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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

**[Docket No. 05–068–2]**

## Importation of Peppers From the Republic of Korea

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to allow the importation into the continental United States of peppers from the Republic of Korea under certain conditions. As a condition of entry, the peppers will have to be grown in approved insect-proof, pest-free greenhouses and packed in pest-exclusionary packinghouses. In addition, the peppers will have to be safeguarded against pest infestation during their movement from the production site to the packinghouse and from the packinghouse to the continental United States. This action will allow for the importation of peppers from the Republic of Korea into the continental United States while continuing to provide protection against the introduction of quarantine pests.

**DATES:** *Effective Date:* June 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On December 29, 2005, we published in the **Federal Register** (70 FR 77069–77073, Docket No. 05–068–1) a proposal [1] to amend the regulations to allow the importation of peppers from the Republic of Korea into the continental United States under certain conditions. As a condition of entry, we proposed that the peppers would have to be grown in approved insect-proof, pest-free greenhouses and packed in pest-exclusionary packinghouses. In addition, we proposed that the peppers would have to be safeguarded against pest infestation during their movement from the production site to the packinghouse and from the packinghouse to the continental United States.

We solicited comments concerning our proposal for 60 days ending February 27, 2006. We received two comments by that date. One comment was from a private citizen who questioned the need to import peppers from the Republic of Korea. The commenter stated generally that the United States should rely on its own pepper production, but did not otherwise address any issues germane to the proposal. The second commenter, from a State department of agriculture, expressed concern that *Pepino mosaic virus* could be transported into the United States on peppers from the Republic of Korea. *Pepino mosaic virus* has a narrow host range which includes tomato. As the commenter stated, it is not known for certain whether *Capsicum* species serve as hosts for the virus. In addition, the virus is reported to occur within the United States, including Florida, and is not under official control. APHIS regards fruit for consumption as an unlikely pathway for the establishment of *Pepino mosaic virus* and does not, therefore, restrict the interstate movement of U.S. tomatoes, even though tomato is an established host of the virus. Pepper is not a known host for *Pepino mosaic virus*; therefore, we believe pepper fruit for consumption is even less likely to serve as a pathway.

The commenter also expressed concern that the pest risk assessment does not discuss the fungus *Monilinia fructicola* in any depth, given that the brown rot symptoms caused by *M. fructicola* are difficult to distinguish from the symptoms caused by *M. fructigena*, which is identified as a quarantine pest of concern in the pest risk assessment. *M. fructicola* is common within the United States and is not considered a quarantine pest. Fruit infected with *M. fructicola* exhibits symptoms of brown rot that would be visible upon inspection. Since, as the commenter notes, brown rot is also a symptom of *M. fructigena*, which is a quarantine pest addressed by this rule, peppers would not be accepted from any greenhouse where brown rot symptoms had been detected unless it is determined that the causal fungus is the nonquarantine species.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

**Note:** In our December 2005 proposed rule, we proposed to add the conditions governing the importation of peppers from the Republic of Korea as § 319.56–2oo. In this final rule, those conditions are added as § 319.56–2qq.

### 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.

We are amending the fruits and vegetables regulations to allow the importation into the continental United States of peppers from the Republic of Korea (South Korea) under certain conditions. As a condition of entry, the peppers will have to be grown in approved insect-proof, pest-free greenhouses and packed in pest-exclusionary packinghouses. In addition, the peppers will have to be safeguarded against pest infestation during their movement from the production site to the packinghouse and from the packinghouse to the continental United States. This action will allow for the importation of peppers from South Korea into the

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2005–0112, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

continental United States while continuing to provide protection against the introduction of quarantine pests.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. In accordance with section 604 of the RFA, we have prepared a final regulatory flexibility analysis describing the expected impact of the changes in this rule on small entities. During the comment period for our proposed rule, we did not receive any comments pertaining to the initial regulatory flexibility analysis presented in that document.

The peppers to be imported into the United States are greenhouse-grown throughout South Korea. Based on information provided by the National Plant Quarantine Service (NPQS) of South Korea, we expect that red varieties or cultivars ('Spirit,' 'Special,' 'Jubilee') will comprise 60–70 percent of the peppers that will be exported to the United States from South Korea. Yellow pepper cultivars or varieties ('Fiesta,' 'Romeca') will comprise 20–25 percent of exports, and orange ('Nassau,' 'Emily,' 'Boogie') pepper cultivars will comprise 5–10 percent of the peppers shipped to the United States. The Netherlands is the seed source for the peppers grown in South Korea.

The harvesting of the peppers will occur between November and July. The pepper fruits ready for export to the United States will be packed in standard boxes (usually 5kg/carton package) and stored under low temperature conditions. During distribution, temperatures will be maintained at 8–10 °C. The peppers will then be transported from South Korea by ship, using refrigerated containers, to western parts of the United States, and via air containers to eastern parts of the United States.

South Korea expects to export 250 metric tons of peppers per month, amounting to 3,000,000 kg annually. At 5 kg per carton, that will comprise 600,000 cartons per year, or about 600 40-foot container loads (assuming that each holds 1,000 cartons). This level of imports is small compared to current levels of production and imports into the United States.

In 2004, a volume of 446,006,999 kg of peppers, valued at $663.6 million, was imported into the United States. These imports included fresh or chilled fruits of the genus *Capsicum* or *Pimienta*. Mexico, Canada, the Netherlands, and Israel were the major exporting countries.

Regarding commercial pepper production in the United States, the National Agricultural Statistics Service (NASS) (2005) reports the production of bell and chili peppers separately. In 2004, the production of bell peppers for fresh market and processing amounted to 16,803,000 cwt[2] (762,171,259 kg), and was valued at $576,375,000. California and Florida are the major producing States. The production of chili peppers in 2004 was 4,753,000 cwt (215,592,453 kg), valued at $123,615,000. Chili peppers are defined as all peppers excluding bell peppers, and the estimates include both fresh and dry products. New Mexico and California are the major producing States.

**Effects on Small Entities**

The Regulatory Flexibility Act requires agencies to specifically consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has established size criteria based on the North American Industry Classification System (NAICS) to determine which economic entities meet the definition of a small firm. This rule may affect producers and wholesalers of peppers in the United States.

Pepper producers are classified into two categories: Other Vegetable (except Potato) and Melon Farming (NAICS 111219) and Food Crops Grown Under Cover (NAICS 11141). The small entity size standard for these producers is $750,000 or less in annual receipts. According to the 2002 Census of Agriculture, there were 31,550 farms classified under NAICS 111219 in 2002. The total market value of the agricultural products sold from these farms amounted to $10,159,518,000 with $10,093,575,000 accruing to sales of crops, and $65,943,000 to sales of livestock, poultry, and their products. Similarly, there were 1,778 farms classified under NAICS 11141 in 2002. The total value of the agricultural products sold from these farms amounted to $1,215,760,000, with $1,214,474,000 accruing to sales of crops and $1,286,000 to sales of livestock, poultry, and their products.

However, APHIS does not have information on the distribution of these farms by sales value of their products. We also do not have information for pepper producers specifically. Nevertheless, the 2002 Agricultural Census data indicated that the bell peppers harvested for sale in 2002 were harvested from 8,484 farms; and that the harvested areas were smaller than 5 acres on 90 percent of these farms. Though lack of data thus precludes more definitive conclusions regarding the potential economic impacts on small entities, the above data indicate that the majority of pepper farms that may be affected by this rule would likely qualify as small.

Fruit and vegetable wholesalers are classified under NAICS 424480, and those with not more than 100 employees are considered small by SBA standards. There were 5,376 fresh fruit and vegetable merchant wholesalers in the United States in 2002, which employed a total of 110,578 employees. APHIS does not have information on the distribution of the wholesalers by numbers of employees. We also do not have data on the wholesale trade for peppers specifically. However, the above data indicate that the majority of fruit and vegetable wholesalers that may be affected by this rule would likely qualify as small entities.

Thus, APHIS expects that the producers and wholesalers in the United States that may be affected by the importation of peppers from South Korea will predominantly be small entities. Nevertheless, the economic effects are not expected to be significant. It has been estimated that about 3,000 tons of peppers would be imported annually from South Korea. In an economic analysis prepared by APHIS for a recent proposed rule,[3] it was estimated that annual imports of about 31,040 tons of peppers from the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua would lead to a price decrease of approximately $0.01 to $0.02 per pound at the retail level. Since the volume imported from South Korea is expected to be significantly smaller, effects on domestic prices that may result from the importation of peppers from South Korea should be even lower. Thus, the price changes that may result from this level of increase in the supply of peppers are expected to be negligible.

On the other hand, importers and consumers in the United States may benefit from this rule. Importers will have more import opportunities available due to the alternative sources of peppers. Consumers will benefit from an increased availability of the product. Nevertheless, changes of the magnitude presented here are not likely to have large repercussions for either of the categories of entities discussed above.

[2] ''cwt'' is an abbreviation for ''hundredweight,'' the standard unit of production for certain agricultural products. One hundredweight equals 100 pounds.

[3] See 70 FR 59283–59290, Docket 05–003–1, published October 12, 2005.

**Alternatives**

APHIS does not expect there to be any significant economic impact of this rule on small entities. There is therefore no basis for setting forth alternatives that would minimize significant impacts.

Two alternatives to this rule that would not meet stated objectives would be to either not change current regulations regarding the importation of peppers from South Korea or to allow their importation without the required risk mitigations.

The first alternative would maintain current safeguards against the entry of exotic pests. However, this option would also mean that both countries would forgo economic benefits expected to be afforded by the trade. Furthermore, APHIS has concluded that the pest risks associated with the importation of peppers from South Korea can be effectively mitigated by the phytosanitary requirements; given that conclusion, it would be contrary to our obligations under international trade agreements to maintain a prohibition on the importation of peppers from South Korea.

Allowing the importation of fresh peppers from South Korea under phytosanitary requirements less restrictive than those described in this rule could potentially lead to the introduction of pests not currently found in the United States. This option could result in losses and costs to domestic production and is, thus, not desirable.

This rule contains information collection or recordkeeping requirements (see ''Paperwork Reduction Act'' below).

**Executive Order 12988**

This final rule allows peppers to be imported into the United States from South Korea. State and local laws and regulations regarding peppers imported under this rule will be preempted while the fruit is in foreign commerce. Fresh peppers are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of peppers under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[4] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0282.

**Government Paperwork Elimination Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**List of Subjects in 7 CFR Part 319**

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–2qq is added to read as follows:

**§ 319.56–2qq Administrative instructions; conditions governing the entry of peppers from the Republic of Korea.**

Peppers (*Capsicum annuum* L. var. *annuum*) from the Republic of Korea may be imported into the continental United States only under the following conditions:

(a) The peppers must be grown in the Republic of Korea in insect-proof greenhouses approved by and registered with the National Plant Quarantine Service (NPQS).

(b) The greenhouses must be equipped with double self-closing doors, and any vents or openings in the greenhouses (other than the double self-closing doors) must be covered with 0.6 mm screening in order to prevent the entry of pests into the greenhouse.

(c) The greenhouses must be inspected monthly throughout the growing season by NPQS to ensure phytosanitary procedures are employed to exclude plant pests and diseases, and that the screens are intact.

(d) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. During the time the packinghouse is in use for exporting peppers to the continental United States, the packinghouse can accept peppers only from registered approved production sites. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing. The peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the continental United States. These

[4] Go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab and select ''Docket Search.'' In the Docket ID field, enter APHIS–2005–0112, click on ''Submit,'' then click on the Docket ID link in the search results page. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

safeguards must remain intact until the arrival of the peppers in the United States or the shipment will not be allowed to enter the United States.

(e) Each shipment of peppers must be accompanied by a phytosanitary certificate of inspection issued by NPQS bearing the following additional declaration: ''These peppers were grown in greenhouses in accordance with the conditions in 7 CFR 319.56–2qq and were inspected and found free from *Agrotis segetum, Helicoverpa armigera, Helicoverpa assulta, Mamestra brassicae, Monilinia fructigena, Ostrinia furnacalis, Scirtothrips dorsalis, Spodoptera litura*, and *Thrips palmi*.''

(f) The peppers must be imported in commercial shipments only.

(Approved by the Office of Management and Budget under control number 0579–0282)

Done in Washington, DC, this 17th day of May 2006.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 06–4718 Filed 5–19–06; 8:45 am]

**BILLING CODE 3410–34–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50 and 72

**RIN 3150–AH39**

### Submission of Annual Financial Reports: Elimination of Requirement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations so that licensees who file financial reports with the Securities and Exchange Commission (SEC) or the Federal Energy Regulatory Commission (FERC), need not submit annual financial reports, including the certified financial statements, to the Commission. The Commission is also amending its regulations so that Independent Spent Fuel Storage Installation (ISFSI) licensees who file financial reports with the SEC or the FERC, need not submit annual financial reports, including the certified financial statements, to the Commission.

