken in the modifying or revoking ruling unless the protestant is entitled to a different decision due to application of any procedural delay.

2. Paragraph (b) of the proposed text concerns the procedures for modifying or revoking prospective rulings, internal advice decisions, and holdings or principles covered by protest review decisions. The following points are noted regarding this text:

a. The text reflects the statutory distinction between rulings, etc. that have been in effect for less than 60 days and those that have been in effect for 60 or more days. In the latter case the text sets forth proposed and final action *Customs Bulletin* publication procedures. The modification and revocation procedures set forth in this paragraph reflect the procedures that Customs has followed under authority of the statute since the Mod Act provisions were enacted;

b. In addition to soliciting comments on the proposed modification or revocation, the notice of the proposed action invites members of the public who have received an affected ruling, etc., but who are not specifically identified in the notice, to advise Customs in writing of that fact during the prescribed 30-day comment period. The purpose of this provision is to give all affected ruling, etc. recipients an opportunity to come forward to Customs so that they would be notified in writing of the final action taken on the proposed modification or revocation. It should be noted that a failure to respond to this solicitation would have no effect on the ruling, etc. recipient's statutory and regulatory rights regarding the effective date of the final modification or revocation action, including his right to exercise the option of having application of the modification or revocation to his transactions commencing on the date of publication of the final notice of modification or revocation rather than only upon the close of the statutory 60-day delayed effective date period (see the discussion below regarding the paragraph (e) effective date provisions); and

c. The text makes it clear that a published final modifying or revoking notice applies to all existing rulings and decisions that involve substantially identical merchandise or issues, including rulings and decisions that are not specifically identified in that final notice.

3. Paragraph (c) of the proposed text sets forth the standards that apply to the issuance of a prospective ruling that has the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions. The following points are noted regarding the proposed text:

a. Paragraph (c)(1) includes a definition of the term ''treatment,'' describes the general approach Customs will take in applying that definition to a specific situation, provides that a person may not claim as a treatment the treatment Customs accorded to

transactions of another person (because treatment is personal and thus not transferable), provides that the burden of proving the existence of a treatment is on the person claiming the treatment, and prescribes standards for evidence of previous treatment. In setting forth these regulatory standards, Customs has relied in part on the text of present § 177.9(e) which concerns the use of delayed effective dates in the case of ruling letters covering transactions or issues not previously the subject of ruling letters and which have the effect of modifying the treatment previously accorded by Customs to substantially identical transactions. Customs believes that use of the present regulatory standards in this new regulatory text is appropriate because, given the similarity in language, it seems clear that the present regulation served as the model for the subsequently enacted statutory text except that application of a delayed effective date is now mandated. However, in the definition of ''treatment,'' the proposed regulatory text differs from the present regulatory standard in providing that Customs will give ''no weight'' (rather than ''diminished weight'') to transactions that Customs for facilitation purposes processes expeditiously and without examination or import specialist review. This proposed text is intended to reflect present Customs operational reality, that is, the fact that under selectivity and bypass and related procedures Customs simply does not intervene in the vast majority of the approximately 18 million formal entries filed annually (98 percent of which are filed electronically and over 60 percent of which do not require the presentation of invoices to Customs). Customs believes that it would be inappropriate to conclude, as a legal matter, that Customs accorded treatment to a transaction in those circumstances;

b. Paragraph (c)(2)(i) describes the normal circumstance in which Customs will publish in the *Customs Bulletin* a notice of intent to modify or revoke a treatment, that is, when Customs has reason to believe at the outset that the proposed prospective ruling would have that effect. In this case the regulatory text states that the notice will be published either separately or as part of a notice of a proposed modification or revocation of a ruling, etc. under paragraph (b), will solicit comments on the proposed modification or revocation, and will invite members of the public to advise Customs in writing if they have received the same treatment on substantially identical transactions (as in the case of rulings, etc., a failure to respond to the notice would not prejudice a treatment recipient's right to avail himself of the benefits of the effective date provisions under paragraph (e)). The text also provides for publication of a notice of final action on the proposed modification or revocation; and

c. Paragraph (c)(2)(ii) sets forth a second circumstance in which Customs might publish a notice of intent to modify or revoke a treatment, that is, when Customs issues a prospective ruling without being aware that it would have that effect but after issuance receives a written application from a person claiming previous treatment and requesting a delay in the effective date of the prospective ruling with respect to his transactions. In this case, if Customs agrees with the position of the person regarding the existence of the previous treatment: (1) the prospective ruling in effect would be void as regards the person who established that he had the previous treatment, and (2) Customs would continue the treatment previously accorded to that person's substantially identical transactions pending completion of the proposed modification or revocation and final action publication procedures prescribed in paragraph (c)(2)(i). The proposed text sets no time limit for submission of the written application.

Paragraph (c)(2)(ii) has been included in the section text because the statutory publication requirements regarding modification or revocation of a treatment merely require the existence of a treatment and thus do not require advance knowledge on the part of Customs regarding the existence of the treatment. This being the case, in the absence of publication of notice of a proposed modification or revocation of a ruling, etc. under paragraph (b) which would automatically solicit comments regarding existing treatments, a post-issuance mechanism must be provided whereby interested persons may inform Customs of the existence of treatments of which Customs is not otherwise aware (Customs does not keep the types of records that would enable Customs to determine routinely and independently that a treatment is being affected by a prospective ruling). As part of the general solicitation of public comments set forth in this document, Customs is interested in receiving comments on the approach proposed in this paragraph, including suggestions for any alternative approaches that commenters believe would be preferable.

4. Paragraph (d) sets forth exceptions to application of the notice requirements of paragraphs (b) and (c). The following is noted regarding the proposed text:

a. Paragraph (d)(1) sets forth a general statement and specific examples of circumstances in which Customs will not follow the paragraph (b) or paragraph (c) publication and issuance requirements. These circumstances generally involve modifications and revocations that result from governmental (legislative, judicial or administrative) decisions or other actions taken outside Customs or that result from publication procedures pursuant to other statutory authority. This paragraph has been included because it would be unreasonable, excessively burdensome, and unnecessary to require Customs to follow the paragraph (b) or paragraph (c) publication and issuance requirements with regard to matters as to which the public already has notice regarding their effect (by operation of law or otherwise) and with regard to changes that do not result from the exercise of discretionary decision-making authority on the part of Customs.

Paragraph (d)(1)(v) refers to the publication of a decision in the **Federal Register** as a result of a domestic interested party petition, which is a procedure that (similar to a protest) has its own statutory and regulatory framework (19 U.S.C. 1516 and 19 CFR part 175) and that (similar to the 19 U.S.C. 1625(c) procedure) provides for public notice and comment. This paragraph was included because Customs does not believe that sound administrative practice would be well served by repeating in a 19 U.S.C. 1625(c) procedure what was already accomplished in a 19 U.S.C. 1516 context. While cases that could potentially give rise to both statutory procedures will occur only infrequently, Customs has developed the following internal approach to avoid any possible conflict between the two procedures: (1) if Customs agrees with the position presented by a domestic interested party under 19 U.S.C. 1516, Customs will then attempt to determine whether there is an extant ruling, internal advice decision, protest review decision or treatment that is in conflict with that position and, if it is determined that a conflict exists, then Customs will initiate the 19 U.S.C. 1625(c) modification or revocation procedure; or (2) if the position of Customs differs from the position of the domestic interested party and that party contests the Customs position, the matter will be resolved in accordance with the 19 U.S.C. 1516 publication procedures. As part of the general solicitation of public comments contained in this document,

Customs is interested in receiving comments on the Customs position regarding this specific matter.

b. Paragraph (d)(2) sets forth three specific circumstances in which Customs will issue a modifying or revoking ruling but is not required to follow the paragraph (b) or paragraph (c) *Customs Bulletin* publication procedure. The reference to correction of a clerical error reflects the terms of 19 U.S.C. 1625(c)(1) and the reference to rulings issued under the NAFTA regulations reflects the fact that different standards apply to the modification or revocation of advance rulings under the NAFTA.

5. Paragraph (e) prescribes rules regarding the effective dates and application of modifications and revocations under § 177.21. The following is noted regarding the proposed text:

a. Paragraph (e)(1) covers the modification or revocation of prospective rulings, internal advice decisions, and holdings or principles covered by protest review decisions that have been in effect for less than 60 days. The proposed text provides for an effective date for the modifying or revoking ruling, and for its application to transactions, commencing on the date of issuance because the statutory *Customs Bulletin* publication and delayed effective date provisions do not apply in this case;

b. Paragraph (e)(2) covers the modification or revocation of prospective rulings, internal advice decisions, and holdings or principles covered by protest review decisions that have been in effect for 60 or more days. The proposed text provides that the modifying or revoking notice will be effective 60 days after publication of the final modifying or revoking notice in the *Customs Bulletin,* in keeping with the statutory delayed effective date provision which applies in this case. With regard to the application of the modifying or revoking notice to transactions, the proposed text states that it will apply to merchandise entered, or withdrawn from warehouse for consumption, and provided that liquidation of the entry in question has not become final, as follows: (1) sixty days after publication of the final modifying or revoking notice in the *Customs Bulletin*; or (2) at the option of the person whose goods are in question, commencing on the date of publication of the final modifying or revoking notice in the *Customs Bulletin.*

This proposal for alternatives in applying the modification or revocation to transactions is not specifically addressed in the delayed effective date language of the statute. However, Customs believes that Congress intended to protect importers and other persons who deal directly with Customs from the effect of unilateral decisions taken by Customs without prior notice. Thus, Customs believes that the proposal could have the following results: (1) It would allow the importer or other interested party to obtain a result earlier if the result reflected in the modifying or revoking notice is favorable to his position; (2) it would afford Customs more flexibility to apply the correct legal position at an earlier date (provided the importer or other interested person requests it); (3) it would reduce the need to resort to other administrative remedies (such as filing protests and applications for further review) at a later date; (4) by leaving the choice to the importer or other interested party who is always the best judge of what is in his interest, it would preserve the basic purpose behind the statutory delayed effective date provision; and (5) it is consistent with the principle that underlies the statutory obligation of an importer to exercise reasonable care when entering merchandise; and

c. Paragraph (e)(3) covers the modification or revocation of treatment previously accorded to substantially identical transactions. Because the statutory *Customs Bulletin* publication and delayed effective date provisions apply in this case, this paragraph follows the general approach taken in paragraph (e)(2) regarding the effective date of the modification or revocation and its application to transactions, but the text in regard to advancing the date of application refers to ''a person who makes a valid claim regarding previous treatment.'' The additional observations regarding paragraph (e)(2) therefore also apply to this paragraph.

As part of the general solicitation of public comments set forth in this document, Customs would be interested in receiving specific comments regarding the suitability of the proposal in paragraphs (e)(2) and (e)(3) of this section to allow alternatives in applying a final modifying or revoking notice to transactions.

Section 177.22

This section concerns changes in established and uniform practices under 19 U.S.C. 1315(d) that result in a higher rate of duty or charge and is in part derived from present § 177.10(c). The following points are noted regarding the proposed new text:

1. Paragraph (a) sets forth traditional administrative and judicial principles regarding the meaning of an established and uniform practice and clarifies that the burden is on the importer to prove the existence of the practice except when Customs publishes a notice of a practice on its own initiative under paragraph (c). Similar to the approach taken in the definition of ''treatment'' in proposed § 177.21(c)(1) as discussed above, this paragraph (a) text provides that ''treatment accorded by Customs'' means an actual review of entries and does not include cases where Customs had no direct, active involvement in the liquidation of the entry.

2. Paragraph (b) concerns the procedures applicable to changes in established and uniform practices and is based both on the statute and on the present regulatory text.

3. Paragraph (c) concerns publication of notice of the existence of an established and uniform practice by Customs on its own initiative. Once Customs publishes the notice of that practice in the *Customs Bulletin,* the practice would become subject to the paragraph (b) change procedures.

Section 177.23

This section sets forth specific procedures for the limitation of court decisions. It implements 19 U.S.C. 1625(d) and in effect replaces present § 177.10(d). The terms of the proposed text are otherwise self-explanatory.

Section 177.24

This section concerns the availability of rulings to the public. It implements the terms of 19 U.S.C. 1625(a) and in effect replaces present § 177.10(a). The following points are noted regarding the proposed new text:

1. The text elaborates on the statutory language in referring to all ''rulings'' issued under Part 177 (rather than to only ''interpretive rulings'') to ensure maintenance of the broad availability of all part 177 rulings as has been the practice of Customs since adoption of the Mod Act statutory changes.

2. Although the reference to ''rulings'' would cover internal advice decisions issued under proposed new subpart C, it would not cover protest review decisions issued under part 174 of the regulations. Customs intends to address this matter in the context of a separate part 174 regulatory document.

3. An exception has been included for rulings already made available to the public by virtue of publication under proposed §§ 177.21, 177.22 and 177.23.

Subpart C (Internal Advice Procedure)

Section 177.31

This section concerns requests for advice by Customs offices in general and is based on the general statement contained in present § 177.11(a).

Section 177.32

This section sets forth the standards that apply to requests for advice on current transactions and in effect replaces present § 177.11(b). The following points are noted regarding the proposed text:

1. Paragraph (a) concerns requests for advice in circumstances in which a prospective ruling has been issued. The text corresponds to present § 177.11(b)(1). The following is noted regarding this proposed paragraph (a) text:

a. In cases involving requests initiated by Customs, the text provides that the importer or other interested person having an interest in the current transaction at issue will be given 30 days to make a written submission on the issue; and

b. In cases involving requests initiated by importers or other interested persons, the text provides that, so long as the matter meets the paragraph (c) standards for internal advice, the decision to request advice is solely at the discretion of the Customs office and will be made in writing within 30 days.