**DATES:** *Effective Date:* The final rule is effective August 7, 2006, unless significant adverse comments are received by June 21, 2006. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number RIN 3150–AH39 in the subject line of your comments. Comments on rulemakings or petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 p.m. on Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking or petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3224, e-mail *MTJ1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:** In accordance with section 553(b)(3)(B) of the Administrative Procedures Act, the NRC is using the direct final rule process for this rule because the NRC considers this action to be noncontroversial, and does not anticipate significant adverse comments. The Commission considers this rulemaking action noncontroversial because the annual reports and the certified financial statements currently required by § 50.71 (b) and 72.80 (b), are typically written for the shareholders, and contain information pertaining to financial qualifications, that may be outdated by the time it is published. The reports can be found posted on the company's Web site as well as on the SEC or FERC Web sites. The NRC has concluded that for licensees that are required to file financial reports with the SEC or the FERC, licensee financial information can be collected in a more cost-effective way than requiring licensees to submit the reports to the Commission, as required by 10 CFR 50.71(b) and 10 CFR 72.80 (b). The NRC has access to other more current sources of information than the annual financial reports to assess the licensees' financial condition, making the submittal of the annual financial report to the NRC unnecessary. Additionally, NRC has the authority to request licensees to submit additional or more detailed information regarding their financial status if the Commission considers this information appropriate.

The amendments in this rule will become effective on August 7, 2006. However, if the NRC receives significant adverse comments on this direct final rule by June 21, 2006, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when—

(A) The comment causes the staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the staff.

(2) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

**Background**

Section 182.a of the Atomic Energy Act of 1954, as amended, provides that each application for a license shall state such information as the Commission, by rule or regulation, may determine to be necessary to decide the financial qualifications of the applicant as the Commission may deem appropriate for the license. The Act and the Commission's regulations reflect that the fundamental purpose of the financial qualifications provision of that section is the protection of the public health and safety and the common defense and security. Although the Commission's safety determinations required for the issuance of facility licenses are based upon extensive and detailed technical review, an applicant's financial qualifications can also contribute to the ability to meet its responsibilities on safety matters.

**Discussion**

In SECY–02–0081, ''Staff Activities Related to the NRC Goal of Reducing Unnecessary Regulatory Burden on Power Reactor Licensees,'' dated May 13, 2002, the NRC staff described various interactions with stakeholders regarding ways to reduce unnecessary regulatory burden. By memorandum dated June 25, 2002, the Commission directed the staff to proceed with its evaluation of possible rule changes. In developing the initiative described in SECY–02–0081, the NRC staff had solicited observations and suggestions by placing a notice in the **Federal Register** (66 FR 22134; May 3, 2001) and sponsoring a workshop on May 31, 2001. In a response letter dated July 2, 2001, the Nuclear Energy Institute (NEI) provided a list of suggestions from its members for possible changes to several regulations that could reduce unnecessary regulatory burden. This list included the annual reports and the certified financial statements currently required by §§ 50.71(b) and 72.80(b).

These reports are typically written for the shareholders, and contain information pertaining to financial qualifications, such as:

(1) A letter to the shareholders that covers the company's changing conditions, goals achieved or missed, and its outlook;

(2) Sales and marketing data showing the product lines of the company, sales volume, and the products that produce the most revenue;

(3) CPA (certified public accountant) opinion letter on the company's financials;

(4) List of directors and officers;

(5) Management discussion and analysis of significant financial trends;

(6) Consolidated financial statements that show multi-year trends in revenue, spending, profits, inventory and debt;

(7) Trends in the stock price;

(8) Notes to the consolidated financial statements that explain most line items on the financials.

By comparing the company's past year performance to previous years, insights can be obtained as to how the company, as a whole, has been doing financially as of the end of the past year.

The information in the annual report and the certified financial statements may be outdated by the time they are published and submitted to the NRC. Accordingly, in many instances the NRC has been using a more current source of information, called Form 10–Q, the quarterly financial report submitted to the SEC. Form 10–Q usually contains:

(1) The three months and the year-to-date income statement compared to the same period of the previous year;

(2) The company's balance sheets;

(3) The three months and year-to-date cash flow statements compared to the same period of the previous year;

(4) Notes to the consolidated financial statements;

(5) Management discussion and analysis of financial condition and results of operations.

The Form 10–Q gives a snap shot of the company's performance on a quarterly basis. The report can be found posted on many company's Web sites as well as on the SEC Web site. Form 1, submitted to the FERC, contains similar up-to-date financial information that can be electronically accessed by the staff.

The Commission has concluded that, for licensees that are required to file financial reports with the SEC or the FERC, licensees financial information can be collected in a more cost-effective way than requiring licensees to submit the reports required by 10 CFR 50.71(b) and 10 CFR 72.80(b). The NRC has access to other more current sources of information than the annual financial reports to assess the licensees' financial condition, making the submittal of the annual financial report to the NRC unnecessary. Additionally, NRC has the authority to request licensees to submit additional or more detailed information regarding their financial status if the Commission considers this information appropriate.

Accordingly, the Commission has concluded that 10 CFR 50.71(b) ''Maintenance of records, making of reports'' and 10 CFR 72.80(b) ''Other records and reports'' may be revised to eliminate reporting requirements for licensees who file financial reports with the SEC or the FERC.

**Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this direct final rule, the NRC is eliminating the requirement to submit annual financial reports and certified financial statements to the Commission if financial reports are already submitted to the SEC or the FERC. These actions do not constitute the establishment of a standard that contains generally applicable requirements.

**Plain Language**

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

**Environmental Impact: Categorical Exclusion**

The NRC determined that this direct final rule is categorically excluded from

NEPA because it does not have a significant impact on the human environment and does not substantially modify the regulations and is a minor non-policy change of the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii) for rulemaking involving reporting requirements. This action eliminates the requirement to submit annual financial reports and certified financial statements to the Commission if financial reports are already submitted to the SEC or the FERC. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

**Paperwork Reduction Act Statement**

This direct final rule decreases the information collection burden contained in section 50.71(b) of 10 CFR part 50 and section 72.80(b) of 10 CFR part 72 that is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The burden reduction for this information collection is estimated to average .50 hour(s) per response. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number(s) 3150–0011 and 3150–0132.

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

**Regulatory Analysis**

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor, nonsubstantive amendment; a relatively small impact on NRC licensees ($400 annual savings per licensee) and no economic impact on the public.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities.This final rule affects only the licensing and operation of nuclear power plants and independent spent fuel storage installations. The companies that own these facilities do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC.

**Backfit Analysis**

The NRC has determined that the backfit rule does not apply to this final rule and, therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1) or 10 CFR 72.62.

The final rule imposes no new requirements on licensees, nor does it alter procedures at nuclear facilities or ISFSIs. Rather, it no longer requires licensees and applicants to submit annual financial reports and certified financial statements to the Commission. Licensees are free to continue submitting reports to the NRC. Therefore, the proposed requirement constitutes a voluntary relaxation and is not a backfit.

**Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

**List of Subjects**

*10 CFR Part 50*

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

*10 CFR Part 72*

Administrative practice and procedure, Hazardous waste, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act for 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR parts 50 and 72.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for 10 CFR part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(d), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 50.71, paragraph (b) is revised to read as follows:

**§ 50.71 Maintenance of records, making of reports.**

* * * * *

(b) With respect to any production or utilization facility of a type described in § 50.21(b) or 50.22, or a testing facility, each licensee and each holder of a construction permit shall submit its annual financial report, including the certified financial statements, to the Commission, as specified in § 50.4, upon issuance of the report. However, licensees and holders of a construction permit who submit a Form 10-Q with the Securities and Exchange Commission or a Form 1 with the Federal Energy Regulatory Commission, need not submit the annual financial report or the certified financial statement under this paragraph.

* * * * *

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE.

■ 3. The authority citation for 10 CFR part 72 continues to read as follows:

**Authority:** Secs, 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub.

L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended; 202, 206, 88 Stat. 1242, as amended; 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241; sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under section 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)), Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (U.S.C. 10198).

■ 4. In § 72.80, paragraph (b) is revised to read as follows:

**§ 72.80 Other records and reports.**

* * * * *

(b) Each licensee shall furnish a copy of its annual financial report, including the certified financial statements, to the Commission. However, licensees who submit a Form 10–Q with the Securities and Exchange Commission or a Form 1 with the Federal Energy Regulatory Commission, need not submit the annual financial report or a certified financial statement under this paragraph.

* * * * *

Dated at Rockville, Maryland, this 2nd day of May, 2006.

For the Nuclear Regulatory Commission.

**Luis A. Reyes,**

*Executive Director for Operations.*

[FR Doc. 06–4737 Filed 5–19–06; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 73

**[Docket No. FAA–2003–16531; Airspace Docket No. 96–ASO–10]**

**RIN 2120–AA66**

## Modification and Revocation of Restricted Areas R–3007A, B, C, D, and E; Townsend, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action reconfigures Restricted Areas R–3007A, B, C, and D, and revokes Restricted Area R–3007E, Townsend, GA, by reducing the lateral size, increasing the vertical limits, and by increasing the time of designation of the restricted airspace by six hours per day. The FAA is taking this action to better accommodate Department of Defense (DOD) training requirements and to eliminate restricted airspace that is no longer needed by the military. Additionally, the name of the using agency for all R–3007 subareas is changed to reflect the current organizational title. This action also makes a minor correction to the latitude/longitude positions of two points in the descriptions of R–3007B and R–3007C.

**DATES:** Effective 0901 UTC, August 3, 2006.

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

**SUPPLEMENTARY INFORMATION:**

### Background

On December 5, 1996, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to reconfigure the existing restricted airspace at Townsend Range, Georgia, by reducing the lateral size, increasing the vertical limits, increasing the time of designation of the restricted areas by six hours per day, and changing the name of the using agency to reflect the current organizational title (61 FR 64494). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. The FAA received no comments in response to the proposal. Further action on the proposal was then deferred pending the completion of additional environmental studies by the proponent. As a result of this delay, the FAA published a supplemental notice of proposed rulemaking on February 3, 2004, to readvertise the proposal and invite additional comment (69 FR 5099). One comment, expressing support for the proposed action, was received in response to the supplemental notice.

Restricted Areas are published in subpart B of FAA Order 7400.8M, dated January 6, 2006 and effective February 16, 2006, which is incorporated by reference in 14 CFR 73. The Restricted Areas listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 to reconfigure restricted areas R–3007A, B, C, D, and E, at the Townsend Range, Georgia, to better accommodate Department of Defense training requirements, eliminate restricted airspace no longer needed for military training, and enable the more efficient use of airspace. This amendment eliminates all of the restricted airspace currently described as R–3007A and approximately one half of the restricted airspace currently described as R–3007B. The remaining Townsend Range restricted airspace is redescribed as three subareas: R–3007A, B, and C. A new restricted area, designated R–3007D, is established directly above R–3007A, B, and C. The designation R–3007E is no longer needed and is revoked.

Specifically, R–3007A is revised to describe the circular surface target area that is currently designated as R–3007E. The designation R–3007E is revoked. The subarea currently designated as R–3007D is redescribed as R–3007B. The existing subarea R–3007C is revised to retain its original area, plus incorporate the remaining portion of the former R–3007B subarea.

New restricted airspace is established above the revised R–3007A, B, and C subareas. This new area, designated R–3007D, extends from 13,000 feet above mean sea level (MSL) to flight level (FL) 250. The purpose of R–3007D is to raise the ceiling of the Townsend Range from the current 13,000 feet MSL, to FL 250, in order to accommodate high altitude, high angle weapons delivery training. The existing 13,000 feet MSL ceiling at Townsend Range precludes the conduct of this essential training at the Range. This rule also increases the time of designation for the revised Townsend Range complex by six hours per day from the current ''Monday–Friday, 0800–1700 local time; other times by NOTAM at least 24 hours in advance'' to ''Monday–Friday, 0700–2200 local time; other times by NOTAM at least 24 hours in advance.'' This change permits more flexible range utilization and accommodates increased night training requirements. Finally, the using agency name for all subareas is changed from ''Savannah Air National Guard Training Site, Garden City, GA'' to ''ANG, Savannah Combat Readiness Training Center, GA'' to reflect the current organizational name. The Townsend Range complex will be joint-use airspace. The restricted areas will be returned to the controlling agency on a real-time basis when not required for

military activities. All flight operations in the Range will be subsonic.

In addition, this amendment makes a minor correction to two points in the descriptions of R–3007B and R–3007C, respectively. The point published in the NPRM as 31°33′16″ N., long. 81°31′14″ W., is corrected to lat. 31°33′18″ N., long. 81°31′13″ W. The point published as 31°31′16″ N., long. 81°31′59″ W., is corrected to lat. 31°31′26″ N., long. 81°31′58″ W. These corrections are the result of a more accurate plot of the airspace boundaries.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

In November 1995, the Air National Guard (ANG) issued a Final Environmental Impact Statement (FEIS) for the ''Proposed Wing Conversion and Modification to Airspace in Southeastern Georgia.'' On January 3, 1996, the ANG issued a Record of Decision (ROD). In 2005, due to the lapse in time since issuance of the 1995 FEIS and 1996 ROD, the ANG prepared a Supplemental Environmental Assessment (SEA) in accordance with the National Environmental Policy Act (NEPA), as amended, of the proposed reconfiguration of R–3007 and a separate nonrulemaking proposal to modify military operations areas (MOA) in southeastern Georgia. The nonrulemaking proposal involves the revocation of the existing Quick Thrust and Gator MOAs and the establishment of the Coastal MOAs, which will take effect concurrent with the effective date of this rule. The SEA process included both the rulemaking and nonrulemaking proposed actions. The FAA participated in the SEA process as a Cooperating Agency. The ANG provided a 30-day public comment period on the draft SEA, which ended on November 20, 2005. They received no comments. The ANG then issued a Final SEA and Finding of No Significant Impact (FONSI) on December 22, 2005.

Pursuant to FAA Order 1050.1E, ''Environmental Impacts: Polices and Procedures,'' the FAA conducted an independent review of the Final SEA. On March 2, 2006, in accordance with paragraph 404d in the Order, the FAA adopted the December 2005 Final SEA, and in accordance with paragraph 406 in the Order, the FAA issued a FONSI. The FONSI signifies that the FAA will not prepare an environmental impact statement and has completed the NEPA process for the proposed actions.

**List of Subjects in 14 CFR Part 73**

Airspace, Navigation (air).

**The Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration will amend 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

**§ 73.30 [Amended]**

■ 2. Section 73.30 is amended as follows:

* * * * *

**R–3007A Townsend, GA [Revised]**

*Boundaries.* A circular area with a 1.5-mile radius centered at lat. 31°33′16″ N., long. 81°34′44″ W.

*Designated altitudes.* Surface to but not including 13,000 feet MSL.

*Time of designation.* 0700–2200 local time, Monday–Friday; other times by NOTAM at least 24 hours in advance.

*Controlling agency.* FAA, Jacksonville ARTCC.

*Using agency.* ANG, Savannah Combat Readiness Training Center, GA.

**R–3007B Townsend, GA [Revised]**

*Boundaries.* Beginning at lat. 31°38′01″ N., long. 81°28′59″ W.; to lat. 31°37′31″ N., long. 81°28′14″ W.; to lat. 31°32′31″ N., long. 81°27′29″ W.; to lat. 31°26′16″ N., long. 81°31′29″ W.; to lat. 31°25′31″ N., long. 81°35′59″ W.; to lat. 31°27′26″ N., long. 81°33′39″ W.; to lat. 31°31′26″ N., long. 81°31′58″ W.; thence clockwise along a 1 NM radius arc from a point centered at lat. 31°32′26″ N., long. 81°31′49″ W.; to lat. 31°33′18″ N., long. 81°31′13″ W.; to the point of beginning.

*Designated altitudes.* 1,200 feet AGL to but not including 13,000 feet MSL.

*Time of designation.* 0700–2200 local time, Monday–Friday; other times by NOTAM at least 24 hours in advance.

*Controlling agency.* FAA, Jacksonville ARTCC.

*Using agency.* ANG, Savannah Combat Readiness Training Center, GA.

**R–3007C Townsend, GA [Revised]**

*Boundaries.* Beginning at lat. 31°38′01″ N., long. 81°46′59″ W.; to lat. 31°42′31″ N., long. 81°33′59″ W.; to lat. 31°38′01″ N., long. 81°28′59″ W.; to lat. 31°33′18″ N., long. 81°31′13″ W.; thence counterclockwise along a 1 NM radius arc from a point centered at lat. 31°32′26″ N., long. 81°31′49″ W.; to lat. 31°31′26″ N., long. 81°31′58″ W.; to lat. 31°27′26″ N., long. 81°33′39″ W.; to lat. 31°25′31″ N., long. 81°35′59″ W.; thence west along the Altamaha River to the point of beginning; excluding R–3007A.

*Designated altitudes.* 100 feet AGL to but not including 13,000 feet MSL.

*Time of designation.* 0700–2200 local time, Monday–Friday; other times by NOTAM at least 24 hours in advance.

*Controlling agency.* FAA, Jacksonville ARTCC.

*Using agency.* ANG, Savannah Combat Readiness Training Center, GA.

**R–3007D Townsend, GA [Revised]**

*Boundaries.* Beginning at lat. 31°38′01″ N., long. 81°46′59″ W.; to lat. 31°42′31″ N., long. 81°33′59″ W.; to lat. 31°38′01″ N., long. 81°28′59″ W.; to lat. 31°37′31″ N., long. 81°28′14″ W.; to lat. 31°32′31″ N., long. 81°27′29″ W.; to lat. 31°26′16″ N., long. 81°31′29″ W.; to lat. 31°25′31″ N., long. 81°35′59″ W.; thence northwest along the Altamaha River to the point of beginning.

*Designated altitudes.* 13,000 feet MSL to FL 250.

*Time of designation.* 0700–2200 local time, Monday–Friday; other times by NOTAM at least 24 hours in advance.

*Controlling agency.* FAA, Jacksonville ARTCC.

*Using agency.* ANG, Savannah Combat Readiness Training Center, GA.

**R–3007E Townsend, GA [Revoked]**

* * * * *

Issued in Washington, DC, on May 12, 2006.

**Edith V. Parish,**

*Manager, Airspace and Rules.*

[FR Doc. 06–4734 Filed 5–19–06; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 101

**[Docket No. 2004P–0512]**

## Food Labeling: Health Claims; Soluble Dietary Fiber From Certain Foods and Coronary Heart Disease

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is adopting as a

final rule, without change, the provisions of the interim final rule that amended the regulation authorizing a health claim on the relationship between beta-glucan soluble fiber from whole oat sources and reduced risk of coronary heart disease (CHD) by adding barley as an additional source of beta-glucan soluble fiber eligible for the health claim. FDA is taking this action to complete the rulemaking initiated with the interim final rule.

**DATES:** This rule is effective May 22, 2006. The Director of the Office of the **Federal Register** approved the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 101.81(c)(2)(ii)(A)(5) as of December 23, 2005.

**FOR FURTHER INFORMATION CONTACT:** James E. Hoadley, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1450.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of December 23, 2005 (70 FR 76150), FDA published an interim final rule to amend the regulation that authorizes a health claim on the relationship between soluble fiber from certain foods and CHD risk (§ 101.81 (21 CFR 101.81)) to include beta-glucan soluble fiber from barley. Under sections 403(r)(3)(B)(i) and (r)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(3)(B)(i) and (r)(7)), FDA issued this interim final rule in response to a petition filed under section 403(r)(4) of the act. Section 403(r)(3)(B)(i) of the act states that the Secretary of Health and Human Services (and, by delegation, FDA) shall issue a regulation authorizing a health claim only if FDA ''determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence'' (see also 21 CFR 101.14(c)). Section 403(r)(4) of the act sets out the procedures that FDA is to follow upon receiving a health claim petition. Section 403(r)(7) of the act permits FDA to make proposed regulations issued under section 403(r) effective upon publication pending consideration of public comment and publication of a final regulation if the agency determines that such action is necessary for public health reasons (70 FR 76150 at 76157).

On August 3, 2004, the National Barley Foods Council (petitioner), submitted a health claim petition to FDA requesting that the agency amend the ''Soluble fiber from certain foods and coronary heart disease health claim'' at § 101.81 to include barley and barley products as an additional source of beta-glucan soluble fiber eligible for the health claim. FDA filed the petition for comprehensive review in accordance with section 403(r)(4) of the act on November 10, 2004. The petitioner requested that FDA grant an interim final rule by which labeling of barley-containing foods could bear the health claim prior to publication of a final rule.

FDA considered the scientific evidence presented in the petition as part of its review of the scientific literature on barley beta-glucan soluble fiber and CHD risk, as well as information previously considered by the agency on the relationship of consumption of beta-glucan containing oat foods and blood (serum or plasma) cholesterol levels. The agency summarized this evidence in the interim final rule (70 FR 76150 at 76153—76155). Based on the available evidence, FDA concluded that consuming whole grain barley and dry milled barley products that provide at least 3 grams of beta-glucan soluble fiber per day, is effective in lowering blood total and LDL cholesterol; and that the cholesterol-lowering effects of beta-glucan soluble fiber in dry milled barley products is comparable to that of the oat sources of beta-soluble glucan fiber now listed in § 101.81(c)(2)(ii)(A). Consequently, FDA amended § 101.81 to broaden the health claim to include whole grain barley and dry milled barley products as an additional source of beta-glucan soluble fiber eligible for the health claim.

## II. Summary of Comments and the Agency's Response

FDA solicited comments on the interim final rule. The comment period closed on March 8, 2006. The agency received no comments related to the requirements in the interim final rule. Therefore, FDA is adopting, without change, as a final rule, the interim final rule that amended § 101.81 to include dry milled barley products as an eligible source of beta-glucan soluble fiber for the soluble fiber from certain foods and CHD health claim.

## III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The costs and benefits of available regulatory alternatives analyzed in the interim final rule (70 FR 76150) are adopted without change in this final rule. By now reaffirming that interim final rule, FDA has not imposed any new requirements. Therefore, there are no additional costs and benefits associated with this final rule.

### *A. Regulatory Flexibility Analysis*

We have examined the economic implications of this final rule, as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the economic impact of the rule on small entities. As this final rule does not make any changes to the interim final rule or our analysis included therein, this final rule does not impose any new costs on firms. Accordingly, we certify that this final rule will not have a significant economic impact on a substantial number of small entities.

### *B. Unfunded Mandates*

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*, 1532) requires that agencies prepare a written statement, of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 in any one year (adjusted annually for inflation). This final rule does not create such a mandate. The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1–year expenditure that would meet or exceed this amount.

## IV. Environmental Impact

FDA has determined under 21 CFR 25.32(p) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an

environmental assessment nor an environmental impact statement is required.

**V. Paperwork Reduction Act**

FDA has concluded that the labeling provisions of this final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the food labeling health claim on the association between consumption of barley beta-glucan soluble fiber and CHD risk is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (see 5 CFR 1320.3(c)(2)).

**VI. Federalism**

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule will have a pre-emptive effect on State law. Section 4(a) of the Executive Order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision, or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 403A of the act (21 U.S.C. 343–1) is an express pre-emption provision. Section 403A (a) (5) of the act (21 U.S.C. 343–1(a)(5)) provides that * * * no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce— * * * (5) any requirement respecting any claim of the type described in section 403(r)(1) made in the label or labeling of food that is not identical to the requirement of section 403(r). * * *

Currently, this provision operates to pre-empt States from imposing health claim labeling requirements concerning barley beta-glucan soluble fiber and reduced risk of CHD. On December 23, 2005, FDA published an interim final rule which imposed requirements under section 403(r) of the act. This final rule affirms the December 23, 2005, amendment of food labeling regulations to add whole grain barley and dry milled barley products as eligible sources of beta-glucan fiber to the soluble fiber from certain foods and CHD health claim. Although this rule has a pre-emptive effect, in that it would preclude States from issuing any health claim labeling requirements for barley and reduced risk of CHD that are not identical to those required by this final rule, this pre-emptive effect is consistent with what Congress set forth in section 403A of the act. Section 403A(a)(5) of the act displaces both State legislative requirements and State common law duties. *Medtronic* v. *Lohr, 518 U.S. 470, 503 (1996)* (Breyer, J., concurring in part and concurring in judgment); *id. at 510* (O'Connor, J., joined by Rehnquist, C.J., Scalia, J., and Thomas, J., concurring in part and dissenting in part); *Cipollone* v. *Liggett Group, Inc., 505 U.S. 504, 521 (1992)* (plurality opinion); *id. at 548–49* (Scalia, J., joined by Thomas, J., concurring in judgment in part and dissenting in part).

FDA believes that the pre-emptive effect of the final rule is consistent with Executive order 13132. Section 4(e) of the Executive Order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' FDA provided the States with an opportunity for appropriate participation in this rulemaking when it sought input from all stakeholders through publication of the interim final rule in the **Federal Register** on December 23, 2005. FDA received no comments from any States on the interim rulemaking.

In addition, on January 13, 2006, FDA's Division of Federal and State Relations provided notice via fax and e-mail transmission to State health commissioners, State agriculture commissioners, food program directors, and drug program directors as well as FDA field personnel, of FDA's intended amendment to add barley beta-glucan soluble fiber to the soluble fiber from certain foods and CHD health claim (§ 101.81). The notice provided the States with further opportunity for input on the rule. It advised the States of the publication of the interim final rule and encouraged State and local governments to review the notice and to provide any comments to the docket (Docket No. 2004P–0512), opened in the December 23, 2005 **Federal Register** notice, by the close of the comment period indicated in the **Federal Register** notice (i.e., by March 8, 2006), or to contact certain named individuals. FDA received no comments in response to this notice. The notice has been filed in the above numbered docket.