2. Paragraph (b) concerns requests for advice in circumstances in which a prospective ruling has not been issued. The text corresponds to present § 177.11(b)(2). The following is noted regarding this proposed paragraph (b) text:

a. In proposed paragraph (b)(1), the text follows proposed paragraph (a) regarding written submissions when requests are initiated by Customs and regarding the discretion of the Customs office to request advice. However, the text also contains an exception to that discretionary authority in cases involving differences in tariff treatment as provided in proposed paragraph (b)(2); and

b. Paragraph (b)(2) mandates that a Customs office request internal advice, subject to two conditions, when it learns that two or more Customs offices are applying different tariff results to the same merchandise. The text also provides that an importer of merchandise, as a function of the exercise of reasonable care, has an obligation to inform Customs when he files his entry if he knows that a ''difference'' situation exists regarding his importations. This provision is intended to foster uniformity in tariff application and in effect replaces present § 177.12 in this regard.

3. Paragraph (c) sets forth criteria for internal advice and has no specific counterpart in the present § 177.11 text. The following is noted regarding this proposed paragraph (c) text:

a. Proposed paragraph (c)(1) sets forth specific circumstances in which internal advice may be requested and is modeled on the criteria for further review of protests contained in present § 174.24 but with changes to reflect an internal advice context. It should be noted that these new criteria for internal advice do not permit the mere allegation of a fact by an importer or other interested person to establish that a criterion for internal advice has been met; and

b. Proposed paragraph (c)(2) lists specific circumstances in which internal advice may not be requested and is similar to proposed § 177.16 (which specifies when a prospective ruling under Subpart B will not be issued) but with changes to reflect an internal advice context. Thus, this proposed text incorporates, among other things, the two-bites-at-the-apple principle discussed above.

4. Paragraph (d) sets forth content standards for submissions or requests made by importers and other interested persons and in effect replaces present § 177.11(b)(3). The text has been modified to align on the language used in proposed § 177.11(b) for prospective ruling requests as regards conferences, requests for confidential treatment and, if the second criterion for internal advice is used, the certification as regards pending consideration and accuracy of the information provided.

5. Paragraph (e) concerns the initial review of statements submitted by importers and other interested persons and is based on present § 177.11(b)(4).

6. Paragraph (f) sets forth procedures regarding the submission and processing of requests for internal advice. The following is noted regarding this proposed paragraph (f) text:

a. Proposed paragraph (f)(1) requires the involved Customs office to submit the internal advice request to the National Commodity Specialist Division if the request involves a matter on which the National Commodity Specialist Division is allowed to issue a prospective ruling under proposed § 177.11(a)(1). The text also specifies three specific alternative actions that the National Commodity Specialist Division may take regarding the request (that is, in specific circumstances, return it to the requesting Customs office without decision, issue a decision to the requesting Customs office with a copy to the importer or other interested person, or forward the request to the Headquarters Office for consideration and decision) and the circumstances in which each of those actions may be taken;

b. Proposed paragraph (f)(2) requires the involved Customs office to submit the internal advice request directly to the Headquarters Office if the request involves a matter on which only the Headquarters Office may issue a prospective ruling under proposed § 177.11(a)(2). The text also specifies the manner in which the Headquarters Office will review an internal advice request and issue a decision and includes the terms of present § 177.11(b)(5) regarding circumstances in which the Headquarters Office may refuse to consider a request; and

c. Proposed paragraph (f)(3) concerns conferences on issues raised in internal advice requests and has no specific counterpart in present § 177.11. This proposed text is modeled on the conference provisions for prospective rulings set forth in proposed § 177.13.

7. Paragraph (g) concerns the effect of internal advice decisions. The following is noted regarding this proposed text:

a. Proposed paragraph (g)(1) sets forth a general statement regarding the effect and application of internal advice decisions and is derived from present § 177.11(b)(6). The proposed text differs from the present text in that it (1) does not refer only to decisions issued by the Headquarters Office (because internal advice decisions can also be issued by the National Commodity Specialist Division in some cases), (2) does not include the language regarding reconsideration of the decision (which Customs does not believe is necessary given the extent of the participation of the requesting office in the process), (3) clarifies that a decision will be applied by Customs to future transactions of the importer or other interested person involving circumstances that are substantially identical in all material respects (rather than only to the one specific current transaction that gave rise to the decision), and (4) includes exception language for cases in which a decision is subsequently modified or revoked; and

b. Proposed paragraph (g)(2) sets forth standards regarding the reliance on internal advice decisions by third parties. The text follows the approach taken in the case of prospective rulings under proposed § 177.19(c).

Section 177.33

This section sets forth procedures regarding the appeal of adverse internal advice decisions. The proposed text follows the proposed § 177.20 text regarding the appeal of adverse prospective rulings but with some wording changes necessary to reflect an internal advice context. Therefore, the principles reflected in the points noted above regarding proposed § 177.20 also apply to this proposed section.

Section 177.34

This section concerns the availability of internal advice decisions to the public and consists of a simple cross-reference to proposed § 177.24. It thus is consistent with the mandate of 19 U.S.C. 1625(a) and replaces present § 177.11(b)(7).

Subpart D (Disclosure of Confidential Business Information)

Section 177.41

This section sets forth detailed standards for the treatment of requests for confidential treatment of business information submitted to Customs under subpart B or subpart C. In addition to the general comments regarding subpart D made above, the following points are noted regarding the proposed text:

1. Paragraph (a) consists of a basic statement regarding (1) the position of Customs on the general availability to the public of information submitted to Customs under part 177 and (2) the right of a submitting person to request confidential treatment of information that he does not want to be disclosed to the public.

2. Paragraph (b) prescribes the standards for submitting requests for confidential treatment. The proposed text represents an elaboration of, and therefore in effect replaces, present § 177.2(b)(7) and is self-explanatory.

3. Paragraph (c) specifies the procedures Customs will follow in handling requests for confidential treatment made under proposed paragraph (b). It has no direct counterpart in the present part 177 texts. With regard to situations in which Customs and the requesting person cannot reach agreement on a request for confidential treatment, it should be noted that the proposed text does not provide for nonconsideration and return of a submission made in connection with a prospective ruling or internal advice request that is initiated by Customs. Rather, the text provides in this case that Customs will proceed with the prospective ruling or internal advice decision but will attempt to prepare a meaningful ruling or decision in such a way as to avoid disclosure of the information at issue. This provision was included in order to avoid a situation in which the issuance of a ruling that Customs deems to be necessary could be forestalled by an importer or other interested person simply by making a request for confidentiality. Customs believes that such a result must be avoided because it could seriously compromise the effectiveness of the Customs-initiated ruling procedure.

Section 177.42

This section provides for a time limitation on a grant of confidential treatment and is self-explanatory.

Section 177.43

This section sets forth the procedures for renewing a grant of confidential treatment and is self-explanatory.

Section 177.44

This section specifies the procedures that Customs and private parties must follow when a request for disclosure under the Freedom of Information Act (the FOIA, 5 U.S.C. 552) is made for business information submitted to Customs under subpart B or subpart C of part 177. It has no counterpart in the present part 177 texts. The proposed text reflects the so-called ''reverse FOIA'' principles that apply to Federal government agencies under Exemption 4 of the FOIA and is based on the provisions regarding disclosure of business information contained in § 1.6 of the Treasury Department Regulations (31 CFR 1.6).

Subpart E (Government Procurement; Country-of-Origin Determinations)

The only changes proposed for this subpart involve changes to section references within the texts to reflect the organizational changes and consequential renumbering of the sections within part 177.

Comments

Before adopting these proposed regulatory amendments as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The administrative procedures reflected in the proposed regulatory amendments are designed to provide advance advice regarding the applicability of the Customs and related laws to planned import transactions and to assist in the proper application of those laws to current transactions, and direct involvement of the public in those administrative procedures is voluntary in nature. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Furthermore, this document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

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 control number.

The collections of information in these proposed regulations are in §§ 177.11, 177.14, 177.17, 177.18, 177.20, 177.21, 177.32, 177.33, 177.41, 177.43 and 177.55. The information to be collected is required in connection with the consideration of requests for, and issuance of, rulings or other written advice from Customs regarding the application of the Customs and related laws to current or future transactions, in connection with appeals and modifications or revocations of prior Customs rulings or treatments, or in connection with the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement. Failure to provide the required information may preclude issuance of the requested advice by Customs or may preclude the application of the requested relief or other action by Customs. The likely respondents are individuals and business or other for-profit institutions, including partnerships, associations, and corporations, and their authorized agents.

Estimated total annual reporting and/or recordkeeping burden: 128,000 hours.

Estimated average annual burden per respondent/recordkeeper: 10 hours.

Estimated number or respondents and/or recordkeepers: 12,200.

Estimated annual number of responses: 1.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention:

Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

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 information collection burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the information collection burden 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 operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 177

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Government procurement, Reporting and recordkeeping requirements, Rulings.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend Part 177 of the Customs Regulations (19 CFR Part 177) as set forth below:

PART 177—ADMINISTRATIVE RULINGS

1. The authority citation for Part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1502, 1624, 1625.

1a. Subpart A, consisting of § 177.0, is removed.

1b. Subpart B, consisting of §§ 177.21 through 177.31, is redesignated as subpart E, consisting of §§ 177.51 through 177.61.

1c. New subparts A through D are added to read as follows:

Subpart A—General Provisions

Sec.
177.1 Overview of the part 177 ruling and related processes.
177.2 Definitions.

Subpart B—Advice on Prospective Transactions

177.11 Preparation and submission of requests for prospective rulings.
177.12 Nonconforming requests.
177.13 Conferences on issues.
177.14 Change in status of transaction.
177.15 Withdrawal of requests.
177.16 Situations in which no prospective ruling will be issued.
177.17 Issuance of prospective rulings.
177.18 Requirement to bring rulings to the attention of field offices.
177.19 Effect of prospective rulings.
177.20 Appeal of prospective rulings.
177.21 Modification or revocation of prospective rulings, internal advice decisions, protest review decisions, and previous treatment of substantially identical transactions.
177.22 Established and uniform practice.
177.23 Limitation of court decisions.
177.24 Availability of rulings to the public.

Subpart C—Internal Advice Procedure

177.31 Requests for advice by Customs offices in general.
177.32 Requests for advice on current transactions.
177.33 Appeal of internal advice decisions on current transactions.
177.34 Availability of internal advice decisions to the public.

Subpart D—Disclosure of Confidential Business Information

177.41 Treatment of requests for confidentiality.
177.42 Time limitation.
177.43 Renewal of confidential treatment.
177.44 Disclosure pursuant to the FOIA.

Subpart A—General Provisions

§ 177.1 Overview of the part 177 ruling and related processes.

(a) *General*—(1) *What does part 177 cover?* This part covers:

(i) The issuance by Customs of written advice on future (prospective) Customs transactions and the procedures Customs will follow when limiting court decisions or when changing an established and uniform practice involving tariff treatment (subpart B of this part);

(ii) The issuance by Customs of written advice on current Customs transactions (subpart C of this part);

(iii) The treatment of requests for confidential treatment of business information submitted to Customs under subpart B or C of this part (subpart D of this part); and

(iv) The issuance of country-of-origin advisory rulings and final determinations relating to Government procurement (subpart E of this part).

(2) *What is a Customs transaction?* A Customs transaction is an importation or other action that involves the application of the Customs and related laws (see also the definition of ''Customs transaction'' in § 177.2).

(3) *What does part 177 not cover?* The provisions of this part do not apply to:

(i) Administrative rulings, determinations, or decisions requested or issued under procedures set forth in other parts within this chapter, including, but not limited to, those set forth in:

(A) Part 12 (relating to submissions of proof of admissibility of articles detained under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307));

(B) Part 103 (relating to disclosure of information in Customs files);

(C) Part 133 (certain enforcement actions relating to intellectual property rights);

(D) Subpart C of part 152 (relating to determinations concerning the dutiable value of merchandise by Customs field officers);

(E) Part 162 (relating to the calculation of loss of revenue in penalty cases);

(F) Part 171 (relating to fines, penalties, and forfeitures);

(G) Part 172 (relating to liquidated damages);

(H) Part 174 (relating to protests);

(I) Part 175 (relating to petitions filed by American manufacturers, producers, or wholesalers pursuant to section 516 of the Tariff Act of 1930, as amended);

(J) Part 181 (relating to the North American Free Trade Agreement); and

(K) Part 191 (relating to general and specific manufacturing drawback rulings); and

(ii) Other requests for decisions of an operational, administrative, or investigative nature.

(b) *Advice on prospective transactions under subpart B of this part.*

(1) *How does Customs provide written advice on prospective transactions?* Customs provides written advice on prospective Customs transactions under subpart B of this part through the issuance of rulings (see the definition of ''ruling'' in § 177.2) either in response to a request made under § 177.11 or in accordance with § 177.17(b).

(2) *What is the main purpose of a prospective ruling?* A ruling issued under subpart B of this part informs the recipient of the legal consequences of a Customs transaction (for example, the tariff classification and rate of duty that apply to an article to be imported into the United States from another country) before the transaction takes place.

(3) *Does a prospective ruling have specific legal significance and effect for*

Customs and the recipient? Yes. Issuance of a ruling under subpart B of this part means that Customs is legally bound by the conclusion reached in it. This guarantees that Customs will apply that result to the recipient's transaction once it becomes a current transaction by virtue of importation or other action (absent a subsequent modification or revocation or superseding legal event that has taken effect). For more information on this point, see § 177.19.