In conclusion, the agency believes that it has complied with all of the applicable requirements under the Executive order and has determined that the pre-emptive effects of this rule are consistent with Executive Order 13132.

**List of Subjects in 21 CFR Part 101**

Food labeling, Incorporation by Reference, Nutrition, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

## PART 101—FOOD LABELING

■ Accordingly, the interim final rule amending 21 CFR part 101 which was published at 70 FR 76150 on December 23, 2005, is adopted as a final rule without change.

Dated: May 15, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 06–4703 Filed 5–19–06; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF LABOR

### Office of Labor-Management Standards

### Employment Standards Administration

### 29 CFR Part 220

**RIN 1215–AB55**

## Airline Employee Protection Program; Rescission of Regulations Pursuant to Pub. L. 105–220, Which Repealed the Airline Employee Protection Program

**AGENCY:** Office of Labor-Management Standards, Employment Standards Administration, Labor.

**ACTION:** Final rule, rescission of regulations.

**SUMMARY:** Section 199(a)(6) of the Workforce Investment Act, Pub. L. 105–220, 112 Stat. 1059 (1998), repealed the Airline Employee Protection Program, originally established pursuant to Section 43 of the Airline Deregulation Act, Pub. L. 95–504, 92 Stat. 1705 (1978), and subsequently codified at 49 U.S.C. 42101–42106. In accordance with the provisions of the Workforce Investment Act, the Department of Labor (Department) is issuing this final rule to rescind its regulations established by 29 CFR Part 220, to administer the Airline Employee Protection Program.

**DATES:** *Effective Date:* May 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Patrick A. Hyde, Chief, Division of Statutory Programs, Office of Labor-

Management Standards, Employment Standards Administration, U.S. Department of Labor, Room N5112, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202–693–0126. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On December 27, 1985, the Department of Labor issued regulations to implement the Airline Employee Protection program established by Section 43 of the Airline Deregulation Act of 1978. Secretary's Order Number 1–79 and 5–84, assigned to the Bureau of Labor Management Relations and Cooperative Programs, now the Office of Labor Management Standards, the responsibility for provisions concerning protected employees' priority hire rights, air carriers' duty to hire and the comprehensive job listing. The regulations covered the following items: Rehire Program and Qualifying Dislocations, Waiting Period, Exemption from the Duty to Hire, Definition of Protected Employees, Equal Employment Opportunity, New Entrants' Requirement to List Vacancies, Recall Rights, Temporary and Seasonal Employees, Responsibilities of Non-Operating Carriers, Participation of Labor Organizations, Eligibility for Designated Status, Notices of Rights, Effective Period, Submission of Semiannual Reports, and Enforcement.

In 1998, Congress repealed Section 43 of the Airline Deregulation Act in Section 199(a)(6) of the Workforce Investment Act, Pub. L. No. 105–220, 112 Stat. 1059 (1998). As a result, the regulations implementing the Airline Employee Protection Program are now without force or effect because their underlying statutory authority has been repealed. Consequently, this final rule rescinds the regulations.

A comment period for this rescission is unnecessary because the enabling statute has been repealed, and, consequently, the regulations are now without force or effect. *See* 5 U.S.C. 553(b)(B). For this same reason, good cause exists to make the rescission effective immediately upon this rule's publication. *See* 5 U.S.C. 553(d)(3).

## Regulatory Procedures

### *Regulatory Flexibility Act*

The rescission of the regulations administering the Airline Employee Protection Program through this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 605(b)) is not required. The Assistant Secretary for Employment Standards has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

### *Unfunded Mandates Reform*

Executive Order 12875—This rule will not create an unfunded Federal mandate upon any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

### *Paperwork Reduction Act*

The rescission of the regulations administering the Airline Employee Protection Program through this final rule contains no new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

■ Accordingly, under the authority of section 199(a)(6) of the Workforce Investment Act, part 220 of title 29 of the Code of Federal Regulations is removed.

Signed at Washington, DC, this 15th day of May 2006.

**Victoria A. Lipnic,**

*Assistant Secretary for Employment Standards.*

Signed at Washington, DC, this 15th day of May 2006.

**Don Todd,**

*Deputy Assistant Secretary for Labor-Management Standards.*

[FR Doc. 06–4727 Filed 5–19–06; 8:45 am]

BILLING CODE 4510–CP–P

## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## 31 CFR Parts 535, 536, 537, 538, 539, 540, 541, 542, 560, 588, 594, and 595

## Iranian Assets Control Regulations, Narcotics Trafficking Sanctions Regulations, Burmese Sanctions Regulations, Sudanese Sanctions Regulations, Weapons of Mass Destruction Trade Control Regulations, Highly Enriched Uranium (HEU) Agreement Assets Control Regulations, Zimbabwe Sanctions Regulations, Syrian Sanctions Regulations, Iranian Transactions Regulations, Western Balkans Stabilization Regulations, Global Terrorism Sanctions Regulations, Terrorism Sanctions Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (OFAC) is revising its regulations to reflect amendments to the International Emergency Economic Powers Act (IEEPA) made by the Combating Terrorism Financing Act of 2005 (the ''Act'').

**DATES:** Effective May 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance, Outreach & Implementation, tel.: 202/622–2490, Assistant Director, Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

## Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

## Background

On March 9, 2006, the President signed the Act into law as Public Law 109–177. Section 402 of the Act amended section 206 of IEEPA (50 U.S.C. 1705) by raising the maximum civil penalty for a violation, or attempted violation, of any license, order, or regulation issued under IEEPA to $50,000. The Act also increased the maximum term of imprisonment for a willful violation of any such license, order, or regulation to 20 years.

Accordingly, OFAC is amending the current IEEPA-based sanctions programs regulations to reflect the revised penalties prescribed by the Act.

**Executive Order 12866, Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act**

Because the regulations at issue involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. In addition, OFAC finds that, because the rule merely amends the penalties provisions of certain sanctions regulations to conform with the statutory changes provided in the Combating Terrorism Financing Act of 2005, good cause exists under 5 U.S.C. 553(b)(B) to waive the notice and public participation procedures, as well as under 5 U.S.C. 553(d)(3) to waive the delay in effective date. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

The Paperwork Reduction Act does not apply because this rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**List of Subjects**

*31 CFR Part 535*

Administrative practice and procedure, Banks, Banking, Currency, Foreign claims, Foreign investments in United States, Iran, Penalties, Reporting and recordkeeping requirements, Securities.

*31 CFR Part 536*

Administrative practice and procedure, Banks, Banking, Drug traffic control, Penalties, Reporting and recordkeeping requirements.

*31 CFR Part 537*

Administrative practice and procedure, Banks, Banking, Burma, Currency, Foreign investments in United States, Foreign trade, Penalties, Reporting and recordkeeping requirements, Securities.

*31 CFR Part 538*

Administrative practice and procedure, Banks, Banking, Currency, Foreign investments in United States, Foreign trade, Penalties, Reporting and recordkeeping requirements, Securities, Sudan.

*31 CFR Part 539*

Administrative practice and procedure, Arms and munitions, Imports, Penalties, Reporting and recordkeeping requirements.

*31 CFR Part 540*

Administrative practice and procedure, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Russian Federation, Uranium.

*31 CFR Part 541*

Administrative practice and procedure, Banks, Banking, Blocking of assets, Penalties, Reporting and recordkeeping requirements, Securities, Services, Zimbabwe.

*31 CFR Part 542*

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Penalties, Reporting and recordkeeping requirements, Securities, Services, Syria.

*31 CFR Part 560*

Administrative practice and procedure, Exports, Humanitarian aid, Imports, Iran, Penalties, Reporting and recordkeeping requirements.

*31 CFR Part 588*

Administrative practice and procedure, Banks, Banking, Penalties, Reporting and recordkeeping requirements, Securities, Western Balkans.

*31 CFR Part 594*

Administrative practice and procedure, Banks, Banking, Penalties, Reporting and recordkeeping requirements, Terrorism.

*31 CFR Part 595*

Administrative practice and procedure, Banks, Banking, Currency, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

■ For the reasons set forth in the preamble, 31 CFR chapter V is amended by amending the penalty provisions in 31 CFR parts 535, 536, 537, 538, 539, 540, 541, 542, 560, 588, 594, and 595.

## PART 535—IRANIAN ASSETS CONTROL REGULATIONS

■ 1. The authority citation for part 535 is revised to read as follows:

**Authority:** 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12170, 44 FR 65729; 3 CFR, 1979 Comp., p. 457; E.O. 12205, 45 FR 24099; 3 CFR, 1980 Comp., p. 248; E.O. 12211, 45 FR 26685; 3 CFR, 1980 Comp., p. 253; E.O. 12276, 46 FR 7913; 3 CFR 1981 Comp., p. 104; E.O. 12279, 46 FR 7919; 3 CFR, 1981 Comp., p. 109; E.O. 12280, 46 FR 7921; 3 CFR, 1981 Comp., p. 110; E.O. 12281, 46 FR 7923; 3 CFR, 1981 Comp., p. 110; E.O. 12282, 46 FR 7925; 3 CFR, 1981 Comp., p. 113; E.O. 12283, 46 FR 7927; 3 CFR, 1981 Comp., p. 114; and E.O. 12294, 46 FR 14111; 3 CFR, 1981 Comp., p. 139; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

**§ 535.701 [Amended]**

■ 2. Amend § 535.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''ten years'' and adding in its place ''twenty years''.

## PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

■ 1. The authority citation for part 536 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1641, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12978, 60 FR 54579; 3 CFR, 1995 Comp., p. 415; E.O. 13224, 66 FR 49079; 3 CFR, 2001 Comp., p. 786; E.O. 13286, 68 FR 10619, March 5, 2003; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

**§ 536.701 [Amended]**

■ 2. Amend § 536.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''ten years'' and adding in its place ''twenty years''.

## PART 537—BURMESE SANCTIONS REGULATIONS

■ 1. The authority citation for part 537 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C 1601–1651, 1701–1706; Sec. 570, Pub. L. 104–208, 110 Stat. 3009; Pub. L. 108–61, 117 Stat. 864; E.O. 13047, 62 FR 28301; 3 CFR 1997 Comp., p. 202; E.O. 13310, 68 FR 44853; 3 CFR 2004 Comp., p. 241; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

**§ 537.701 [Amended]**

■ 2. Amend § 537.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''10 years'' and adding in its place ''twenty years''.

## PART 538—SUDANESE SANCTIONS REGULATIONS

■ 1. The authority citation for part 538 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2339B, 2332d; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 106–387, 114 Stat. 1549; E.O. 13067, 62 FR 59989; 3 CFR, 1997 Comp., p. 230; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

#### § 538.701 [Amended]

■ 2. Amend § 538.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''10 years'' and adding in its place ''twenty years''.

## PART 539—WEAPONS OF MASS DESTRUCTION TRADE CONTROL REGULATIONS

■ 1. The authority citation for part 539 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 22 U.S.C. 2751–2799aa–2; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 12938, 59 FR 59099; 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803; 3 CFR, 1998 Comp., p. 200; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

#### § 539.701 [Amended]

■ 2. Amend § 539.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''10 years'' and adding in its place ''twenty years''.

## PART 540—HIGHLY ENRICHED URANIUM (HEU) AGREEMENT ASSETS CONTROL REGULATIONS

■ 1. The authority citation for part 540 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13159, 65 FR 39279; 3 CFR Comp., p. 277; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

#### § 540.701 [Amended]

■ 2. Amend § 540.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''10 years'' and adding in its place ''twenty years''.

## PART 541—ZIMBABWE SANCTIONS REGULATIONS

■ 1. The authority citation for part 541 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13288, 68 FR 11457; 3 CFR, 2003 Comp., p. 186; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

#### § 541.701 [Amended]

■ 2. Amend § 541.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''10 years'' and adding in its place ''twenty years''.

## PART 542—SYRIAN SANCTIONS REGULATIONS

■ 1. The authority citation for part 542 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13338, 69 FR 26751, May 13, 2004; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

#### § 542.701 [Amended]

■ 2. Amend § 542.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''10 years'' and adding in its place ''twenty years''.

## PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 1. The authority citation for part 560 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 12613, 52 FR 41940; 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615; 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CRF, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531; 3 CFR, 1997 Comp., p. 217; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

#### § 560.701 [Amended]

■ 2. Amend § 560.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''ten years'' and adding in its place ''twenty years''.

## PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

■ 1. The authority citation for part 588 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13219, 66 FR 34777; 3 CFR, 2002 Comp., p. 778; E.O. 13304, 68 FR 32315, May 29, 2003; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

#### § 588.701 [Amended]

■ 2. Amend § 588.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''10 years'' and adding in its place ''twenty years''.

## PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 1. The authority citation for part 594 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13224, 66 FR 49079, September 25, 2001; E.O. 13268, 67 FR 44751, July 3, 2002; 3 CFR, 2002 Comp., p. 240; E.O. 13284, 64 FR 4075, January 28, 2003; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

#### § 594.701 [Amended]

■ 2. Amend § 594.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''10 years'' and adding in its place ''twenty years''.

## PART 595—TERRORISM SANCTIONS REGULATIONS

■ 1. The authority citation for part 595 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12947, 60 FR 5079; 3 CFR, 1995 Comp., p. 319; Pub. L. 109–177, 120 Stat. 192.

### Subpart G—Penalties

#### § 595.701 [Amended]

■ 2. Amend § 595.701 in paragraph (a)(1) by removing ''$11,000'' and adding in its place ''$50,000'', and in paragraph (a)(2) by removing ''ten years'' and adding in its place ''twenty years''.

Dated: April 20, 2006.

**Barbara C. Hammerle,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 06–4705 Filed 5–19–06; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 060317073–6125–02; I.D. 031406A]**

**RIN 0648–AT28**

## Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2006

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement recreational management measures for the 2006 summer flounder, scup, and black sea bass fisheries. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Effective June 21, 2006, except for the amendment to § 648.107(a) introductory text, which is effective May 22, 2006.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.noaa.gov*. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279.

**SUPPLEMENTARY INFORMATION:**

### Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations, which are found at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational management measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The 2006 coastwide recreational harvest limits are 9,293,695 lb (4,216 mt) for summer flounder, 4,153,168 lb (1,884 mt) for scup, and 3,988,732 lb (1,809 mt) for black sea bass. The 2006 quota specifications, inclusive of the recreational harvest limits, were determined to be consistent with the 2006 target fishing mortality rate (F) for summer flounder and the target exploitation rates for scup and black sea bass.

The proposed rule to implement annual Federal recreational measures for the 2006 summer flounder, scup, and black sea bass fisheries was published on March 27, 2006 (71 FR 15147), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. A complete discussion of the development of the recreational management measures appeared in the preamble of the proposed rule and is not repeated here. All minimum fish sizes discussed below are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person.

Based on the recommendation of the Commission, the Regional Administrator finds that the recreational summer flounder fishing measures proposed to be implemented by the states of Massachusetts through North Carolina for 2006 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. According to the regulation at § 648.107(a)(1), vessels subject to the recreational fishing measures of this part and landing summer flounder in a state with an approved conservation equivalency program shall not be subject to the more restrictive Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) has been amended accordingly. The management measures will vary according to the state of landing, as specified in the following table.

TABLE 1 - 2006 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

| State | Minimum Fish Size | Possession Limit | Fishing Season |
|---|---|---|---|
| MA | 17.5 inches (44.5 cm) | 7 fish | January 1 through December 31 |
| RI | 17.5 inches (44.5 cm) | 7 fish | April 1 through December 31 |
| CT | 18 inches (45.7 cm) | 6 fish | April 30 through December 31 |
| NY | 18 inches (45.7 cm) | 4 fish | May 6 through September 12 |
| NJ | 16.5 inches (41.9 cm) | 8 fish | May 6 through October 9 |
| DE | 17 inches (43.2 cm) | 4 fish | January 1 through December 31 |
| MD* | 15.5 inches (39.4 cm) | 4 fish | January 1 through December 31 |
| VA | 16.5 inches (41.9 cm) | 6 fish | January 1 through December 31 |
| NC | 14 inches (35.6 cm) | 8 fish | January 1 through December 31 |

* Measures for the ocean waters off MD in the Atlantic Ocean and coastal bays; for the Chesapeake Bay, a 15–inch (38.1–cm) minimum fish size, a 2–fish possession limit, and a fishing season of January 1 through December 31 applies.

Table 2 contains the coastwide Federal measures for scup and black sea bass that are being implemented. These measures are unchanged from those published in the proposed rule.

TABLE 2 - 2005 SCUP AND BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

| Fishery | Minimum Fish Size | | Possession Limit | Fishing Season |
|---|---|---|---|---|
| | inches | cm | | |
| Scup | 10 | 25.4 | 50 fish | January 1 through last day of February, and September 18 through November 30 |
| Black Sea Bass | 12 | 30.5 | 25 fish | January 1 through December 31 |

As in the past 4 years, the scup fishery in state waters will be managed under a regional conservation equivalency system developed through the Commission. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures, the Federal and state recreational scup management measures will differ for 2006.

**Comments and Responses**

One comment letter was received regarding the proposed recreational management measures (71 FR 15147, March 27, 2006).

*Comment 1:* The commenter expressed concern about the impact of commercial fishing on the summer flounder, scup, and black sea bass total stocks and supports reduction of the total allowable landings for these species by 50 percent in 2006, and by an additional 10 percent each subsequent year.

*Response:* This final rule implements management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. As described in the proposed rule, the FMP established Monitoring Committees (Committees) for the summer flounder, scup, and black sea bass fisheries, consisting of representatives from the Commission, the Mid-Atlantic, New England, and South Atlantic Councils, and NMFS. The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures (i.e., minimum fish size, possession limit, and fishing season) necessary to achieve the recreational harvest limits established for each of the three fisheries for the upcoming fishing year. While NMFS acknowledges that consideration of total allowable landings and quota allocation are important, this rule is not the proper mechanism to address these general issues.

**Classification**

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effective date for the summer flounder recreational management measures contained in this rule (§ 648.107(a)). The linchpin of NMFS's decision whether to proceed with the coastwide measures or to give effect to the conservation equivalent measures is advice from the Commission as to the results of its review of the plans of the individual states. This advice has only recently been received via a letter dated May 3, 2006. The recreational summer flounder fishery has commenced in all states. The party and charter vessels from the various states are by far the largest component of the recreational fishery that fish in the EEZ. The Federal coastwide regulatory measures for the three species that were codified last year remain in effect. The Federal coastwide measures for the summer flounder fishery are more restrictive than the measures adopted by the states (with the exception of NY) and approved by the Commission as conservation equivalents, and implemented by NMFS in this rule. Federally permitted recreational vessels subject to these more restrictive measures are currently operating at a disadvantage, since non-federally permitted recreational vessels can fish in state waters under less restrictive measures.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts described in the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the Council (see **ADDRESSES**).

**Final Regulatory Flexibility Analysis**

*Statement of Objective and Need*

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

*Summary of Significant Issues Raised in Public Comments*

The one comment letter received on the proposed rule did not specifically address the potential economic impact of the rule. No changes to the proposed rule were required to be made as a result of the public comments. For a summary of the comments received, and the responses thereto, refer to the ''Comments and Responses'' section of this preamble.

*Description and Estimate of Number of Small Entities to Which This Rule Will Apply*

The Council estimated that the proposed measures could affect any of the 803 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2004, the most recent year for which complete permit data are available. However, only 327 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2004.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

*Description of the Steps Taken to Minimize Economic Impact on Small Entities*

Under the conservation equivalency approach, each state may implement unique management measures appropriate to that state to achieve state-specific harvest limits, as long as the combined effect of all of the states'

management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the annual recreational harvest limit. The conservation equivalency approach allows states flexibility in the specification of management measures, unlike the application of one set of coastwide measures. It is not possible to further mitigate economic impacts on small entities because the specification of the recreational management measures (minimum fish size, possession limits, and fishing seasons) contained in this final rule is constrained by the conservation objectives of the FMP.

The economic analysis conducted in support of this action assessed the impacts of the various management alternatives. In the EA, the no action alternative for each species is defined as the continuation of the management measures as codified for the 2005 fishing season. For summer flounder, although the status quo measures would be expected to constrain landings to the 2006 target, state-specific implications of the no-action (coastwide) alternative would be varied, with the coastwide measures being more restrictive than the conservation equivalent measures for some states and less restrictive for others. Conservation equivalency allows each state to tailor specific recreational fishing measures to the needs of that state, while still achieving conservation goals. The implications of the no-action alternative are not substantial for scup and black sea bass. Landings of these species in 2005 were less than their respective targets, and the status quo measures are expected to constrain landings to the 2006 targets. The no-action measures were analyzed in Summer Flounder Alternative 2, Scup Alternative 1, and Black Sea Bass Alternative 1.

At this time, it is not possible to determine the economic impact of summer flounder conservation equivalency on each state. However, it is likely to be proportional to the level of landings reductions required. If the conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Under § 648.107, vessels landing summer flounder in any state that does not implement conservation equivalent measures are subject to the precautionary default measures, consisting of an 18–inch (45.7–cm) minimum fish size, a possession limit of one fish, and no closed season. The suites of conservation equivalent measures proposed by each state are less restrictive than the precautionary default measures. Therefore, because states have a choice as to the specific measures to apply to landings in each state, it is more rational for the states to adopt conservation equivalent measures that result in fewer adverse economic impacts than to adopt the more restrictive measures contained in the precautionary default alternative.

For the proposed rule, average party/charter losses for each of the 18 potential combinations of alternatives were estimated for federally permitted vessels by multiplying the number of potentially affected trips in 2006 in each state by the estimated average access fee paid by party/charter anglers in the Northeast Region in 2005. Predicted average losses for NY were presented as an example, and ranged from $1,582 per vessel under the combined effects of Summer Flounder Alternative 2, Scup Alternative 3, and Black Sea Bass Alternative 2, to $6,924 per vessel under the combined effects of the summer flounder precautionary default (considered in Summer Flounder Alternative 1), Scup Alternative 2, and Black Sea Bass Alternative 3 (assuming a 25–percent reduction in effort for affected trips).

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide (the guide) was prepared and will be sent to all holders of Federal party/charter permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and the guide are available from NMFS (see *ADDRESSES*) and at the following Web site: *http://www.nero.noaa.gov*.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 17, 2006.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.107, paragraph (a) introductory text is revised to read as follows:

**§ 648.107 Conservation equivalent measures for the summer flounder fishery.**

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2006 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

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[FR Doc. 06–4739 Filed 5–19–06; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No., I.D. 050906B]**

### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Allocation of Trips to Closed Area (CA) II Yellowtail Flounder Special Access Program (SAP)

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

**ACTION:** Temporary rule; notification of maximum number of trips.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) is allocating, using the formula implemented by Framework Adjustment (FW) 40B, zero trips into the CA II Yellowtail Flounder SAP for the 2006 NE multispecies fishing year (FY). The intent of this

action is to provide a sustainable fishery throughout FY 2006.

**DATES:** Effective July 1, 2006, through April 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Moira Kelly, Fishery Management Specialist, phone: (978) 281–9218, fax: (978) 281–9135, e-mail: *moira.kelly@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** FW 40B, developed by the New England Fishery Management Council (Council) and approved and implemented on June 1, 2005, requires the Regional Administrator to allocate, prior to June 1 of each year, the total number of trips into the CA II Yellowtail Flounder SAP based on the Georges Bank (GB) yellowtail flounder total allowable catch (TAC), as established through the U.S./Canada Resource Sharing Understanding, and the amount of GB yellowtail flounder caught outside of the SAP. FW 40B established the following formula for determining the appropriate number of trips for this SAP on a yearly basis to help achieve optimum yield (OY) of GB yellowtail flounder: Number of trips = (GB yellowtail flounder TAC - 1,946 mt)/4.54 mt. Note that 4.54 mt is equivalent to 10,000 lb (4,536 kg). This formula assumes that, similar to the calculation that was done for FY 2005, 94 percent of the GB yellowtail flounder TAC (i.e., 1,946 mt) will be caught outside of the CA II Yellowtail Flounder SAP. The formula results in an allocation of only 27 trips for FY 2006. However, if it is determined that the catch available for the SAP (i.e., GB yellowtail flounder TAC - GB yellowtail flounder caught outside SAP) is not sufficient to support 150 trips with a 15,000–lb (6,804–kg) trip limit, or that at least 1,020 mt are available for the SAP, the Regional Administrator may choose to not allocate any trips to the SAP. However, the FY 2006 GB yellowtail flounder TAC (2,070 mt) less the amount of GB yellowtail that will be caught outside of the SAP is only 124 mt. It would not be feasible or equitable to allocate and monitor such a low number of trips across the fleet. Allocating such a low number of trips fleet-wide would likely cause a derby fishery which would be impossible to monitor and control in such a way to ensure that the low available catch is not exceeded. Therefore, based on the final rule implementing the 2006 U.S./Canada GB yellowtail flounder TAC (71 FR 25095; April 28, 2006), which was recommended by the Transboundary Management Guidance Committee and the Council for FY 2006, and using the criteria specified under § 648.85(b)(3)(vii) to determine the appropriate number of trips for FY 2006, the Regional Administrator has determined that there will be insufficient GB yellowtail flounder TAC to support the CA II Yellowtail Flounder SAP for FY 2006. As such, zero trips will be available for FY 2006.

## Classification

This action is required by § 648.85(b)(3)(vii) and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment for this action because any delay of this action would be impracticable and contrary to the public interest. Additional prior notice and opportunity for public comment would delay the implementation of the action which could potentially lead to the opening of this SAP during FY 2006. Opening of this SAP during FY 2006 could prematurely close the Eastern U.S./Canada Area, as increased catches of GB yellowtail flounder from this SAP would likely result in the early attainment of the U.S./Canada Management Area TAC for GB yellowtail flounder. Such a closure would reduce sources of potential revenue, decreased economic returns, and lead to further adverse economic impacts to the fishing industry, not only from GB yellowtail flounder, but from GB cod and GB haddock as well. In addition, the potential for an unexpected opening and rapid closure of this SAP following the consideration of additional public comment could create confusion in the fishing industry. Therefore, given the potential negative impacts resulting from delayed implementation of this action, as described above, it would be impracticable and contrary to the public interest to provide further notice and opportunity for public comment. Any detrimental effect of foregoing prior notice and comment for this action is mitigated because the possibility of this closure was contemplated during the development of FW 40B and commented on by the public. In addition, the Council and public were consulted about this action during the April 4, 2006, Council meeting, at which time there was opportunity for additional public comment.

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

Dated: May 16, 2006.

**Alan D. Risenhoover,**

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

[FR Doc. 06–4740 Filed 5–19–06; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 060424110–6110–01; I.D. 081304C]**

**RIN 0648–AU39**

## Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Correction

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

**ACTION:** Final rule; request for comments; correction.

**SUMMARY:** This final rule establishes the 2006 fishery specifications for Pacific whiting (whiting) in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). It also adjusts the bycatch limits in the whiting fishery. This **Federal Register** document also corrects the final rule implementing the specifications and management measures, which was published December 23, 2004. These specifications include the level of the acceptable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the non-tribal commercial sectors. The intended effect of this action is to establish allowable harvest levels of whiting based on the best available scientific information.

**DATES:** Effective May 19, 2006. Comments on the revisions to bycatch limits must be received no later than 5 p.m., local time on June 6, 2006.

**ADDRESSES:** You may submit comments, identified by I.D. 081304C by any of the following methods:

- E-mail: *Whiting2006OY.nwr@noaa.gov*: Include I.D. 081304C in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Becky Renko

• Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

Copies of the final environmental impact statement (FEIS) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way, NE, Seattle, WA 98115–0070.

**FOR FURTHER INFORMATION CONTACT:** Becky Renko (Northwest Region, NMFS) 206–526–6110.

**SUPPLEMENTARY INFORMATION:**

## Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm*.

## Background

A proposed rulemaking to implement the 2005–2006 specifications and management measures for the Pacific Coast groundfish fishery was published on September 21, 2004 (69 FR 56550). The final rule to implement the 2005–2006 specifications and management measures for the Pacific Coast Groundfish Fishery was published on December 23, 2004 (69 FR 77012). Comments regarding bycatch of overfished species, including bycatch of overfished species in the whiting fishery were responded to in the final rule.

In November 2003, the U.S. and Canada signed an agreement regarding the conservation, research, and catch sharing of whiting. The whiting catch sharing arrangement that was agreed upon provides 73.88 percent of the total catch OY to the U.S. fisheries and 26.12 percent to the Canadian fisheries. At this time, both countries are taking steps to bring this agreement into force. Until the agreement is ratified and implementing legislation becomes effective, the negotiators recommended that each country apply the agreed upon provisions to their respective fisheries.

In anticipation of the ratification of the U.S.-Canada agreement and a new stock assessment, and given the small amount of whiting that is typically landed under trip limits prior to the April 1 start of the primary season, the Council adopted a range for OY and ABC in the 2005–2006 specifications, and delayed adoption of final 2005 and 2006 ABC and OY until its March 2005 and 2006 meetings, respectively. To date, the international agreement has not yet been ratified and implementing legislation has not yet been made effective. A final rule to implement the 2005 harvest specifications and management measures for the whiting fishery was published on May 3, 2005 (70 FR 22808). NMFS received no comments on the 2005 harvest specifications and management measures for the whiting fishery. The ABC and OY values recommended by the Council as final ABC and OY values for 2006 are based on a stock assessment update, and their impacts are consistent with the scope of impacts considered in the EIS for the 2005 and 2006 management measures. The OY being implemented in this rule, and the resulting allocations among the sectors and the bycatch limit for canary rockfish are the same as those in effect in 2005. The bycatch limit for widow rockfish is slightly lower than the limit in 2005.

## Stock Status

In general, whiting is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span when compared to other overfished groundfish species. In 1987, the whiting biomass was at a historically high level due to an exceptionally large number of fish that spawned in 1980 and 1984 (fished spawned during a particular year are referred to as year classes). As these large year classes of fish passed through the population and were replaced by moderate sized year classes, the stock declined. The whiting stock stabilized between 1995 and 1997, but then declined to its lowest level in 2001. After 2001, the whiting biomass increased substantially as a strong 1999 year class matured and entered the spawning population. The 1999 year class is now rapidly moving through the population.

The joint US-Canada Stock Assessment Review (STAR) panel met February 6–9, 2006, to review an updated whiting stock assessment prepared by the Northwest Fisheries Science Center. The STAR panel accepted two equally plausible assessment models that consider uncertainty in the relative depletion level and stock productivity.

As in 2005, the amount of whiting that the hydroacoustic survey was able to measure relative to the total amount of whiting in the surveyed area (survey catchability coefficient or q) was identified as a major source of uncertainty in the new stock assessment. Model–1 has a fixed value of q=1, while Model–2 estimates q in the model (using an informative prior) to arrive at q = 0.69, which results in an upward scaling of both biomass and ABC/OY estimates. Uncertainty regarding the true value of q has been a major issue with whiting stock assessments in recent years, and the Council has based whiting ABC and OYs from the last several assessments on models where q was set equal to 1.

With Model–1, q=1, the whiting stock biomass was estimated to be at 31 percent of its unfished biomass at the end of 2005 and at 38 percent of its unfished biomass with Model–2, q=0.69. Because only moderately sized year classes have been observed since 1999, the whiting biomass is projected to decline in the near future. However, data from the 2005 hydroacoustic survey suggest a moderately strong 2003 year class, and that a moderate to strong 2004 year class may mature and enter the fishery in the next few years. If these year classes are stronger than currently projected, the whiting biomass could stabilize or even increase in biomass.

The steepness of the stock-recruitment relationship (the proportion of young fish entering the population in relation to the number of adult fish) was redefined in the 2006 assessment. A steepness value of 0.75 was used in 2006, whereas a value of 1 was used in 2005. Assuming a steepness of 1 implies that the recruitment is the same when the biomass is high and when the biomass is lower, which may result in overly optimistic projections. The Council's Scientific and Statistical Committee (SSC)recommended that the steepness of the stock-recruitment relationship be explored further with the next assessment.

The U.S. Canada Treaty provisions include the use of a default harvest rate of $F_{40\%}$. A rate of $F_{40\%}$ can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing). The selection of the $F_{40\%}$ value was based on an analysis of stock and recruitment data for other whiting (hake) species. However, because the whiting stock is projected to fall below the overfished threshold if managed with a harvest rate of $F_{40\%}$, the

SSC recommended that further work be done on the development of a control rule that allows for maximized yields while keeping whiting above the overfished threshold.

Based on its review, the SSC endorsed the use of both models in setting 2006 ABCs and OYS and noted that the results of both models could be combined, with each model given equal weighting, to form the basis of a management recommendation.

**ABC/OY Recommendations**

The range of U.S. ABCs and OYs considered by the Council and analyzed in the EIS for 2006 included: a low ABC/OY of 114,296 mt, which represents 50 percent of the medium ABC/OY; a medium ABC/OY of 228,593 mt, based on the results of the 2004 assessment with the OY being set equal to the ABC because the stock biomass is greater than 40 percent of the unfished biomass; and a high ABC/OY of 457,186 mt, which is twice the amount of the medium ABC/OY.

At its March 6–10, 2006, meeting in Seattle, WA, the Council reviewed the results of the new whiting stock assessment and recommended adopting a U.S.-Canada coastwide ABC of 661,680 mt (results in a U.S. ABC of 518,294 mt based on q=1 and the harvest rate proxy of $F_{40\%}$. Because the whiting biomass is estimated to be below 40 percent of its unfished biomass, the 40/10 adjustment was applied as defined by the U.S.-Canada agreement. With the 40/10 adjustment, the U.S.-Canada coastwide OY was 593,750 mt with the q=1 model, and 883,490 mt with the q=0.69 model. The potential OYs with the 40/10 adjustment were unsupportably high, at record levels during a time when the stock biomass is in decline. Both 40/10 based OYs were projected to result in the stock biomass falling below the overfished threshold by 2007. Given the relative impact on future stock biomass levels, the Council considered a more conservative range of U.S.-Canada coastwide OYs that were between 100,000 mt and 400,000 mt.

Following discussion and public testimony, the Council recommended adopting a U.S.-Canada coastwide OY of 364,842 mt with a corresponding U.S. OY of 269,069 mt. The U.S. OY is the same as the OY value that was in place in 2005. With a U.S. OY of 269,069 mt, the stock biomass level is projected to drop below the overfished level by 2008 if q=1 is the true state of nature; however, the biomass would remain near 30 percent of the unfished level if q=0.69 is the true state of nature. When the results of both models are combined and given equal weighting, as recommended by the SSC, the 2008 depletion level is projected to be slightly above the overfished level. Because whiting stock assessments are prepared annually and OYs adjusted annually, the risk of reaching an overfished conditions is reduced. A new stock assessment will be prepared prior to the 2007 fishing year and will provide an opportunity to further adjust harvest levels in response to new assessment information. The 2007 assessment will further investigate the appropriateness of model parameters, harvest rates proxies, and year class strength.

**Overfished Species**

The availability of overfished species as incidental catch, particularly Pacific ocean perch, canary rockfish, darkblotched rockfish, and widow rockfish, may prevent the industry from harvesting the entire whiting OY during 2006. To allow the industry to have the opportunity to harvest the higher whiting OY, the Council recommended bycatch limits for certain overfished species. With bycatch limits, the industry has the opportunity to harvest a larger amount of whiting, if they can do so while keeping the incidental catch of specific overfished species within adopted bycatch limits. Regulations provide for the automatic closure of the commercial (non-tribal) portion of the whiting fishery upon attainment of a bycatch limit.

In recent years, the most constraining overfished species for the whiting fishery have been darkblotched, canary and widow rockfish. Prior to this final rule, regulations at 50 CFR 660.373 (b)(4) contained the following bycatch limits for the commercial sectors (non-tribal) of the whiting fishery: 7.3 mt bycatch limit for canary and 243.2 mt for widow rockfish.

At the March 2006 Council meeting, the Council's groundfish management team (GMT) examined the 2006 whiting OY alternatives in relation to the impacts of incidental catch of overfished species. With an OY of 269,069 mt and in the absence of any further restrictions, the catch of canary rockfish was estimated to be approximately 5.4 mt, the catch of widow rockfish was estimated to be approximately 122 mt, and the catch of darkblotched rockfish was estimated to be approximately 16.2 mt. As in 2005, canary rockfish was found to be the most constraining overfished species for the 2006 whiting fishery. After considering the projected catch of overfished species in all other fishing and research activities, the Council recommended that the canary rockfish bycatch limit for the whiting fishery be set at 4.7 mt, which was the same limit that was in effect in 2005, and that the widow rockfish bycatch limit be set at 200 mt.

The Council also considered establishing a darkblotched rockfish bycatch limit, but choose to delay its decision until its April meeting or later. If the whiting fishery encounters higher than expected take of Chinook salmon, fishers will be asked to take measures to avoid Chinook salmon catch. In 2005, fishers were required to fish seaward of the 100–fm depth contour to avoid Chinook salmon. If fishers are required or encouraged to fish in deeper waters in 2006 to avoid Chinook salmon or canary rockfish, it may result in increased darkblotched rockfish catch, which will be taken into account in establishing a darkblotched bycatch limit.

**Allocations**

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes' usual and accustomed ocean fishing areas (described at 50 CFR 660.324).

The Pacific Coast Indian treaty fishing rights, described at 50 CFR 660.385, allow for the allocation of fish to the tribes through the specification and management measures process. A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The tribal whiting fishery is a separate fishery, and is not governed by the limited entry or open access regulations or allocations. To date, only the Makah Tribe has participated. It regulates, and in cooperation with NMFS, monitors this fishery so as not to exceed the tribal allocation.