(4) *Does a prospective ruling impose any obligation on the recipient?* Yes. The ruling recipient must follow the result of the prospective ruling when entering the merchandise in question. A failure to do so could result in the assessment of a monetary penalty. For more information on this point, see § 177.18.

(5) *Who may request a prospective ruling?* A ruling regarding tariff classification may be requested under subpart B of this part by any person who is an importer of merchandise into, or an exporter of merchandise to, the United States. A ruling may be requested in a non-classification context under subpart B of this part by any person who has a direct and demonstrable interest in the question or questions presented under the Customs and related laws. An authorized agent (see the definition of ''authorized agent'' in § 177.2) may submit a ruling request on behalf of an importer or other interested person.

(6) *What matters may be the subject of a request for a prospective ruling?* A request for a ruling under subpart B of this part may cover any issue under the Customs and related laws that falls within the subject matter jurisdiction of the Headquarters Office or the National Commodity Specialist Division, including the following:

(i) Tariff classification under the Harmonized Tariff Schedule of the United States;

(ii) Country of origin determinations;

(iii) Country of origin marking;

(iv) Valuation;

(v) Entry procedures;

(vi) Customs brokers;

(vii) Drawback;

(viii) Duty-preference programs;

(ix) Duty-deferral programs;

(x) Transportation and conveyances; and

(xi) Intellectual property rights.

(7) *When will Customs not issue a prospective ruling?* Customs will not issue a prospective ruling in any of the circumstances described in § 177.16.

(8) *Does it matter whether the prospective ruling is issued by the Headquarters Office or by the National Commodity Specialist Division?* No. Regardless of which office issues the prospective ruling, Customs and the recipient must follow the conclusion reached in the ruling (unless it has been superseded, modified, or revoked and the supersession, modification or revocation has taken effect) and any person who is not the recipient of the prospective ruling may choose to rely on it when it is reasonable to do so. For more information on these points, see § 177.19.

(9) *Can Customs issue prospective rulings on its own initiative?* Yes. These rulings are referred to as Customs-initiated rulings and have the same legal effect as rulings issued under subpart B of this part in response to a request. For more information on Customs-initiated rulings, see § 177.17(b).

(10) *Does the recipient of a prospective ruling have any recourse under subpart B of this part if he disagrees with the result reached in the ruling?* Yes. The recipient may appeal the prospective ruling in accordance with § 177.20.

(11) *Are prospective rulings available for review and use by the general public after issuance?* All prospective rulings are made available to the general public after issuance (see § 177.24).

(12) *Can Customs modify or revoke a prospective ruling after issuance?* Yes. The procedures for modifying or revoking prospective rulings are set forth in § 177.21. A recipient of a prospective ruling that has been modified or revoked will receive actual or constructive notice of that fact. If Customs contemplates modifying or revoking a prospective ruling more than 60 calendar days after it was issued, the recipient of that ruling will be given an opportunity to comment on the contemplated action before Customs makes a final decision. Public notice with opportunity to comment will be published in the *Customs Bulletin.*

(13) *If a prospective ruling is modified or revoked, what are the consequences?* A prospective ruling that has been modified or revoked is no longer binding on Customs or the recipient and no longer has relevance for third parties and therefore should not be followed. See § 177.21 for more information on the modification or revocation of rulings.

(14) *If Customs has treated a person's transactions consistently in a certain way (for example, applied a specific tariff classification to imported merchandise) and then contemplates issuance of a prospective ruling that would change that treatment, will Customs provide the affected person with an opportunity to comment?* Yes. When Customs has reason to believe that a contemplated prospective ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions, notice of the intent to modify or revoke that treatment will be published and the affected person will have an opportunity to comment. See § 177.21 for more information on the modification or revocation of treatment previously accorded to transactions.

(15) *Will Customs issue a prospective rulings that is orally requested?* No. Customs will not issue a prospective ruling in response to an oral request. Oral opinions or advice of Customs personnel are not binding on Customs. However, oral inquiries may be made to Customs offices regarding existing rulings, the scope of existing rulings, the types of transactions with respect to which Customs will issue rulings, the scope of the rulings which may be issued, or the procedures to be followed in submitting ruling requests, as described in this part.

(16) *Will Customs issue a ruling in response to a current transaction?* Yes. This is referred to as the internal advice procedure. If a question arising in connection with a Customs transaction already before a Customs office (a current transaction) cannot be resolved by that office in accordance with existing principles and precedents, the Customs office may forward the question for advice under the internal advice procedure in accordance with subpart C of this part. See also paragraph (c) of this section.

(c) *Advice on current transactions under subpart C of this part.*

(1) *What is the internal advice procedure?* The internal advice procedure under subpart C of this part involves the issuance of advice by the National Commodity Specialist Division or by the Headquarters Office to a Customs field office regarding the application of the Customs and related laws to a specific Customs transaction that has already come before that Customs field office (a current transaction). A completed Customs transaction may not be the subject of the internal advice procedure.

(2) *How is the procedure started?* The internal advice procedure may be started by the Customs field office on its own initiative or as a result of a request for the procedure made by an importer or other interested person.

(3) *Does an importer or other interested person have a right to the internal advice procedure?* No. While an importer or other interested person may request that a Customs field office seek internal advice, submission of the

internal advice request is generally at the discretion of the Customs field office. However, there are some circumstances in which internal advice must be requested and some circumstances in which internal advice may not be requested. In addition, the procedure regarding further review of protests may be available. For more information on the standards for requesting internal advice, see § 177.32(a)–(c). For more information on the procedures for the further review of protests, see part 174 of this chapter.

(4) *Does an importer or other interested person have an opportunity to participate in the procedure?* Yes. An importer or other interested person who requests the internal advice procedure is required to present his views on the matter at issue in his written request (see § 177.32(d)). If the Customs field office starts the procedure on its own initiative, the importer or other interested person will be given an opportunity to present its written views on the matter. In addition, the importer or other interested person may ask for a conference with Customs to discuss the matter (see § 177.32(f)(3)).

(5) *How is the internal advice decision issued?* The internal advice decision is issued in writing to the Customs field office, and a copy of the decision is provided to the importer or other interested person at that time.

(6) *Does the importer or other interested person have any recourse under subpart C of this part if he disagrees with the result reached in the internal advice decision?* Yes. The recipient may appeal the decision in accordance with § 177.33.

(7) *What is the legal effect of an internal advice decision?* As in the case of a prospective ruling issued under subpart B of this part, an internal advice decision issued under subpart C of this part represents the official position of Customs regarding the transaction described in it. For more information on this point, see § 177.32(g)(1).

(8) *Are internal advice decisions available for review and use by the general public after issuance?* Internal advice decisions issued under subpart C of this part constitute rulings as that term is defined for purposes of that subpart. Accordingly, as in the case of prospective rulings issued under subpart B of this part, internal advice decisions are made available to the general public after issuance (see § 177.34).

(9) *What utility does an internal advice decision have for a person other than the importer or other interested person?* A person may rely on an internal advice decision issued on a current transaction of another person. For more information on this point, see § 177.32(g)(2).

(10) *Are there circumstances in which an internal advice decision should no longer be followed?* Yes. The modification and revocation procedures and requirements that apply to prospective rulings issued under subpart B of this part are also applicable to internal advice decisions issued under subpart C of this part. Accordingly, an internal advice decision that has been modified or revoked by operation of law or by a prospective ruling issued under § 177.21 no longer represents the official position of Customs and therefore should not be followed by the Customs field office or by the importer or other interested person or by third parties. See § 177.21 for more information on the modification or revocation of internal advice decisions.

§ 177.2 Definitions.

For purposes of subparts A through D of this part:

(a) An *authorized agent* is a person expressly authorized by a principal to act on his behalf and may be an attorney at law, a licensed customs broker (see part 111 of this chapter), or any person who is not an attorney at law or a licensed customs broker provided that the matter on which the person represents his principal under this part does not constitute ''customs business'' as defined in 19 U.S.C. 1641(a)(2). A ruling request submitted by an authorized agent must include a statement describing the authority under which the request is made. Any person appearing before Customs as an authorized agent in connection with a ruling request may be required to present evidence of his authority to represent the principal.

(b) The term *Customs and related laws* includes any provision of the Tariff Act of 1930, as amended (including the Harmonized Tariff Schedule of the United States), or the Customs Regulations, or any provision contained in other laws (including the navigation laws), regulations, treaties, orders, proclamations, or other agreements administered by Customs.

(c) A *Customs transaction* is an act or activity to which the Customs and related laws apply. There are three basic types of Customs transactions:

(1) A *prospective* Customs transaction is one that has not resulted in any arrival or in the filing of any entry or other document or in any other act to bring the transaction, or any part of it, under the jurisdiction of any Customs office;

(2) A *current* Customs transaction is one in which there has been an arrival or the filing of an entry or other document or any other act which brings the transaction, or any part of it, under the jurisdiction of any Customs office, other than the filing of a ruling request under this part or the filing of a request for other administrative action under a provision set forth elsewhere in this chapter; and

(3) A *completed* Customs transaction is one, other than a ruling issued under this part, which has been acted upon by a Customs office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest, or other review, as provided in the applicable Customs and related laws and regulations.

(d) The term *Headquarters Office* means the Office of Regulations and Rulings located at Headquarters, United States Customs Service, Washington, DC.

(e) An *information letter* is a written statement issued by the Headquarters Office that does no more than call attention to a well-established interpretation or principle of the Customs and related laws, without applying it to a specific set of facts. If Customs believes that general information may be of some benefit to the person making the request, an information letter may be issued in response to a request for a ruling when:

(1) The request suggests that general information, rather than a ruling, is actually being sought;

(2) The request is incomplete or otherwise fails to meet the requirements for a ruling set forth in this part; or

(3) The ruling requested cannot be issued for any other reason.

(f) The *National Commodity Specialist Division* is a Customs office located in the port of New York that is an organizational part of the Customs Office of Regulations and Rulings and that includes among its functions the issuance of prospective rulings and internal advice decisions under this part.

(g) A *person* includes an individual, corporation, partnership, association, or other entity or group.

(h) A *ruling* is a written statement issued by the Headquarters Office or by the Customs National Commodity Specialist Division or by the appropriate field office of Customs as provided in subpart B or subpart C of this part that sets forth the official position of Customs on the interpretation and application of the provisions of the Customs and related laws under a specific set of facts. A ruling may be

issued in response to a specific request and be set forth in a letter addressed to the person making the request or his authorized agent. A ruling also may be issued in the form of a letter to a Customs field office or person in the absence of a specific request. Rulings provided for under subpart B of this part are generally prospective in nature. Rulings provided for under subpart C of this part generally relate to current transactions and consist of internal advice decisions issued to Customs offices.

Subpart B—Advice on Prospective Transactions

§ 177.11 Preparation and submission of requests for prospective rulings.

(a) *Form and address.* A request for a ruling on a prospective Customs transaction should be in the form of a signed letter written in the English language. Requests for prospective rulings must be submitted as follows:

(1) *To the National Commodity Specialist Division.* A request for a ruling involving a matter identified in paragraph (b)(3)(ii) or paragraph (b)(3)(iii) of this section, other than country of origin determinations involving duty-preference programs under General Notes 3(a)(iv) and 4 through 11, Harmonized Tariff Schedule of the United States (HTSUS), must be submitted to the Director, National Commodity Specialist Division, Office of Regulations and Rulings, United States Customs Service, 6 World Trade Center, New York, New York 10048; and

(2) *To the Headquarters Office.* A request for a ruling on country of origin involving duty-preference programs under General Notes 3(a)(iv) and 4 through 11, HTSUS, or on any matter identified in paragraphs (b)(3)(iv) through (b)(3)(vii) of this section, must be submitted to the Office of Regulations and Rulings, United States Customs Service, Washington, DC 20229.

(b) *Content*—(1) *General.* Each request for a ruling on a prospective Customs transaction must contain a complete statement of all facts and other information relating to the transaction. A ruling is issued on the basis of the facts presented to Customs. If an issued ruling was based on inaccurate or incomplete information regarding a material fact, it will not be applied to the transaction for which it was intended.

(2) *Names and addresses.* The ruling request must specify the names, addresses, and other appropriate identifying information of all interested parties.

(3) *Description of transaction*—(i) *General.* The Customs transaction to which the ruling request relates must be described in sufficient detail with all material and relevant facts to permit the proper interpretation and application of relevant Customs and related laws.

(ii) *Tariff classification rulings.* If the transaction involves the importation of an article for which a ruling is requested as to its proper classification under the provisions of the Harmonized Tariff Schedule of the United States, including special program provisions or other provisions under Chapter 98 or Chapter 99, the ruling request should include a full and complete description of the article, including the country of origin of the article and any of its components, if known, and any applicable descriptive details required to be included on an invoice for such article under § 141.89 of this chapter, a description of the manufacturing processes used to produce the article and the countries in which those processes took place, and information as to the article's principal use in the United States, its commercial, common, or technical designation, and, where the article is composed of two or more materials, the relative quantity (by weight and by volume) and value of each. The ruling request should also note, whenever germane, the purchase price of the article, and its approximate selling price in the United States. Individual requests for rulings may involve a maximum of five (5) merchandise items, all of which must be of the same class or kind.

(iii) *Country of origin and marking rulings*—(A) *Country of origin.* If the ruling request involves a determination of the country of origin of an article that incorporates processing operations and/or constituent materials attributable to more than one country (including the United States), the ruling request should include a full and complete description of:

(*1*) The article and/or material prior to the processing in each country, including its tariff classification, if known;

(*2*) Each processing operation performed in each country, the type of machinery used, and the time expended during the processing; and

(*3*) The article after the processing in each country, including its tariff classification, if known.