Beginning in 1999, NMFS set the tribal allocation according to an abundance-based sliding scale method, proposed by the Makah Tribe in 1998 see 64 FR 27928, 27929 (May 29, 1999); 65 FR 221, 247 (January 4, 2000); 66 FR 2338, 2370 (January 11, 2001). Details on the abundance-based sliding scale allocation method and related litigation are discussed in the preamble to the proposed rule (69 FR 56570; September 21, 2004) and are not repeated here. On December 28, 2004, the Ninth Circuit Court of Appeals upheld the sliding scale approach in *Midwater Trawler Cooperative* v. *Daley*, 393 F. 3d 994 (9th

Cir. 2004). Under the sliding scale allocation method, the tribal allocation varies with U.S. whiting OY, ranging from a low of 14 percent (or less) of the U.S. OY when OY levels are above 250,000 mt, to a high of 17.5 percent of the U.S. OY when the OY level is at or below 145,000 mt. For 2006, using the sliding scale allocation method, the tribal allocation will be 35,000 mt, the same as in 2005. The Makah is the only Washington Coast tribe that requested a whiting allocation for 2006. The tribal fleet is comprised of 4 mid-water trawlers who deliver to shoreside plants and to two at-sea motherships one of which also participates in the non-tribal mothership whiting fishery.

The 2006 commercial OY (non-tribal) for whiting is 232,069 mt. This is calculated by deducting the 35,000–mt tribal allocation and 2,000–mt for research catch and bycatch in non-groundfish fisheries from the 269,069 mt total catch OY. Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the whiting fishery.

The catcher/processor sector is comprised of vessels that harvest and process whiting (the fleet has typically been 6 to 7 vessels since the formation of the Pacific Whiting Conservation Cooperative in 1997). The mothership sector is comprised of catcher vessels that harvest whiting for delivery to motherships (typically 3–5 motherships operate in the fishery with one mothership also servicing the tribal fleet). Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is comprised of vessels that harvest whiting for delivery to shoreside processors (In recent years, the number of participating vessels has ranged from 29 to 35 vessels some of which also service the non-tribal mothership sector). Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (78,903 mt), motherships getting 24 percent (55,696 mt), and the shore-based sector getting 42 percent (97,469 mt), the same as in 2005.

It should also be noted that whiting is not the only fishery that these vessels depend on. Shorebased vessels typically participate in other fisheries such as non-whiting groundfish, crab, and shrimp fisheries. Mothership and catcher-processor operations typically participate in the Alaska pollock fishery.

All whiting caught in 2006 before the effective date of this action will be counted toward the new 2006 OY. As in the past, the specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

**Correction**

An omission was identified in the yelloweye rockfish footnote in Table 2a, which was published in the final rule of the 2005–2006 harvest specifications (December 23, 2004; 69 FR 77012). Although the Council recommended that regional recreational harvest guidelines be specified for yelloweye rockfish to allow the states to swiftly close the recreational fisheries if the amount anticipated to be taken in the recreational fishery was reached, the yelloweye rockfish footnote in Table 2a neglected to identify the value of anticipated recreational catch as a harvest guideline or to apportion it north and south of the California/Oregon boarder as recommended by the Council and addressed in the EIS. The states recently notified NMFS of the omission. Specifying the anticipated amount as a harvest guideline is necessary to keep the fishery within the yelloweye rockfish OY specified for rebuilding, therefore the omission is being remedied with this document.

**Classification**

The final whiting specifications and management measures for 2006 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)and are in accordance with 50 CFR part 660, the regulations implementing the FMP.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to the 2006 Pacific whiting specifications and the canary and widow rockfish bycatch limits under 5 U.S.C. 553(b)(B). Also for these reasons, NMFS finds good cause to waive the 30–day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as soon as possible after the April 1, 2006, fishery start date.

The FMP requires that fishery specifications be evaluated periodically using the best scientific information available. NMFS does a stock assessment every year in which U.S. and Canadian scientists cooperate. The 2006 stock assessment update for whiting was prepared in early 2006, which is the optimal time of year to conduct stock assessments for this species. Whiting differs from other groundfish species in that it has a shorter life span and the population fluctuates more swiftly. Thus, it is important to use the most recent stock assessment when determining ABC and OY. Because of the timing of the assessment, the results are not available for use in developing the new ABC and OY until just before the Council's annual March meeting.

In whiting fisheries, vessels tend to catch overfished species at sporadic and unpredictable rates. Protection of overfished species is required by the FMP and implementing regulations. The revised canary and widow rockfish bycatch limits for the whiting fisheries are intended to keep the overall harvest of overfished species within their rebuilding OYs. If the revision of bycatch limits for canary and widow rockfish were delayed for a public notice and comment period, the 4.7 mt of canary rockfish and 200 mt of widow rockfish available to the whiting fishery would likely be taken before the completion of the public comment period. Therefore, delaying this final rule could result in unexpectedly high bycatch of canary and widow rockfish such that the annual OY established for rebuilding is exceeded, or that many other portions of the groundfish fishery would have to be closed to make up for bycatch in the whiting fishery. Allowing the fisheries to exceed overfished species' OY would be contrary to the public's interest in rebuilding these overfished species and NMFS' obligations under the Magnuson-Stevens Act.

The proposed rulemaking to implement the 2006 specifications and management measures, published on September 21, 2004 (69 FR 56550), addressed the delay in adopting the whiting ABC and harvest specifications. NMFS requested public comment on the proposed rule through October 21, 2004. The final rule was published on December 23, 2004 (69 FR 77012) and again explained that the range in the specifications would be adjusted following the Council's March 2005 and 2006 meetings and announced in the **Federal Register** as a final rule shortly thereafter.

As explained above, NMFS was recently notified by the states that the regional recreational harvest guidelines for yelloweye had been omitted from the final rule. Though each of the three states has adopted regulations that conform to the Federal requirements, the inclusion of the yelloweye regional harvest guideline is particularly important for recreational fishery management in California. The State of California has adopted regulatory language that allows the recreational fishery to be closed quickly if a Federal recreational harvest guideline is reached. Given the large number of

recreational fishery participants, the limited amount of information to project catch, and the low OY for yelloweye rockfish, overfishing could occur quickly if California did not have a mechanism for stopping the fishery if the harvest guideline were to be reached. Revising the ABC/OY tables to identify the anticipated yelloweye recreational catch amount as area harvest guidelines ensures that the state recreational fisheries can be managed to stay within the rebuilding-based OY for yelloweye rockfish. Allowing the fisheries to exceed an overfished species' OY would be contrary to the public's interest in rebuilding an overfished species, thus NMFS finds good cause to waive prior public notice and comment on these revisions, under 5 U.S.C. 553(b)(B). For the reasons stated above, NMFS also finds good cause under 5 U.S.C 553 (d)(3) to waive the 30 day delay in effectiveness. This action needs to be implemented as soon as possible to allow the states to restrict the recreational fishery, if necessary, to keep catch of yelloweye rockfish within the rebuilding based OYs.

The environmental impacts associated with the Pacific whiting harvest levels being adopted by this action are consistent with the impacts in the final environmental impact statement for the 2005–2006 specification and management measures. Copies of the FEIS and the ROD are available from the Council (see **ADDRESSES**).

An Initial Regulatory Flexibility Analysis (IRFA) and FRFA were prepared for the 2005–2006 harvest specifications and management measures, which included the regulatory impacts of this action on small entities. The IRFA was summarized in the proposed rule published on September 21, 2004 (69 FR 56550). The following summary of the FRFA analysis, which covers the entire groundfish regulatory scheme of which this is a part, was published in the final rule on December 23, 2004 (69 FR 77012). The need for and objectives of this final rule are contained in the SUMMARY and in the Background section under **SUPPLEMENTARY INFORMATION**. NMFS did not receive any comments on the IRFA or on the proposed rule regarding the economic effects of this final rule.

The final 2005–2006 specifications and management measures were intended to allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of more abundant stocks while also ensuring that those fisheries do not exceed the allowable catch levels intended to rebuild and protect overfished and depleted stocks. The form of the specifications, in ABCs and OYS, follows the guidance of the Magnuson-Stevens Act, the national standard guidelines, and the FMP for protecting and conserving fish stocks. Fishery management measures include trip and bag limits, size limits, time/area closures, gear restrictions, and other measures intended to allow year-round West Coast groundfish landings without compromising overfished species rebuilding measures.

Approximately 1,700511 vessels participated in the West Coast commercial groundfish fisheries in 20013. (This figure decreased to 1,511 in 2003, the most recent year for which data are available.) Of those, about 420498 vessels (498 in 2003) were registered to limited entry permits issued for either trawl, longline, or pot gear. Of the remaining vessels, approximately 1280 vessels, about 770 participated in the open access fisheries and derived more than 5 percent of fisheries revenue from groundfish. All but 10–20 of the 1,511 vessels participating in the groundfish fisheries are considered small businesses by the Small Business Administration. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast, and 415 charter vessels active on the California coast. Although some charter businesses, particularly those in or near large California cities, may not be small businesses, all are assumed to be small businesses for purposes of this discussion.

In recent years the number of participants in the whiting fishery has ranged from 29 to 35 shoreside trawl vessels; 3 to 5 mothership operations-each of which are serviced typically by 3 or 4 trawl vessels, some of which deliver shoreside; and 7 catcher processors. Shore-based trawlers and trawlers that service motherships are considered small businesses as they typically earn less than $4.0 million in revenues. (In 2003, the 30 vessels that participated in the shore-based whiting fishery, earned an average of $400,000 from Pacific whiting, coastal pelagic, crab, other groundfish, and shrimp fisheries. Motherships and catcher-processors are considered ''large'' as they typically earn far greater than $4.0 million each because of their participation in Alaska pollock fisheries.

The Magnuson-Stevens Act requires that actions taken to implement FMPs be consistent with the 10 national standards, one of which requires that conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act, take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities and, (B) to the extent practicable, minimize adverse economic impacts on such communities. Fishing communities that rely on the groundfish resource and people who participate in the groundfish fisheries have weathered many regulatory changes in recent years. NMFS and the Council introduced the first overfished species rebuilding measures in 2000, which severely curtailed the fisheries from previous fishing levels. Since then, NMFS has implemented numerous management measures and regulatory programs intended to rebuild overfished stocks and to better monitor the catch and bycatch of all groundfish species. These programs are expected to improve the status of West Coast groundfish overfished stocks over time and, by extension, the economic health of the fishing communities that depend on those stocks. Initially, however, the broad suite of new regulatory programs that NMFS has introduced since 2000 have: reduced overall groundfish harvest levels, increased costs of participating in the fisheries, and caused confusion for fishery participants trying to track new regulatory regimes.

The Council considered five alternative specifications and management measures regimes for 2005 and 2006: the no action alternative, which would have implemented the 2004 regime for 2005 and 2006; the low OY alternative, which set a series of conservative groundfish harvest levels that were either intended to achieve high probabilities of rebuilding within $T_{MAX}$ for overfished species or modest harvest levels for more abundant stocks; the high OY alternative, which set harvest levels that were either intended to achieve lower probabilities of rebuilding within $T_{MAX}$ for overfished species or higher harvest levels for more abundant stocks; the medium OY alternative, which set harvest levels intermediate to those of the low and high alternatives;, and,; the Council OY alternative (preferred alternative,) which was the same as the medium OY alternative, but with more precautionary OY levels for lingcod, Pacific cod, cowcod, canary and yelloweye rockfish. Each of these alternatives included both harvest levels (specifications) and management measures needed to achieve those harvest levels, with the most restrictive management measures

corresponding to the lowest OYS. The most notable difference between the Council's preferred alternative and the other alternatives is that alternative's requirement that trawl vessels operating north of 40°10° N. lat. use selective flatfish trawl gear. Because selective flatfish trawl gear has lower rockfish bycatch rates than conventional trawl gear, the targeted flatfish amounts available to the trawl fisheries are higher under the Council's preferred alternative than under the other alternatives. Each of the alternatives analyzed by the Council was expected to have different overall effects on the economy. Among other factors, the EIS for this action reviewed alternatives for expected changes in revenue and income from 2003 levels. The low OY alternative was expected to decrease annual commercial income from the no action alternative by $1.99 million in 2005 and 2006, decrease commercial fishery-related annual employment from the no action alternative by 0.3 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The high OY alternative was expected to increase annual commercial income from the no action alternative by $2.54 million in 2005 and 2006, increase commercial fishery-related annual employment from the no action alternative by 0.4 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The medium OY alternative was expected to increase annual commercial income from the no action alternative by $1.51 million in 2005 and 2006, increase commercial fishery-related annual employment from the no action alternative by 0.3 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The Council's OY alternative was expected to increase annual commercial income from the no action alternative by $3.02 million in 2005 and 2006, increase commercial fishery-related annual employment from the no action alternative by 0.5 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The Council's preferred alternative would have had commercial fisheries effects that were similar to or less beneficial than the medium OY alternative had the Council preferred alternative not included the requirement that trawl vessels north of 40°10′ N. lat. fish with selective flatfish trawl gear in nearshore waters. The Council's preferred alternative is intended to meet the conservation requirements of the Magnuson-Stevens Act while reducing to the extent practicable the adverse economic impacts of these conservation measures on the fishing industries and associated communities.