(B) *Marking issues not involving origin*—(*1*) *Manner of marking.* If the ruling request involves a determination of the acceptability of a manner of marking (for example, whether a proposed marking is sufficiently conspicuous or permanent), a sample of the article is generally required. However, if a sample is not available, a ruling will be issued on a submitted photograph if the photograph adequately demonstrates the proposed marking.

(*2*) *Request for marking exception.* If the ruling request involves the application of one or more exceptions from marking, all facts regarding the requested exception must be furnished. For example, a request involving a proposal to mark a container rather than the article contained therein should include: A complete description of the article and the container; a statement indicating whether or not the article will be repacked after importation; and a statement of how the article is to be used and to whom it is to be sold.

(iv) *Valuation rulings*—(A) *Required information.* Each request for a ruling on the proper method of valuation or on any other issue relating to the appraised value of imported merchandise under 19 U.S.C. 1401a should contain the following:

(*1*) A narrative description of the import transaction;

(*2*) A brief description of the imported merchandise;

(*3*) The names of all parties involved in any sale or sales of the imported merchandise, including the manufacturer, the seller (if different from the manufacturer), the purchaser, the importer, the consignee, and any intermediaries (for example, middlemen acting as buying agents, selling agents, or sellers), or, if the imported merchandise is not sold, a detailed description of the circumstances surrounding the import transaction and the parties involved;

(*4*) A detailed description of the roles of the various parties, including the intermediaries;

(*5*) A description of the relationship, if any, of the various parties;

(*6*) If a sale is involved, the terms of sale, the purchase price, and the method of payment;

(*7*) How, when, and where the merchandise will be shipped and the place from which it will be shipped (to the extent known, the expected movement of the merchandise from the place of manufacture to its ultimate destination in the United States should be described);

(*8*) A statement regarding whether or not any additional payments are made by the buyer to the seller or to a party related to the seller over and above the purchase price (and if so, a description of what each such payment is for);

(*9*) A statement regarding whether or not any assists, as described in subpart

E of part 152 of this chapter, were furnished;

(*10*) If there is more than one sale of the imported merchandise, the details concerning each sale;

(*11*) If the person requesting the ruling does not have any relevant information specified in this paragraph (b)(3)(iv)(A), a statement identifying that missing information; and

(*12*) Any additional information that is relevant to the particular issue presented (the provisions of subpart E of part 152 of this chapter should be consulted in order to determine what additional information might be relevant).

(B) *Documentary evidence.* Each request for a ruling on the proper method of valuation or on any other issue relating to the appraised value of imported merchandise under 19 U.S.C. 1401a should include copies of all relevant documents pertaining to the issue presented, including purchase orders, sales contracts, invoices, bills of lading, buying agency agreements, and royalty agreements (a ruling request involving the dutiability of royalty payments must include copies of any written royalty agreement pertaining to the payment of such royalties and any written supply agreement pertaining to the sale of the imported merchandise).

(v) *Rulings on entry procedures, Customs brokers, drawback, and duty-deferral programs*—(A) *Required information.* Each request for a ruling on entry procedures, issues concerning Customs brokers, drawback (other than applications for rulings under §§ 191.7 and 191.8 of this chapter), and duty-deferral programs (foreign trade zones, temporary importations under bond, and Customs bonded warehouses, including duty-free sales enterprises) should include the following:

(*1*) A complete statement of the specific statutory and regulatory provisions believed to be at issue, if known;

(*2*) Citations to the specific judicial and administrative decisions believed to address the issue involved in the transaction;

(*3*) A complete description of the transaction. The Customs ports at which the transaction is to occur should be identified. The anticipated time when the transaction will take place also should be stated;

(*4*) If the issue involves a transfer of merchandise, then each transfer must be described completely and each party to the transfer must be identified;

(*5*) If the issue involves the adequacy of records, those records must be described in detail, with particular emphasis on describing how the subject merchandise will be recorded and identifying the recordkeeper and where the records will be stored. If the records involve codes, the codes must be defined;

(*6*) If the ruling request involves information that is intended to be filed with Customs when the transaction occurs, the request must state whether the information is to be filed in documentary form or electronically;

(*7*) If the issue involves merchandise in a foreign trade zone, the intended zone status of the merchandise must be stated;

(*8*) If the issue involves the processing of merchandise, a complete description of the processing and of the merchandise at the start and end of the processing must be provided. The ruling request must describe how the merchandise at the end of the process differs in name, use, or characteristics from the merchandise at the start of the process. If the processing involves a chemical reaction or a mixture of chemicals, the chemical formulas must be provided; and

(*9*) If the issue involves commercial interchangeability of imported merchandise and merchandise to be substituted for that merchandise under 19 U.S.C. 1313(j)(2), the ruling request must include information on published governmental or industry standards, tariff classification, part numbers, and value for both the imported merchandise and the substituted merchandise. The request must include information as to whether, and if so how, these criteria are used as terms of sale or purchase of the merchandise.

(B) *Documentary evidence.* Each request for a ruling on entry procedures, issues concerning Customs brokers, drawback, and duty-deferral programs must include documentary evidence which illustrates the information required under paragraph (b)(3)(v)(A) of this section. For example:

(*1*) If the issue involves the sale or purchase of merchandise, documentary evidence would include a complete representative sample of the documents covering the sale or purchase;

(*2*) If the issue involves inventory procedures, documentary evidence would include a complete representative sample of the inventory records involved;

(*3*) If the issue involves the processing of merchandise, documentary evidence would include photographs or drawings of the merchandise at each stage of the process and may include flow charts, if appropriate; and

(*4*) If the issue involves the delivery of merchandise from a duty-free sales enterprise, documentary evidence would include a map or drawing to scale of the store location with respect to the international border and photographs showing the representative amount of traffic during business hours.

(vi) *Rulings on transportation and conveyances*—(A) *Required information.* Each request for a ruling involving transportation and conveyance issues should include the following:

(*1*) A complete statement of the specific statutory and regulatory provisions believed to be at issue;

(*2*) Citations to the specific judicial and administrative decisions believed to address the issue involved in the transaction;

(*3*) A complete description of the transaction. The Customs ports at which, or nearest to which, the transaction is to occur should be identified. The anticipated time when the transaction will take place also should be stated;

(*4*) If the issue involves a vessel, the ruling request must identify the vessel, its country of build, flag, and, if a vessel of the United States, any endorsements on the vessel's documentation;

(*5*) If the issue involves vessel or air cabotage, a complete itinerary must be provided (that is, the ruling request must describe the location of all points in any movement involved, as well as any activity which would occur at each point). If the issue involves passengers, there must be a general description of the types of passengers involved and of their relationship to the conveyance. If the issue involves merchandise, the merchandise must be described;

(*6*) If the issue involves a vehicle, the ruling request must identify the vehicle owner's principal base of operations;

(*7*) If the issue involves fisheries, the ruling request must identify all activities, locations, and species of fish involved; and

(*8*) If the issue involves instruments of international traffic, the ruling request must state the numbers of instruments that are expected to be used and must describe the instrument in detail, including how the instrument is suitable for, and capable of, reuse.

(B) *Documentary evidence.* Each request for a ruling on transportation and conveyance issues must include documentary evidence which illustrates the information required under paragraph (b)(3)(vi)(A) of this section. If the issue involves the movement of a conveyance, documentary evidence would include maps showing the movement. If the issue involves an instrument of international traffic, documentary evidence would includes

photographs or drawings of the instrument.

(vii) *Rulings related to intellectual property rights*—(A) *General.* If the transaction involves the importation of an article or articles for which a ruling is requested as to whether the proposed importation would infringe on a registered trademark or copyright or a recorded trade name, the ruling request should include a full and complete description of the article and a sample together with a description of the transaction to which the ruling request relates.

(B) *Gray market goods.* If the transaction involves the importation of a gray market article (as defined in § 133.23(a) of this chapter), in addition to the information specified in paragraph (b)(3)(vii)(A) of this section, the ruling request should include the country of origin of the article(s), the name(s) of the manufacturer(s), and, if known, a statement as to whether the trademark is owned outside of the United States by the U.S. trademark owner or by a parent, subsidiary, or other party otherwise subject to common ownership or control with the U.S. owner.

(4) *Samples.* Each request for a ruling regarding the status of an article under any Customs or related law affecting the importation or arrival of that article should be accompanied by photographs, drawings, or other pictorial representations of the article and, whenever possible, by a sample article, unless a precise description of the article is not essential to the ruling requested. Any article consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis. A sample submitted in connection with a request for a ruling becomes a part of the Customs file in the matter and will be retained until the ruling is issued or the ruling request is otherwise disposed of. If the return of the sample is desired, the ruling request should say so and should provide for a means of return that will entail no cost to Customs for packing materials and shipping fees. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the ruling request. All samples not returned or retained by Customs for official government use or consumed in the course of examination, testing, or analysis will be donated to a charity, destroyed, or otherwise disposed of according to law 90 days after issuance of the ruling or other disposition of the ruling request.

(5) *Related documents.* If the question or questions presented in the ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the ruling request become a part of the Customs file in the matter and cannot be returned except as otherwise provided in § 177.12 or § 177.41.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the ruling request.

(6) *Prior or current transactions.* Each ruling request must contain, or provide as a signed attachment to the request, the following certification by a person having knowledge of the facts:

> I certify that, to the best of my knowledge and belief, and except as otherwise stated herein, the transaction described in this ruling request, or one similar, identical, or related to it, is not currently being considered by any Customs office and will not be pending before any Customs office by virtue of a request for a prospective ruling or a request for internal advice or a protest filed simultaneously with this request and is not pending before any other Federal agency or before any Federal court, and that, to the best of my knowledge and belief, all information provided in connection with this ruling request is accurate and complete.

(7) *Statement of position.* If the ruling request asks that a particular determination or conclusion be reached in the ruling letter, a statement must be included in the request setting forth the basis for that determination or conclusion, together with a citation of all relevant supporting authority.

(8) *Confidential information.* If the person submitting a ruling request wants Customs to accord confidential treatment to any information submitted in connection with the ruling request, a written request for that confidential treatment must be made when the information is submitted to Customs and must conform to the requirements of subpart D of this part.

(9) *Conferences.* If a person submitting a ruling request wants an opportunity to have a conference if issuance of an adverse ruling is contemplated (see § 177.13), a statement to that effect must be included in the ruling request.

(c) *Signing; instructions as to reply.* The ruling request must be signed by a person entitled to make the request, as provided in § 177.1(b)(5). A ruling requested by a principal or authorized agent may direct that the ruling letter be addressed to the other.

§ 177.12 Nonconforming requests.

(a) *Notice of nonconformity.* If a ruling request does not conform to the requirements of this subpart, the person submitting the ruling request will be so notified in writing, and the requirements that have not been met will be pointed out in the notice.

(1) *Request submitted to the Headquarters Office.* In the case of a nonconforming ruling request submitted to the Headquarters Office, the person will be given 30 calendar days from the date of the notice (or such longer period as the notice may provide) to supply any additional information requested in the notice or to otherwise conform the ruling request to the requirements referred to in the notice. The file pertaining to a nonconforming ruling request submitted to the Headquarters Office will be administratively closed if the ruling request is not brought into conformity with the provisions of this part within the period of time allowed.

(2) *Request submitted to the National Commodity Specialist Division.* In the case of a ruling request made to the Director, National Commodity Specialist Division, a failure to conform to the requirements of this part will result in the immediate return of the ruling request with the notice specifying the deficiencies, and the file pertaining to the nonconforming ruling request will be closed with no further action taken on the request but without prejudice to resubmission.

(b) *Submission to the wrong office.* If a ruling request is not submitted to the proper Customs office specified in § 177.11(a), Customs will not for that reason alone treat it as a nonconforming request under this section. However, there will be a delay in processing the request while it is forwarded to the proper office.

§ 177.13 Conferences on issues.

(a) *General.* Conferences on issues presented in ruling requests under this subpart will be held only in connection with rulings to be issued by the Headquarters Office and only in circumstances in which either the Headquarters Office contemplates issuance of a ruling adverse to the ruling requester's position or the Headquarters Office for any other reason believes that a conference is necessary. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the ruling request. Accordingly, the parties will not be bound by any

argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of a ruling.

(b) *National Commodity Specialist Division rulings.* If a ruling request filed with the Director, National Commodity Specialist Division, reflects a desire for a conference and it is determined after review of the issue or issues raised that the proposed ruling will be adverse to the ruling requester's position, and if the different positions cannot be resolved through telephonic or other informal discussions between the ruling requester and the National Commodity Specialist Division, the case will be referred to the Headquarters Office for processing.

(c) *Time, place, and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in a ruling request will be scheduled unless, in the opinion of the Headquarters Office, additional conferences are necessary.

(d) *Representation.* A person whose request for a conference has been granted may appear at the conference in person and may be accompanied by counsel or other representatives or, in lieu of a personal appearance, the person may designate an authorized agent to appear at the conference in his place.

(e) *Additional information presented at conference.* It will be the responsibility of the person submitting the ruling request to provide for inclusion in the Headquarters Office file in the matter a written record setting forth any and all additional documents, exhibits, or other information introduced during the conference to the extent that person considers the material relevant to the consideration of the ruling request. Any further documentation, exhibits, or other information to be submitted as a result of the conference must be submitted to the Headquarters Office within 30 calendar days following the conference or within any longer period as the Headquarters Office may authorize.

§ 177.14 Change in status of transaction.

Each person who submitted a ruling request in connection with a prospective Customs transaction must immediately advise in writing the Customs office in which the ruling request is pending when any transaction described in the ruling request becomes a current transaction or when the person subsequently learns that a summons has been filed in the U.S. Court of International Trade regarding the same issue as that involved in the ruling request. In addition, any person who is engaging in a current Customs transaction and who has knowledge that a ruling has been previously requested with respect to that transaction must advise the Customs field office in which the current transaction is occurring that a prospective ruling is pending concerning the matter. Failure to advise the Customs office in which the ruling request is pending or the Customs office in which the transaction is occurring may result in refusal to issue the ruling or, if a ruling was issued, revocation of the ruling.

§ 177.15 Withdrawal of requests.

Any request for a prospective ruling may be withdrawn in writing by the person submitting it at any time before the issuance of a ruling letter or any other final disposition of the request. When a withdrawal occurs and except as otherwise provided in subpart D of this part, all correspondence, documents, and exhibits submitted in connection with the ruling request will be retained in the Customs file and will not be returned. The mere withdrawal of a ruling request will not preclude Customs from issuing a ruling on its own initiative if Customs determines that it would be consistent with the sound administration of the Customs and related laws to do so (see § 177.17(b)).

§ 177.16 Situations in which no prospective ruling will be issued.

As a general rule, no prospective ruling will be issued under this subpart:

(a) In response to a ruling request which fails to comply with the provisions of this subpart;

(b) With regard to transactions or questions that are essentially hypothetical in nature or in any instance in which it otherwise appears contrary to the sound administration of the Customs and related laws to issue a ruling;

(c) With regard to a completed transaction;

(d) When confidentiality issues raised in a ruling request cannot be resolved (see subpart D of this part);

(e) When Customs determines that issuance of an information letter would be more appropriate;

(f) When the ruling requester has previously received a ruling involving an identical or similar transaction and:

(1) A decision on an appeal from that previous ruling has been issued under § 177.20; or

(2) A modification or revocation involving that previous ruling is pending or has been issued under § 177.21;

(g) If the issue involved is identical or similar to one that is the subject of a pending modification or revocation under § 177.21;

(h) An established and uniform practice involving an identical or similar transaction exists or is undergoing a change under § 177.22;

(i) A limitation of a court decision involving an identical or similar transaction is pending under § 177.23;

(j) A protest review decision involving an identical or similar transaction is pending under part 174 of this chapter; or

(k) If the ruling involves an issue pending before the United States Court of International Trade as a result of a summons filing or other action or which is pending before the United States Court of Appeals for the Federal Circuit or any court of appeal from that court. Litigation before any other court will not preclude the issuance of a ruling letter, provided neither the United States nor any of its agencies, officers or agents is named as a party to the action.

§ 177.17 Issuance of prospective rulings.

(a) *Rulings issued in response to a request*—(1) *General.* Customs will normally process requests for rulings on prospective Customs transactions in the order in which they are received and as expeditiously as possible. Additional time may be required for preparation of a ruling if a laboratory analysis of a sample is needed or if it is necessary to obtain additional information from another government agency.

(2) *Request processing by the National Commodity Specialist Division*—(i) *Issuance of rulings.* Requests for prospective rulings involving tariff classification or country of origin or marking that are submitted to the Director, National Commodity Specialist Division, in accordance with § 177.11(a) generally will be responded to within 30 calendar days of receipt except when a referral to the Headquarters Office occurs under paragraph (a)(2)(ii) of this section.

(ii) *Referral of requests to the Headquarters Office.* If the Director, National Commodity Specialist Division, believes that the issues or arguments presented are novel or complex, the ruling request may be referred to the Headquarters Office for response. In addition, if the ruling response contemplated by Customs would be adverse to the position advocated by the ruling requester and the ruling requester has requested a

conference in such a circumstance, the Director, National Commodity Specialist Division, will refer the ruling request to the Headquarters Office for response. In either case, Customs will in writing advise the person submitting the ruling request that it has been referred to the Headquarters Office.

(3) *Requests for immediate consideration.* A request that a particular matter be given consideration ahead of its regular order, if made in the ruling request or thereafter in accordance with the submission procedures set forth in § 177.11(a) and with a showing of a clear need for that treatment, will be given consideration as the particular circumstances warrant and permit. Ordinarily, no assurance can be given that a particular ruling request will be acted upon by the time requested.

(b) *Rulings initiated by Customs.* The Headquarters Office or the National Commodity Specialist Division may issue, or a Field National Import Specialist may prepare for issuance by a port director, other rulings on the initiative of Customs with respect to issues or transactions described or suggested by ruling requests submitted under the provisions of this part, or with respect to issues or transactions otherwise brought to its attention. If Customs contemplates issuance of a Customs-initiated ruling, the importer or other interested party to whom the ruling would be issued will be notified in writing and, except when the contemplated ruling involves a question of admissibility of merchandise (see § 151.16 of this chapter), will be afforded 30 calendar days to make a written submission setting forth its position on the issue involved in the contemplated ruling. If the person making the written submission wants Customs to accord confidential treatment to any information contained in the written submission, a request for that confidential treatment must be included in the written submission and must conform to the requirements of subpart D of this part. These Customs-initiated rulings will be made available to the general public as provided in § 177.24.

§ 177.18 Requirement to bring rulings to the attention of field offices.

Any person, or a successor in interest of that person, to whom a ruling has been issued under this part must abide by the following principles and procedures when engaging in a current Customs transaction that involves imported merchandise to which that ruling relates:

(a) The person must either attach a copy of the ruling to the documents filed with the appropriate Customs office in connection with the current transaction or otherwise include the ruling number in the information filed for the current transaction;

(b) Except as otherwise specifically provided elsewhere in this chapter, the person must use the position set forth by Customs in the ruling in completing any documentation in connection with any subsequent entry involving the issues addressed, and a failure to do so may result in a rejection of the entry and may result in the assessment of a monetary penalty for failure to exercise reasonable care. If the person wishes to challenge a Customs position reflected in a ruling, the appropriate course of action would be to appeal the ruling under § 177.20 or § 177.33 or to file a protest in accordance with part 174 of this chapter; and

(c) The person must immediately bring to the attention of the appropriate Customs field office a ruling received after the filing of entry documents or information. Depending on the circumstances, failure to do so may result in the imposition of such penalties as may be appropriate.

§ 177.19 Effect of prospective rulings.

(a) *General.* A prospective ruling represents the official position of Customs with respect to the particular transaction or issue described in it and is binding on Customs and the recipient until the ruling is modified or revoked as provided in § 177.21. Accordingly, so long as the ruling has not been modified or revoked (whether by Customs action or by operation of law), the principle of that ruling may be cited by the recipient of the ruling as authority in the disposition of transactions involving circumstances that are substantially identical in all material respects. Generally, a ruling is effective on the date of issuance and may be applied to all entries of merchandise which are unliquidated, or may be applied to other transactions on which Customs has not taken final action, on that date (see, however, §§ 177.21 and 177.22 regarding rulings which modify or revoke previous rulings or result in a change of an established and uniform practice). Notwithstanding the issuance of a ruling under this part, the admissibility of merchandise is determined at the time of entry or release.

(b) *Application to transactions*—(1) *Application of rulings in general.* Each prospective ruling is issued on the assumption that all of the information furnished in connection with it and incorporated in it, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling by a Customs field office to a current transaction to which it is purported to relate is subject to the verification of the facts incorporated in that ruling, a comparison of the described transaction and the current transaction, and the satisfaction of any conditions on which the ruling was based. If, in the opinion of any Customs field office by which the current transaction is under consideration or review, the ruling does not conform to the material facts of the current transaction or any conditions set forth in that ruling have not been satisfied, the ruling will not be applied to that current transaction. Otherwise, if the transaction described in the ruling and the current transaction are substantially identical in all material respects, and provided that any and all conditions set forth in the ruling have been satisfied, the ruling will be applied to the current transaction.

(2) *Tariff classification rulings.* Each prospective ruling setting forth the proper classification of an article under the provisions of the Harmonized Tariff Schedule of the United States will be applied not only to the prospective transaction covered by the ruling request but also to any current transactions involving either articles identical in all material respects to the sample submitted with the ruling request or articles whose description is identical in all material respects to the description set forth in the ruling.

(c) *Third party reliance on rulings.* A person engaging in a Customs transaction who has not received a ruling covering that transaction may rely on a prospective ruling issued to or on behalf of another person and made available to the public under § 177.24, and may assume that Customs will apply the principles of that ruling to his transaction, provided that Customs determines that the relevant facts and principles reflected in the ruling are materially the same as those involved in the transaction under consideration and provided that the ruling has not been modified or revoked by operation of law or by Customs action (see § 177.21). In addition, any person eligible to request a prospective ruling as provided in § 177.1(b)(5) may request under this subpart a ruling on a transaction believed to be similar to one covered by an already issued ruling.

§ 177.20 Appeal of prospective rulings.

(a) *Scope of appeal.* If the recipient of a prospective ruling issued under this subpart (other than a ruling issued

under § 177.21) believes that the ruling is adverse to his position on one or more substantive issues reflected in the ruling, that recipient, or his authorized agent, may pursue an administrative appeal of that ruling in accordance with the procedures set forth in this section. An appeal filed under this section must be limited to issues involving the construction of the law and will involve a *de novo* review of the ruling which is the subject of the appeal. The decision on appeal may correct an erroneous statement in the original ruling, may affirm the result reached in the original ruling, may modify or revoke the original ruling (see § 177.21), or may involve the issuance of a new ruling if new or additional facts are presented in the appeal.

(b) *Form and address.* The appeal must be in the form of a signed letter written in the English language and must be addressed to the Office of Regulations and Rulings, United States Customs Service, Washington, DC 20229. The words ''Ruling Appeal'' should appear in a conspicuous place on the face of the envelope containing the appeal letter.

(c) *Time of filing.* The appeal must be filed within 30 calendar days of the date of the adverse ruling. An appeal received by Customs after that 30-day appeal period will be rejected as untimely and will be returned to the person filing the appeal. The issues raised in a rejected appeal may be the subject of administrative review only under the internal advice procedure provided for in subpart C of this part or in connection with a valid protest filed under part 174 of this chapter.

(d) *Content.* Each appeal letter should include a copy of the ruling which is the subject of the appeal, must include the certification required under § 177.11(b)(6) appropriately modified to reflect an appeal context, and should include any other information, documents, samples or other materials submitted in connection with the original ruling request under § 177.11 which are not reflected in the ruling and which the person filing the appeal deems relevant to the issues raised in the appeal.

(e) *Current or completed transactions.* The filing of an appeal under this section will not result in a suspension of liquidation in the case of current transactions pending resolution of the appeal and will not extend or otherwise affect the period for filing a protest under part 174 of this chapter. However, if a person has filed a timely appeal under this section, he may protest under part 174 any liquidation that is consistent with the original ruling, and any resulting protest decision will reflect the decision on appeal under this section.

(f) *Confidential information.* If the person filing the appeal wants Customs to accord confidential treatment to any information submitted in connection with the appeal, a written request for that confidential treatment must be made when the information is submitted to Customs and must conform to the requirements of subpart D of this part.

(g) *Processing of appeals*—(1) *General.* Appeals of adverse rulings will normally be processed in the order they are received and as expeditiously as possible. The provisions of § 177.13 relating to conferences will apply to appeals under this section, except that a conference on an appeal under this section will not be granted as a matter of right but rather only if the Headquarters Office believes that a conference is necessary. If a conference is held, the Headquarters Office may require additional time to prepare the decision on appeal.

(2) *Requests for expedited consideration.* If a request that an appeal be given expedited consideration is made in the appeal letter with a reasonable showing of business necessity for that treatment, the appeal will be decided no later than 60 calendar days following the date on which the appeal is received by the Headquarters Office except when the publication requirements of § 177.21 are applicable (see paragraph (g)(4)(ii) of this section).

(3) *Issuance of decision.* Each appeal will be decided on the written record before Customs, that is, the record on the original appealed ruling plus the appeal letter submission and any submission made after a conference pursuant to § 177.13(e) and any other information that Customs determines to be relevant. The Headquarters Office will issue a written ruling on the appeal to the person who filed the appeal or to any other person designated for that purpose in the appeal letter.

(4) *Effective dates.* If the ruling on appeal affirms the result reflected in the original ruling, that original ruling will remain in effect for purposes of this subpart. If the Headquarters Office determines on appeal that the original ruling is in error in whole or in part or is otherwise not in accord with the current views of Customs, the ruling on appeal will modify or revoke the original ruling with regard to the issue or issues raised on appeal and will be given effect as follows:

(i) If the ruling on appeal is issued less than 60 calendar days after the effective date of the original ruling, the result reflected in the ruling on appeal will be effective on the date of the original ruling and will be applied to Customs transactions as set forth in § 177.19; or

(ii) If the ruling on appeal is issued 60 or more calendar days after the effective date of the original ruling, the ruling on appeal will constitute a modifying or revoking ruling and the publication and effective date requirements set forth in § 177.21 will apply.

§ 177.21 Modification or revocation of prospective rulings, internal advice decisions, protest review decisions, and previous treatment of substantially identical transactions.

(a) *General.* A prospective ruling issued under this subpart or an internal advice decision issued under subpart C of this part or a holding or principle covered by a protest review decision issued under part 174 of this chapter, if found to be in error or not in accord with the current views of Customs, may be modified or revoked by a prospective ruling issued under this subpart. In addition, a prospective ruling issued under this subpart may have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions. A modification or revocation under this section must be carried out in accordance with the notice procedures set forth in paragraph (b) or paragraph (c) of this section except as otherwise provided in paragraph (d) of this section, and the modification or revocation will take effect as provided in paragraph (e) of this section.

(b) *Prospective ruling, internal advice decision or protest review decision.* Customs may modify or revoke a prospective ruling or internal advice decision or holding or principle covered by a protest review decision that has been in effect for less than 60 calendar days by simply giving written notice of the modification or revocation to the person to whom the original ruling was issued or whose current transaction was the subject of the internal advice decision or, in the case of a protest review decision, to the person identified on the Customs Form 19 as the protestant or to any other person designated to receive notice of denial of a protest under § 174.30(b) of this chapter. However, when Customs contemplates the issuance of a prospective ruling that would modify or revoke a prospective ruling or internal advice decision or holding or principle covered by a protest review decision which has been in effect for 60 or more

calendar days, the following procedures will apply:

(1) *Publication of proposed action.* A notice proposing the modification or revocation and inviting public comment on the proposal will be published in the *Customs Bulletin.* The notice will refer to all previously issued prospective rulings or internal advice decisions or protest review decisions that Customs has identified as being the subject of the proposed action and will invite any member of the public who has received another prospective ruling or internal advice decision or protest review decision involving the issue that is the subject of the proposed action to advise Customs of that fact. Interested parties will have 30 calendar days from the date of publication of the notice to submit written comments on the proposed modification or revocation and to advise Customs in writing that they are recipients of an affected prospective ruling or internal advice decision or protest review decision that was not identified in the notice.

(2) *Notice of final action.* In the absence of extraordinary circumstances, within 30 calendar days after the close of the public comment period, any submitted comments will be considered and a final modifying or revoking notice or notice of other appropriate final action on the proposed modification or revocation will be published in the *Customs Bulletin.* In addition, a written decision will be issued to the person to whom the original prospective ruling was issued or whose current transaction was the subject of the internal advice decision or, in the case of a protest review decision, to the person identified on the Customs Form 19 as the protestant or to any other person designated to receive notice of denial of a protest under § 174.30(b) of this chapter. Publication of a final modifying or revoking notice in the *Customs Bulletin* will have the effect of modifying or revoking any prospective ruling or internal advice decision or holding or principle covered by a protest review decision that involves merchandise or an issue that is substantially identical in all material respects to the merchandise or issue that is the subject of the modification or revocation, including a prospective ruling or internal advice decision or holding or principle covered by a protest review decision that is not specifically identified in the final modifying or revoking notice.

(c) *Treatment previously accorded to substantially identical transactions*—(1) *General.* The issuance of a prospective ruling that has the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions must be in accordance with the procedures set forth in paragraph (c)(2) of this section. For purposes of this section:

(i) *Treatment* means a consistent pattern of decisions involving the classification of imported merchandise under the Harmonized Tariff Schedule of the United States as determined upon liquidation of the applicable entry or reconciliation during the 2-year period immediately prior to publication of the notice of proposed modification or revocation under this section. The determination of whether the requisite treatment occurred will be made by Customs on a case-by-case basis and will involve an assessment of all relevant factors. In particular, Customs will focus on the past transactions to determine whether there was an examination of the merchandise (where applicable) by Customs or the extent to which those transactions were otherwise reviewed by Customs to determine the proper application of the Customs laws and regulations. For purposes of establishing whether the requisite treatment occurred, Customs will give diminished weight to transactions involving small quantities or values, and Customs will give no weight whatsoever to informal entries and to other entries or transactions which Customs, in the interest of commercial facilitation and accommodation, processes expeditiously and without examination and/or import specialist review.

(ii) A person may not claim as a treatment the treatment that Customs accorded to transactions of another person; and

(iii) The burden of proof as regards the existence of the previous treatment is on the person claiming that treatment. The evidence of previous treatment by Customs must include a list of all substantially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each transaction (where applicable), the ports of entry, and the dates of final action by Customs.

(2) *Notice procedures*—(i) When Customs has reason to believe that a contemplated prospective ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions, notice of the intent to modify or revoke that treatment will be published in the *Customs Bulletin* either as a separate action or in connection with a proposed modification or revocation of a prospective ruling or internal advice decision or holding or principle covered by a protest review decision under paragraph (b)(1) of this section. The notice will give interested parties 30 calendar days from the date of publication of the notice to submit written comments on the proposed modification or revocation and will invite any member of the public whose substantially identical transactions have been accorded the same treatment to advise Customs in writing of that fact, supported by appropriate details regarding those transactions, within that 30-day period. Within 30 calendar days after the close of the public comment period, any submitted comments will be considered, notice of the final prospective ruling or other final action on the proposed modification or revocation will be published in the *Customs Bulletin,* and written confirmation of the applicability of a final modification or revocation will be provided to each person identified in the notice or during the public comment period as having had substantially identical transactions that were accorded the same treatment.

(ii) If Customs is not aware prior to issuance that a contemplated prospective ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions, the prospective ruling will be issued and generally will be effective as provided in § 177.19. However, Customs will, upon written application by a person claiming that the prospective ruling has the effect of modifying or revoking the treatment previously accorded by Customs to his substantially identical transactions, consider delaying the effective date of the prospective ruling with respect to that person, and continue the treatment previously accorded the substantially identical transactions, pending completion of the procedures set forth in paragraph (c)(2)(i) of this section.

(d) *Exceptions to notice requirements*—(1) *Publication and issuance not required.* The publication and issuance requirements set forth in paragraphs (b) and (c) of this section are inapplicable in circumstances in which a Customs position is modified, revoked or otherwise materially affected by operation of law or by publication pursuant to other legal authority or by other appropriate action taken by Customs in furtherance of an order, instruction or other policy decision of another governmental agency or entity pursuant to statutory or delegated authority. Such circumstances include, but are not limited to, the following:

(i) Adoption or amendment of a statutory provision, including any

change to the Harmonized Tariff Schedule of the United States;

(ii) Promulgation of a treaty or other international agreement under the foreign affairs function of the United States;

(iii) Issuance of a Presidential Proclamation or Executive Order, or issuance of a decision or policy determination pursuant to authority delegated by the President;

(iv) Subject to the provisions of § 152.16 of this chapter, the rendering of a judicial decision which has the effect of overturning the Customs position;

(v) Publication of a decision in the **Federal Register** as a result of a petition by a domestic interested party pursuant to 19 U.S.C. 1516 (see part 175 of this chapter);

(vi) Publication of an interim or final rule in the **Federal Register** in accordance with 5 U.S.C. 553;

(vii) Publication of a final interpretative rule in the **Federal Register** in accordance with 5 U.S.C. 553 following public notice and comment procedures; and

(viii) Publication of a final ruling in the **Federal Register** in accordance with 19 U.S.C. 1315(d) and § 177.22 of this part relating to change of established and uniform practice.

(2) *Publication not required.* In the following circumstances a final modifying or revoking ruling will be issued to the person entitled to it under paragraph (b) or (c) of this section but *Customs Bulletin* publication under paragraph (b) or (c) of this section is not required:

(i) The modifying ruling corrects a clerical error; or

(ii) The modifying or revoking ruling is directed to a ruling issued under subpart I of part 181 of this chapter relating to advance rulings under the North American Free Trade Agreement.

(e) *Effective date and application to transactions*—(1) *Rulings or decisions in effect for less than 60 days.* If a prospective ruling or internal advice decision or holding or principle covered by a protest review decision that is modified or revoked under this section had been in effect for less than 60 calendar days, the modifying or revoking ruling:

(i) Will be effective on its date of issuance with respect to the specific transaction covered by the modifying or revoking ruling: and

(ii) Will be applicable to merchandise entered, or withdrawn from warehouse for consumption, on and after its date of issuance.

(2) *Rulings or decisions in effect for 60 or more days.* If a prospective ruling or internal advice decision or holding or principle covered by a protest review decision that is modified or revoked under this section had been in effect for 60 or more calendar days, the modifying or revoking notice will, provided that liquidation of the entry in question has not become final, apply to merchandise entered, or withdrawn from warehouse for consumption:

(i) Sixty calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) of this section; or

(ii) At the option of any person with regard to that person's transaction, on and after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) of this section.

(3) *Previous treatment accorded to substantially identical transactions.* A final notice that modifies or revokes the treatment previously accorded by Customs to substantially identical transactions:

(i) Will be effective with respect to transactions that are substantially identical to the transaction described in the modifying or revoking notice 60 calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section; and

(ii) Provided that liquidation of the entry in question has not become final, will apply to merchandise entered, or withdrawn from warehouse for consumption:

(A) Sixty calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section; or

(B) At the option of a person who makes a valid claim regarding previous treatment, on and after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section.

§ 177.22 Established and uniform practice.

(a) *General.* In determining under this section that an established and uniform practice exists for purposes of 19 U.S.C. 1315(d):

(1) Only a practice regarding tariff classification under the Harmonized Tariff Schedule of the United States may be considered;

(2) The practice must involve 100 percent uniform treatment accorded by Customs through liquidations performed at multiple ports over an extended period of time. For purposes of this paragraph, ''treatment accorded by Customs'' means an actual review of entries and therefore does not include cases in which liquidation of an entry occurred without the direct, active involvement of Customs (for example, when liquidation took place by operation of law or involved bypass or automatic liquidation or similar procedures); and

(3) The burden of proof is on the importer except in a situation described in paragraph (c) of this section.

(b) *Change of established and uniform practice*—(1) *Publication.* Before the issuance of a ruling which has the effect of changing an established and uniform practice and which results in the imposition of a higher rate of duty or charge, notice that the established and uniform practice is under review will be published in the **Federal Register** and interested parties will be given an opportunity to make written submissions with respect to the correctness of the contemplated change. After the close of the public comment period, any submitted comments will be considered and a final ruling will be published in the **Federal Register.** The procedures set forth in this paragraph shall not apply with respect to a change of an established and uniform practice affecting the imposition of antidumping or countervailing duties.

(2) *Effective date.* A final ruling which changes an established and uniform practice under this section and results in the imposition of a higher rate of duty or charge will be effective with respect to merchandise entered, or withdrawn from warehouse for consumption, 30 calendar days after publication of that ruling in the **Federal Register.**

(c) *Notice of existence of an established and uniform practice.* Customs may, on its own initiative, publish in the **Federal Register** or *Customs Bulletin* a notice informing the public of the existence of an established and uniform practice. Once published, that established and uniform practice will be subject to the requirements and limitations set forth in paragraph (b) of this section.

§ 177.23 Limitation of court decisions.

(a) *General.* Subject to the notice and comment procedures set forth in paragraph (b) of this section, Customs may issue a decision that limits the application of a court decision to the specific article or issue under litigation, or to an article of a specific class or kind of merchandise that was the subject of the court decision, or to the particular circumstances or entries which were the subject of the court decision.

(b) *Publication procedures.* When Customs contemplates promulgation of a decision that would limit a court decision, a notice of the proposed

decision will be published in the *Customs Bulletin* for public comment. Interested parties will have 30 calendar days from the date of publication of the proposed decision to submit comments. After the close of the public comment period, any submitted comments will be considered and a final decision will be published in the *Customs Bulletin.*

(c) *Effective date.* A final limiting decision promulgated pursuant to this section will be effective upon publication of the decision in the *Customs Bulletin.*

§ 177.24 Availability of rulings to the public.

All rulings issued under this part, except those for which specific publication procedures are prescribed (see §§ 177.21, 177.22 and 177.23), will be published or made available for public inspection by electronic or other means within 90 calendar days after the date of issuance.

Subpart C—Internal Advice Procedure

§ 177.31 Requests for advice by Customs offices in general.

Advice or guidance as to the interpretation or proper application of the Customs and related laws with respect to a specific Customs transaction may be requested by Customs offices from the Headquarters Office or its designee at any time, whether the transaction is prospective, current, or completed. Advice as to the proper interpretation and application of the Customs and related laws with reference to a current transaction may be sought by a Customs office either on its own initiative or following a request made by an importer or other person having an interest in the transaction. Advice or guidance will be furnished by the Headquarters Office or its designee as a means of assisting Customs personnel in the orderly processing of Customs transactions under consideration by them and to ensure the consistent application of the Customs and related laws in the various Customs ports.

§ 177.32 Requests for advice on current transactions.

(a) *When a ruling has been issued*—(1) *Requests initiated by Customs.* If a ruling with respect to a prospective Customs transaction has been issued under subpart B of this part and the Customs office having jurisdiction over a current Customs transaction to which the ruling purports to relate believes that the ruling should be modified or revoked or for any other reason should not be applied to the current transaction, that office may, subject to the provisions of paragraph (c) of this section and in accordance with the procedures of paragraph (f) of this section, forward a request that the ruling be reconsidered or otherwise reviewed to determine its correctness or its applicability to the current transaction. The Customs office will notify the importer or other person having an interest in the current transaction, in writing, that it intends to refer the matter for internal advice. The written notice to the importer or other interested person will identify the specific issue to be reviewed under the internal advice procedure and will afford the importer or other interested person 30 calendar days to make a written submission on the issue, which should be provided to the Customs office issuing the notice, for inclusion with the request for internal advice.

(2) *Requests initiated by importers and others.* If a prospective ruling has been issued under subpart B of this part and the importer or other person having an interest in a current Customs transaction to which the ruling purports to relate disagrees with the Customs office having jurisdiction over the current transaction as to the correctness of the ruling or proper application of the ruling to the current transaction, the importer or other interested person may request in writing that the Customs office seek internal advice as to the correctness of the ruling or proper application of the ruling to the current transaction. Subject to the provisions of paragraph (c) of this section, a decision whether or not to seek internal advice in the circumstances outlined in this paragraph will be solely at the discretion of the Customs office, and the decision by that office will be made in writing within 30 calendar days of receipt of the written request from the importer or other interested person. If the Customs office agrees to seek internal advice, the request for internal advice will be submitted in accordance with paragraph (f) of this section.

(b) *When no ruling has been issued*—(1) *General.* Subject to the provisions of paragraph (c) of this section, internal advice may be sought by a Customs office with respect to a current Customs transaction to which no ruling issued under subpart A of this part purports to relate whenever there is a difference of opinion, including a difference of opinion involving two or more Customs offices, as to the interpretation or proper application of the Customs and related laws to the current transaction. This internal advice may be sought by the Customs office having jurisdiction over the current transaction either on its own initiative or in response to a written request from the importer or other person having an interest in the current transaction and will be submitted in accordance with paragraph (f) of this section. If the request for internal advice is initiated by the Customs office, that office will notify the importer or other interested person in writing that it intends to refer the matter for internal advice; the written notice will identify the specific issue to be reviewed under the internal advice procedure and will afford the importer or other interested person 30 calendar days to make a written submission on the issue, which should be provided to the Customs office issuing the notice, for inclusion with the request for internal advice. If the importer or other interested person submits a written request for the internal advice procedure, a decision whether or not to seek internal advice under this paragraph will be solely at the discretion of the Customs office except as otherwise provided in paragraph (b)(2) of this section; the decision will be made in writing within 30 calendar days of receipt of the written request from the importer or other interested person.

(2) *Differences in tariff application.* If an importer of merchandise knows that two or more Customs offices are allowing different tariff results for the same merchandise imported by that importer, that importer has an obligation, as a function of the exercise of reasonable care, to bring that fact to the attention of Customs in connection with the filing of his entry covering that merchandise. When it comes to the attention of a Customs office through an importer or by any other means that two or more Customs offices are applying different tariff results to the same merchandise, that Customs office must seek internal advice in accordance with paragraph (f) of this section if:

(i) The offices cannot reach agreement on the proper action to be taken with respect to the merchandise; and

(ii) The matter at issue otherwise meets the requirements for internal advice under this subpart.

(c) *Criteria for internal advice*—(1) *When internal advice may be requested.* Except as otherwise provided in paragraph (c)(2) of this section, when a Customs office would otherwise not accept the position presented by an importer or other interested person in connection with a current transaction, that office may request internal advice if:

(i) The importer or other interested person demonstrates that his position is entirely consistent in all material respects with:

(A) A ruling issued under subpart B of this part;

(B) An internal advice decision issued under this subpart;

(C) A protest review decision issued under part 174 of this chapter;

(D) A decision made at any port with respect to a transaction that is substantially identical in all material respects; or

(E) A decision of the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit or any court of appeal from that court;

(ii) The importer or other interested person demonstrates that the current transaction involves questions of law or fact which have not been ruled upon by the Commissioner of Customs or his designee or by the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit or any court of appeal from that court; or

(iii) The current transaction involves matters previously ruled upon by the Commissioner of Customs or his designee or by the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit or any court of appeal from that court, but the importer or other interested person demonstrates that the current transaction involves facts or legal issues which were not considered at the time of the earlier ruling.

(2) *Circumstances in which internal advice may not be requested.* A Customs office may not request internal advice on a current transaction if one of the criteria set forth in paragraph (c)(1) of this section is not met or in any of the following circumstances:

(i) If the importer or other interested person requested that internal advice be sought and the internal advice request would have the effect of seeking reconsideration of either a ruling previously issued to that importer or other interested person under subpart B of this part or a protest review decision previously issued to that importer or other interested person under part 174 of this chapter;

(ii) When confidentiality issues raised in an internal advice submission cannot be resolved (see subpart D of this part);

(iii) When the issue involved is identical or similar to one that is the subject of a pending modification or revocation under § 177.21;

(iv) When an established and uniform practice involving an identical or similar transaction exists or is undergoing a change under § 177.22;

(v) When a limitation of a court decision involving an identical or similar transaction is pending under § 177.23;

(vi) When a protest review decision involving an identical or similar transaction is pending under part 174 of this chapter; or

(vii) When an identical or similar transaction is pending before the Court of International Trade or is on appeal from that court. For purposes of this paragraph, a transaction is ''pending before the Court of International Trade'' if a summons has been filed.

(d) *Content of submissions or requests by importers and others.* If an importer or other interested person makes a submission under paragraph (a)(1) or (b) of this section or requests that a Customs office seek internal advice under paragraph (a)(2) or (b) of this section, the written submission or request must contain a complete statement setting forth a description of the transaction, the specific questions presented, the applicable law, and an argument for the conclusions advocated. If the importer or other interested person wants Customs to accord confidential treatment to any information provided by him in connection with a request for internal advice under this section, a written request for that confidential treatment must be made when that information is provided to Customs and must conform to the requirements of subpart D of this part. If the importer or other interested person wants an opportunity to have a conference if issuance of an adverse decision is contemplated (see paragraph (f)(3) of this section), a statement to that effect must be included in the submission or request. In addition, where an importer or other interested person requests that a Customs office seek internal advice and relies upon the criterion set forth in paragraph (c)(1)(ii) of this section, the request must also contain, or provide as a signed attachment to the request, the following certification by a person having knowledge of the facts:

> I certify that, to the best of my knowledge and belief, and except as otherwise stated herein, the transaction described in this request, or one similar, identical, or related to it, is not currently being considered by any other Customs office and will not be pending before any Customs office by virtue of a request for a prospective ruling or a request for internal advice or a protest filed simultaneously with this request and is not pending before any other Federal agency or before any Federal court, and that, to the best of my knowledge and belief, all information provided in connection with this request is accurate and complete.

(e) *Review of statements by importers and others.* Each written statement submitted by an importer or other interested person under paragraph (d) of this section will be reviewed by the Customs office to which it is submitted. In the event a difference of opinion exists as to the description of the transaction or as to the point or points at issue, the person submitting the statement will be so advised in writing. If agreement cannot be reached, the statement of the importer or other interested person, together with the written position of the Customs office, will be forwarded by the Customs office as a request for internal advice in accordance with paragraph (f) of this section.

(f) *Submission and processing of requests for internal advice—(1) Submission to, and decision by, the National Commodity Specialist Division.* If the request for internal advice on a current Customs transaction involves a matter on which the National Commodity Specialist Division may issue a prospective ruling (see § 177.11(a)(1)), the Customs office will submit the request to the Director, National Commodity Specialist Division, who will review the request to determine whether it meets the standards for internal advice set forth in paragraphs (c) and (d) of this section. At the conclusion of that review:

(i) If the request for internal advice is complete and meets the criteria for internal advice set forth in paragraph (c) of this section, the Director, National Commodity Specialist Division, will issue a written decision on the request to the submitting office within 30 calendar days of receipt of the request and will furnish a copy of the decision to the importer or other interested person, except in any of the following circumstances:

(A) The issue presented in the request involves a position of the submitting office that reflects a position already taken by the Director, National Commodity Specialist Division. In this case, the Director will return the request to the submitting office with instructions to handle the matter in accordance with that Customs position;

(B) The importer or other interested person has requested a conference in accordance with paragraph (f)(3) of this section and the Director, National Commodity Specialist Division, contemplates issuance of a decision adverse to the position of the importer or other person; or

(C) The Director, National Commodity Specialist Division, believes that the nature of the issue presented in the request requires consideration and decision by the Headquarters Office;

(ii) If the request for internal advice involves a circumstance described in paragraph (f)(1)(i)(B) or paragraph

(f)(1)(i)(C) of this section, the Director, National Commodity Specialist Division, will forward the request to the Headquarters Office for consideration and decision; or

(iii) The Director, National Commodity Specialist Division, will return the request for internal advice to the submitting office without taking any further action on it if the request does not contain sufficient information on which to base a decision or if the request does not meet the criteria for internal advice set forth in paragraph (c) of this section. The Director, National Commodity Specialist Division, will provide a written explanation of the reason the request is being returned without action.

(2) *Submission to, and decision by, the Headquarters Office.* If the request for internal advice on a current Customs transaction involves a matter on which only the Headquarters Office may issue a prospective ruling (see § 177.11(a)(2)), the Customs office will submit the request to the Headquarters Office. Following receipt of a request for internal advice submitted under this paragraph or forwarded under paragraph (f)(1)(ii) of this section, the Headquarters Office will review the request to determine whether it meets the standards for internal advice set forth in paragraphs (c) and (d) of this section. At the conclusion of that review, the Headquarters Office will issue a written decision on the request, including a refusal to furnish advice, to the submitting office and will furnish a copy of the decision to the importer or other interested person. The Headquarters Office may refuse to consider the questions presented to it in a request for internal advice whenever:

(i) The Headquarters Office determines that the period of time necessary to give adequate consideration to the questions presented would result in a withholding of action with respect to the transaction, or in any other situation that is inconsistent with the sound administration of the Customs and related laws; and

(ii) The questions presented can subsequently be raised by the importer or other interested party in the form of a protest filed under part 174 of this chapter.

(3) *Conferences on issues.* A request by the importer or other interested person for an opportunity to have a conference on an issue presented in a request for internal advice on a current Customs transaction will be granted only in connection with a decision to be issued by the Headquarters Office and only in circumstances in which the Headquarters Office contemplates issuance of a decision adverse to the position advocated by the importer or other interested person in the written submission or request prepared in accordance with paragraph (d) of this section. A conference held under this section will not conclude with the issuance of an internal advice decision and will be governed by the following principles and procedural requirements:

(i) A conference is scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the written submission or request of the importer or other interested person. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing.

(ii) If a request for a conference is granted, the person making the request will be contacted to arrange a time and place for the conference. No more than one conference with respect to the matters set forth in a request for internal advice will be scheduled, unless, in the opinion of the Headquarters Office, additional conferences are necessary.

(iii) A person whose request for a conference has been granted may appear at the conference in person and may be accompanied by counsel or other representatives or, in lieu of a personal appearance, the person may designate an authorized agent to appear at the conference in his place.

(iv) It will be the responsibility of the person who requested the conference to provide for inclusion in the Headquarters Office file on the matter a written record setting forth any and all additional documents, exhibits, or other information introduced during the conference to the extent that person considers the material relevant to the consideration of the request for internal advice. Any further documentation, exhibits, or other information to be submitted as a result of the conference must be submitted to the Headquarters Office within 30 calendar days following the conference or within any longer period as the Headquarters Office may authorize.

(g) *Effect of internal advice decisions*—(1) *General.* Internal advice furnished by the Director, National Commodity Specialist Division, or by the Headquarters Office under this section represents the official position of Customs as to the interpretation and application of the Customs laws with reference to the facts of a specific transaction. Internal advice furnished under this section will be effective on the date of the written decision and will be applied by the Customs office in its disposition of the current transaction in question and in the disposition of future transactions of the importer or other interested person involving circumstances that are substantially identical in all material respects, provided that the decision has not been modified or revoked on appeal under § 177.33 or modified or revoked by a prospective ruling under § 177.21.

(2) *Third party reliance on internal advice decisions.* A person engaging in a Customs transaction who has not received a ruling covering that transaction may rely on an internal advice decision issued in connection with a Customs transaction of another person and made available to the public under § 177.24, and may assume that Customs will apply the principles of that internal advice decision to his transaction, provided that Customs determines that the relevant facts and principles reflected in the internal advice decision are materially the same as those involved in the transaction under consideration and provided that the internal advice decision has not been modified or revoked by operation of law or by Customs action (see § 177.21).

§ 177.33 Appeal of internal advice decisions on current transactions.

(a) *Scope of appeal.* If an importer or other interested person on whose current transaction an internal advice decision was issued under § 177.32 believes that the decision is adverse to his position on one or more substantive issues reflected in the decision, that person, or his authorized agent, may pursue an administrative appeal of that decision in accordance with the procedures set forth in this section. An appeal filed under this section must be limited to issues involving the construction of the law and will involve a *de novo* review of the decision which is the subject of the appeal. The decision on appeal may correct an erroneous statement in the original decision, may affirm the result reached in the original decision, may modify or revoke the original decision (see § 177.21), or may involve the issuance of a new decision if new or additional facts are presented in the appeal.

(b) *Form and address.* The appeal must be in the form of a signed letter written in the English language. In the case of an internal advice decision issued by the Headquarters Office, the appeal letter must be addressed to the Office of Regulations and Rulings, United States Customs Service, Washington, DC 20229. In the case of an internal advice decision issued by the

Director, National Commodity Specialist Division, the appeal letter must be addressed to the Director, National Commodity Specialist Division, Office of Regulations and Rulings, United States Customs Service, New York, New York 10048, who will forward the appeal letter, together with any comments as may be appropriate, to the Headquarters Office for processing. The words ''Internal Advice Appeal'' should appear in a conspicuous place on the face of the envelope containing the appeal letter.

(c) *Time of filing.* The appeal must be filed within 30 calendar days of the effective date of the adverse internal advice decision. An appeal received by Customs after that 30-day appeal period will be rejected as untimely and will be returned to the person filing the appeal. The issues raised in a rejected appeal may be the subject of administrative review only in connection with a valid protest filed under part 174 of this chapter.

(d) *Content.* Each appeal letter should include a copy of the internal advice decision which is the subject of the appeal and any other information, documents, samples or other materials submitted by the importer or other interested person in connection with the original request for internal advice under § 177.32 which are not reflected in the internal advice decision and which the person filing the appeal deems relevant to the issues raised in the appeal.

(e) *Current or completed transactions.* The filing of an appeal under this section will not result in a suspension of liquidation in the case of current transactions pending resolution of such appeal and will not extend or otherwise affect the period for filing a protest under part 174 of this chapter. However, if a person has filed a timely appeal under this section, he may protest under part 174 any liquidation that is consistent with the original decision, and any resulting protest decision will reflect the decision on appeal under this section.

(f) *Confidential information.* If the person filing the appeal wants Customs to accord confidential treatment to any information submitted in connection with the appeal, a written request for that confidential treatment must be made when the information is submitted to Customs and must conform to the requirements of subpart D of this part.

(g) *Processing of appeals*—(1) *General.* Appeals of adverse internal advice decisions will normally be processed in the order they are received and as expeditiously as possible. The provisions of § 177.32(f)(3) relating to conferences will apply to appeals under this section except that a conference on an appeal under this section will not be granted as a matter of right but rather only if the Headquarters Office believes that a conference is necessary. If a conference is held, the Headquarters Office may require additional time to prepare the decision on appeal.

(2) *Requests for expedited consideration.* If a request that an appeal be given expedited consideration is made in the appeal letter with a reasonable showing of business necessity for that treatment, the appeal will be decided no later than 60 calendar days following the date on which the appeal is filed with Customs except when the publication requirements of § 177.21 are applicable.

(3) *Issuance of decision.* Each appeal will be decided solely on the written record before Customs, that is, the record on the original appealed internal advice decision plus the appeal letter submission and any timely submission made after a conference and any other information that Customs determines to be relevant. The Headquarters Office will issue a written decision on the appeal to the person who filed the appeal or to any other person designated for that purpose in the appeal letter, and a copy of the appeal decision will be provided to the Customs field office and to the Director, National Commodity Specialist Division.

(4) *Effective dates.* If the decision on appeal affirms the result reflected in the original internal advice decision, that original decision will remain in effect for purposes of this subpart. If it is determined on appeal that the original internal advice decision is in error in whole or in part or is otherwise not in accord with the current views of Customs, the decision on appeal will be given effect as follows:

(i) If the decision on appeal is issued less than 60 calendar days after the effective date of the original internal advice decision, the decision on appeal will constitute a modification or revocation of the original internal advice decision with regard to the issue or issues raised on appeal and the result reflected in the decision on appeal will be applied to Customs transactions as follows:

(A) If final Customs action has not been taken on the current transaction that was the subject of the original internal advice decision, Customs will follow the decision on appeal in handling the current transaction; or

(B) If final Customs action has been taken on the current transaction that was the subject of the appeal, Customs will take the decision on appeal into account in considering a valid protest filed against that final action under part 174 of this chapter; or

(ii) If the decision on appeal is issued 60 or more calendar days after the effective date of the original internal advice decision, the original internal advice decision will be modified or revoked in accordance with the procedures set forth in § 177.21, and the decision on appeal will take effect on the effective date of the ruling that modifies or revokes the original internal advice decision (see § 177.21(e)).

§ 177.34 Availability of internal advice decisions to the public.

An internal advice decision issued under this subpart will be made available for public inspection in accordance with § 177.24.

Subpart D—Disclosure of Confidential Business Information

§ 177.41 Treatment of requests for confidentiality.

(a) *General availability of information.* Consistent with the basic principle of availability of information reflected in the Freedom of Information Act (the FOIA, 5 U.S.C. 552) and part 103 of this chapter, the general practice of Customs is to treat all information submitted under this part as a matter of public record that is available to the general public. However, a person who provides information to Customs in connection with a ruling or appeal under subpart B of this part, or who provides information to Customs in connection with an internal advice request or appeal under subpart C of this part, may in accordance with paragraph (b) of this section request that Customs accord confidential treatment to that information if the person does not want it to be disclosed to the public.

(b) *Submission of requests for confidential treatment.* A request for confidential treatment under this section must conform to the following standards:

(1) The request must be in writing and must relate to information that is alleged to constitute trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(2) The request must clearly identify the information that is the subject of the request;

(3) The request must set forth the reasons why the information should not be disclosed, including the reasons the

disclosure of the information would prejudice the competitive position of the interested person;

(4) The request must be supported by a signed statement by the interested person, or by an officer or authorized employee of an interested party company, certifying that the information in question is confidential commercial or financial information and is not already in the public domain; and

(5) A failure to request confidential treatment at the time the information in question is submitted to Customs will constitute a waiver of confidential treatment. Accordingly, a request for confidential treatment will not be entertained under this subpart if the information to which the request relates was submitted to Customs without a request for confidential treatment.

(c) *Disposition of requests for nondisclosure*—(1) *General.* An issue of confidentiality raised under paragraph (b) of this section will be resolved with reference to the principles that apply under Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)) and under 31 CFR part 1 and under part 103 of this chapter. A request for a conference to discuss an issue of confidentiality will be granted only if Customs believes that a conference is necessary. Each issue of confidentiality must be resolved to the satisfaction of Customs and the person who submitted the information to Customs before Customs will consider the substance of the ruling request or submission or appeal which contains the information at issue, except in the case of information submitted in connection with a prospective ruling or request for internal advice that was initiated by Customs (see paragraph (c)(2)(ii) of this section). If the issue of confidentiality is resolved to the mutual satisfaction of Customs and the person who submitted the information at issue, Customs will grant the request for confidential treatment by written notice to the person who made that request. Customs will then resume consideration of the appropriate ruling or internal advice decision or decision on appeal in accordance with subpart B or subpart C of this part.

(2) *Failure to agree on confidential treatment*—(i) *Action not initiated by Customs.* In the case of a ruling request or request for internal advice that was made or initiated by an importer or other interested party, or in the case of an appeal of any ruling or internal advice decision, if an issue of confidentiality raised under paragraph (b) of this section cannot be resolved to the mutual satisfaction of Customs and the person who submitted the information to Customs, or if Customs determines for any other reason that there is not a sufficient basis for granting the request for confidential treatment, Customs will in writing notify the person that his request for confidential treatment is denied. In this case, no further submission will be accepted, and no conference will be held, on the issue of confidentiality after that notification. The person who submitted the information to Customs will be given 10 working days from the date of the notification letter to advise Customs in writing that he is withdrawing the ruling request or submission or appeal which contains the information at issue, and Customs will take one of the following actions:

(A) If the issue of confidentiality relates to information submitted with the original ruling request or submission or appeal and the person who made the ruling request or submission or filed the appeal either withdraws the ruling request or submission or appeal or fails to do so in writing within the prescribed 10-day period, Customs will close the case file without action. Customs also will return the ruling request or submission or appeal to the person who filed it unless a FOIA request for any of that information has been filed under paragraph (d) of this section; or

(B) If the issue of confidentiality relates only to information provided to Customs in a further submission which supplements a ruling request or submission or appeal and the person who made the original ruling request or submission or filed the appeal either withdraws the further submission or fails to do so in writing within the prescribed 10-day period, Customs will return the further submission to the person who made the original ruling request or submission or filed the appeal without considering it and will proceed with consideration of the ruling request or submision or appeal as originally submitted so long as it has not been withdrawn in accordance with paragraph (c)(2)(i)(A) of this section.

(ii) *Action initiated by Customs.* In the case of information contained in a submission made either in connection with a prospective ruling initiated by Customs under § 177.17(b) or in connection with a request for internal advice initiated by Customs under § 177.32(a)(1) or (b), if an issue of confidentiality raised under paragraph (b) of this section cannot be resolved to the mutual satisfaction of Customs and the person who submitted the information to Customs, or if Customs determines for any other reason that there is not a sufficient basis for granting the request for confidential treatment, Customs will in writing notify that person. Customs will proceed with the prospective ruling or internal advice decision notwithstanding the failure to reach agreement on the confidentiality issue but will attempt to prepare the prospective ruling or internal advice decision in such a way as to avoid disclosure of the information claimed to be confidential to the greatest extent practicable and consistent with the need to prepare meaningful rulings and decisions.

§ 177.42 Time limitation.

A grant of confidential treatment under this subpart will be valid for a period of 3 years or for any shorter period of time specified in the written notice provided under § 177.41(c)(1), after which time it will automatically expire by operation of law unless renewed under § 177.43. Even if a grant expires, the information given confidential treatment will only be disclosed to the public pursuant to the Freedom of Information Act.

§ 177.43 Renewal of confidential treatment.

A grant of confidential treatment under this subpart will be considered for renewal for one or more additional periods not to exceed 3 years for each renewal period if a written request for renewal is received by Customs during the 3-month period prior to the scheduled expiration date. A request received either prior to the start of that 3-month period or on or after the scheduled expiration date will be rejected as untimely, unless the requester shows good cause for the failure to make the request during that 3-month period. The request for renewal should be in the form of a letter and must contain a detailed explanation as to why the information continues to require confidential treatment. Customs will advise the requester in writing of the decision on the request for the extension.

§ 177.44 Disclosure pursuant to the FOIA.

(a) *General.* Business information provided to Customs as part of a ruling request or other written submission or appeal under subpart B of this part, or provided to Customs in connection with an internal advice request or appeal under subpart C of this part, may be the subject of a request for disclosure under the Freedom of Information Act (the FOIA, 5 U.S.C. 552) prior to resolution of a request for confidential treatment or subsequent to a grant of confidential treatment under § 177.41 or when no request for confidential treatment has been made or granted under § 177.41. In

any of these cases, the business information will not be disclosed pursuant to a FOIA request if, in the opinion of Customs, it falls within the scope of Exemption 4 of the FOIA.

(b) *Notice to ruling requester or submission filer or appellant and FOIA requester*—(1) *Notice to ruling requester or submission filer or appellant.* Except as otherwise provided in paragraph (f) of this section, Customs will provide a ruling requester or submission filer or appellant with prompt notice of receipt of a request under the FOIA encompassing his business information whenever the ruling requester or submission filer or appellant has in good faith designated the information as commercially or financially sensitive information (even if Customs previously did not grant a request for confidential treatment under § 177.41) or whenever Customs has reason to believe that disclosure of the information may result in commercial or financial injury to the ruling requester or submission filer or appellant. The notice will either describe the exact nature of the information requested or provide copies of the records or portions of records containing the information and will advise the ruling requester or submission filer or appellant of its right to file an objection to the requested disclosure in accordance with the procedures set forth in paragraph (c) of this section. Customs will also provide a copy of the FOIA request.

(2) *Notice to FOIA requester.* When notice is given to a ruling requester or submission filer or appellant under paragraph (b)(1) of this section, Customs will in writing notify the FOIA requester that the notice has been given to the ruling requester or submission filer or appellant. The notice will also advise the FOIA requester that a delay by Customs in responding to the request may be considered a denial of access to records and that the FOIA requester may proceed with an administrative appeal or seek judicial review, if appropriate, in accordance with the FOIA and any applicable regulations. The notice will invite the FOIA requester to agree to a voluntary extension of time so that Customs may review the ruling requester's or submission filer's or appellant's objection to disclosure.

(c) *Filing of objection to disclosure.* The ruling requester or submission filer or appellant may, within 10 working days of the date of the notice provided for in paragraph (b)(1) of this section, file with Customs a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any of the information under any exemption under paragraph (b) of the FOIA, and, in the case of Exemption 4, must demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential.

(d) *Notice of intent to disclose.* Customs will consider any objections filed by a ruling requester or submission filer or appellant under paragraph (c) of this section and any other specific grounds for nondisclosure prior to determining whether to disclose the information pursuant to the FOIA request. If Customs determines that disclosure should be made over the objections of the ruling requester or submission filer or appellant, Customs will provide to the ruling requester or submission filer or appellant a written notice of that determination. The notice, a copy of which will be provided to the FOIA requester, will include:

(1) A statement of the reasons the ruling requester's or submission filer's or appellant's objections to disclosure were not sustained;

(2) A general description of the information to be disclosed; and

(3) A specific date for disclosure which will be 10 working days after the date appearing on the notice.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to compel disclosure of information provided to Customs as part of a ruling request or other written submission or appeal under subpart B of this part or provided to Customs in connection with an internal advice request or appeal under subpart C of this part, Customs will promptly provide written notification of the suit to the ruling requester or submission filer or appellant.

(f) *Exceptions to notice requirements.* The notice requirements of this section will not apply if:

(1) Customs has granted confidential treatment for the information under § 177.41 and intends to continue to honor that grant;

(2) Customs has otherwise determined, by application of Exemption 4 of the FOIA or pursuant to any other provision of law, that the information should not be disclosed;

(3) The information lawfully has been published or otherwise made available to the public; or

(4) Disclosure of the information is required by a provision of law other than the FOIA.

§ 177.52 [Amended]

2. In newly redesignated § 177.52, paragraph (b)(2) is amended by removing the reference ''§ 177.25(a)'' and adding, in its place, the reference ''§ 177.55(a)''.

§ 177.54 [Amended]

3. In newly redesignated § 177.54, the first sentence is amended by removing the reference ''§ 177.23'' and adding, in its place, the reference ''§ 177.53''.

§ 177.55 [Amended]

4. In newly redesignated § 177.55, paragraph (b)(1) is amended by removing the reference ''§ 177.24'' and adding, in its place, the reference ''§ 177.54''.

§ 177.57 [Amended]

5. In newly redesignated § 177.57, the first sentence is amended by removing the reference ''§ 177.23'' and adding, in its place, the reference ''§ 177.53'', and the second sentence is amended by removing the reference ''§ 177.4'' and adding, in its place, the reference ''§ 177.13''.

§ 177.58 [Amended]

6. In newly redesignated § 177.58, paragraph (c) is amended by removing the reference ''§ 177.25(b)(5)'' and adding, in its place, the reference ''§ 177.55(b)(5)''.

§ 177.60 [Amended]

7. In newly redesignated § 177.60, the first sentence is amended by removing the reference ''§ 177.22(d)'' and adding, in its place, the reference ''§ 177.52(d)''.

§ 177.61 [Amended]

8. In newly redesignated § 177.61, the last sentence is amended by removing the reference ''§ 177.29'' and adding, in its place, the reference ''§ 177.59'' and removing the reference ''§ 177.30'' and adding, in its place, the reference ''§ 177.60''.

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 9, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 657/P.L. 107–19

To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)

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