The 2006 ABC, OY, and sector allocations of whiting are the same as those of 2005. The bycatch limit for canary rockfish is the same as that set in 2005, though the bycatch limit for widow rockfish is slightly lower. As explained below, we expect that, compared to the economic impacts analyzed in 2004, this final rule will include some positive economic impacts due to increased production and revenue and some negative impacts due to rising fuel prices. Because of the uncertainty of these impacts, it is not possible for NMFS to quantify the net change in economic impact of this final rule as compared to that analyzed in 2004.

The 2005 fishery generated peak landings of 259,000 tons worth $29 million ex-vessel at $112 per ton. Landings in 2005 were the highest on record since 1966 when their was no domestic fishery and the only participants were foreign fishing vessels. Therefore it is expected that 2006 landings, will continue the growth in annual landings that has occurred since 2002 when the fishery harvested 132,000 tons. The 2003 fishery harvested 142,000 tons worth, on an ex-vessel basis, $17 million at $121 per ton with total catch and revenue reaching 217,000 tons and $22 million ($101 per ton) in 2004.

Based on indications from several industry representatives, markets for the whiting products may be stronger in 2006 than in 2005 as a result of European and Asian exchange rates and growing market demand. Therefore, revenues in 2006 may be greater than in 2005 as a result of price increases. Although cost information on the whiting fleets is unavailable, fuel is a major expenditure category. Compared to the first five months of 2005, fuel prices so far this year are about 15 to 20 percent higher based on fuel prices collected by the Pacific States Marine Fisheries Commission. Therefore, whiting prices will need to increase in similar fashion in order for the industry to maintain current levels of profitability. Whether expected increase in whiting prices balance out the expect increase fuel prices is unknown, but conversations with industry representatives indicates that the expectation is that 2006 will be as good or a better year for the whiting fishery. Whether there will be significant environmental changes in 2006 that effect the fishery is unknown. The ability of being able to harvest the entire whiting OY will also depend on how well the industry stays within the bycatch limits set aside for the industry.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation with tribal officials during the Council process.

This final rule has been determined to be exempt from review for purposes of Executive Order 12866.

**List of Subjects in 50 CFR Part 660**

Fishing, Fisheries, and Indian Fisheries.

Dated: May 17, 2006.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.323, (a)(2) is revised to read as follows:

### § 660.323 Pacific whiting allocations, allocation attainment, inseason allocation reapportionment.

(a)* * *

(2) The non-tribal commercial harvest guideline for whiting is allocated among three sectors, as follows: 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the shoreside sector. No more than 5 percent of the shoreside allocation may be taken and retained south of 42° N. lat. before the start of the primary whiting season north of 42° N. lat. Specific sector allocations for a given fishing year are found in tables 1a and 2a of this subpart.

* * * * *

■ 3. In § 660.373, paragraph (b)(4) is revised to read as follows:

### § 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(b) * * *

(4) *2005–2006 bycatch limits in the whiting fishery.* The bycatch limits for the whiting fishery may be used inseason to close a sector or sectors of the whiting fishery to achieve the rebuilding of an overfished or depleted stock, under routine management measure authority at § 660.370 (c)(1)(ii). These limits are routine management measures under § 660.370 (c) and, as such, may be adjusted inseason or may

have new species added to the list of those with bycatch limits. For 2005, the whiting fishery bycatch limits for the sectors identified § 660.323(a) are 4.7 mt of canary rockfish and 212 mt of widow rockfish. For 2006, the whiting fishery bycatch limits are 4.7 mt of canary rockfish and 200 mt of widow rockfish.

* * * * *

## Subpart G [Amended]

■ 4. Tables 2a and 2b to part 660 subpart G are revised to read as follows:

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Table 2a. 2006, and Beyond, Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs), Harvest Guidelines (HGs), and Limited Entry and Open Access Allocations, by management Area (weights in metric tons).

| Species | ACCEPTABLE BIOLOGICAL CATCH (ABC) | | | | | | OY (Total catch) | Commercial Harvest guidelines (Total Catch) | Allocations total catch | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Vancouver a/ | Columbia | Eureka | Monterey | Conception | Total ABC | | | Limited Entry | | Open Access | |
| | | | | | | | | | Mt | % | Mt | % |
| ROUNDFISH | | | | | | | | | | | | |
| Lingcod b/ north of 42° N. lat. | 1,694 | | 1,021 | | | 2,716 | 1,801 | 214.7 | -- | 81.0 | -- | 19.0 |
| Lingcod south of 42° N. lat. | | | | | | | 612 | | | | | |
| Pacific Cod d/ | 3,200 | | c/ | | | 3,200 | 1,600 | 1,200 | -- | -- | -- | -- |
| Pacific Whiting e/ | 518,294 | | | | | 518,294 | 269,069 | 232,069 | -- | -- | -- | -- |
| Sablefish f/ north of 36° | 8,175 | | | | | 8,175 | 7,363 | 6,522 | 5,909 | 90.6 | 613 | 9.4 |
| Sablefish g/ south of 36° | | | | | | | 271 | 271 | -- | -- | -- | -- |
| Cabezon h/ south of 42°N. lat. | c/ | | 108 | | | 108 | 69 | -- | -- | -- | -- | -- |
| FLATFISH | | | | | | | | | | | | |
| Dover sole i/ | 8,589 | | | | | 8,589 | 7,564 | 7,504 | -- | -- | -- | -- |
| English sole j/ | 2,000 | | 1,100 | | | 3,100 | 3,100 | - | - | - | - | - |
| Petrale sole k/ | 1,262 | | 500 | 800 | 200 | 2,762 | 2,762 | - | - | - | - | - |
| Arrowtooth flounder | 5,800 | | | | | 5,800 | 5,800 | - | - | - | - | - |
| Other flatfish m/ | 6,781 | | | | | 6,781 | 4,090 | - | - | - | - | - |

| Species | ACCEPTABLE BIOLOGICAL CATCH (ABC) | | | | | | OY (Total catch) | Commercial Harvest guidelines (Total Catch) | Allocations total catch | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Vancouver | Columbia | Eureka | Monterey | Conception | Total ABC | | | Limited | | Open | |
| | | | | | | | | | Mt | % | Mt | % |
| ROCKFISH: | | | | | | | | | | | | |
| Pacific ocean perch | 934 | | | | | 934 | 447 | 102.6 | -- | -- | -- | -- |
| Shortbelly o/ | 13,900 | | | | | 13,900 | 13,900 | 13,888 | -- | -- | -- | -- |
| Widow p/ | 3,059 | | | | | 3,059 | 289 | 285.6 | -- | 97.0 | -- | 3.0 |
| Canary q/ | 270 | | | | | 270 | 47.1 | 22.7 | -- | 87.7 | -- | 12.3 |
| Chilipepper r/ | c/ | | | 2,700 | | 2,700 | 2,000 | 1,964 | 1,094 | 55.7 | 870 | 44.3 |
| Bocaccio s/ | c/ | | | 549 | | 549 | 308 | 75.2 | -- | 52.7 | -- | 44.3 |
| Splitnose t/ | c/ | | | 615 | | 615 | 461 | 461 | -- | -- | -- | -- |
| Yellowtail u/ | 3,681 | | | c/ | | 3,681 | 3,681 | 3655 | 3,352 | 91.7 | 303 | 8.3 |
| Shortspine thornyhead v/ north of 34°27' | 1,077 | | | | | 1,077 | 1,018 | 1,011 | 984 | 99.7 | 27 | 0.27 |
| Longspine thornyhead w/ north of 36° | 2,461 | | | | -- | 2,461 | 2,461 | 2,449 | -- | -- | -- | -- |
| south of 36° x/ | -- | | | | 390 | 390 | 195 | 195 | -- | -- | -- | -- |
| Cowcod y/ | c/ | | | 19 | -- | 19 | 2.1 | 0 | -- | -- | -- | – |
| | c/ | | | -- | 5 | 5 | 2.1 | 0 | -- | -- | -- | -- |
| Darkblotched z/ | 294 | | | | | 294 | 200 | 194.8 | -- | -- | -- | -- |
| Yelloweye aa/ | 55 | | | | | 55 | 27 | 6.4 | -- | -- | -- | -- |
| Black bb/ north of 46°16' N. lat. | 540 | | | | | 540 | 540 | | – | – | -- | -- |
| Black bb/ south of 46°16' N. lat. | 736 | | | | | 736 | 736 | | | | | |

| Species | ACCEPTABLE BIOLOGICAL CATCH (ABC) | | | | | | OY (Total catch) | Commercial Harvest guidelines (Total Catch) | Allocations total catch | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Vancouver | Columbia | Eureka | Monterey | Conception | Total ABC | | | Limite | | Open Access | |
| | | | | | | | | | Mt | % | Mt | % |
| Minor Rockfish north cc/ | 3,680 | | | -- | | 3,680 | 2,250 | 2,172 | 1,992 | 91.7 | 180 | 8.3 |
| Minor Rockfish south dd/ | -- | | | 3,412 | | 3,412 | 1,968 | 1,525 | 849 | 55.7 | 676 | 44.3 |
| Remaining Rockfish | 1,612 | | | 854 | | -- | -- | -- | -- | -- | -- | -- |
| bank ee/ | c/ | | | 350 | | 350 | -- | -- | -- | -- | -- | -- |
| blackgill ff/ | c/ | | | 75 | 268 | 343 | -- | -- | -- | -- | -- | -- |
| bocaccio north | 318 | | | | | 318 | -- | -- | -- | -- | -- | -- |
| chilipepper north | 32 | | | | | 32 | -- | -- | -- | -- | -- | -- |
| redstripe | 576 | | | c/ | | 576 | -- | -- | -- | -- | -- | -- |
| sharpchin | 307 | | | 45 | | 352 | -- | -- | -- | -- | -- | - |
| silvergrey | 38 | | | c/ | | 38 | -- | -- | -- | -- | -- | -- |
| splitnose | 242 | | | c/ | | 242 | -- | -- | -- | -- | -- | -- |
| yellowmouth | 99 | | | c/ | | 99 | -- | -- | -- | -- | -- | -- |
| yellowtail south | | | | 116 | | 116 | -- | -- | -- | -- | -- | -- |
| Other rockfish gg/ | 2,068 | | | 2,558 | | -- | -- | -- | -- | -- | -- | -- |
| SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS | | | | | | | | | | | | |
| OTHER FISH ee/ | 2,500 | 7,000 | 1,200 | 3,900 | | 14,600 | 7,300 | -- | -- | -- | -- | -- |

Table 2b. 2006, and Beyond, OYs for minor rockfish by depth sub-groups (weights in metric tons).

| Species | Total Catch ABC | OY (Total Catch) | | | Harvest Guidelines (total catch) | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | Limited Entry | | Open Access | |
| | | Total Catch OY | Recreational Estimate | Commercial HG for minor rockfish and depth sub-groups | Mt | % | Mt | % |
| Minor Rockfish north cc/ | 3,680 | 2,250 | 78 | 2,172 | 1,992 | 91.7 | 180 | 8.3 |
| Nearshore | | 122 | 68 | 54 | | | | |
| Shelf | | 968 | 10 | 958 | | | | |
| Slope | | 1,160 | 0 | 1,160 | | | | |
| Minor Rockfish south dd/ | 3,412 | 1,968 | 443 | 1,390 | 774 | 55.7 | 616 | 44.3 |
| Nearshore ii/ | | 615 | 383 | 97 | | | | |
| Shelf | | 714 | 60 | 654 | | | | |
| Slope | | 639 | 0 | 639 | | | | |

a/ ABCs apply to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was declared overfished on March 3, 1999. A coastwide stock assessment was prepared in 2003. Lingcod was believed to be at 25 percent of its unfished biomass coastwide in 2002, 31 percent in the north and 19 percent in the south. The ABC projection for 2006 is 2,716 mt and was calculated using an $F_{MSY}$ proxy of F45%. The total catch OY of 2,414 mt (the sum of 1,891 mt in the north and 612 mt in the south) is based on the rebuilding plan with a 70 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2009 ($T_{MAX}$). The harvest control rule will be F=0.17 in the north and F=0.15 in the south. Out of the OY, it is estimated that 693 mt will be taken in the recreational fishery, 7.2 mt will be taken during research activity, and 2.8 mt will be taken in non-groundfish fisheries. Under the 2006 management measures, it is anticipated that 214.7 mt will be taken in the commercial fisheries (which is being set as a commercial HG), leaving a residual amount of 1,496.3 mt to be used as necessary during the fishing year. There is a recreational harvest guideline of 271 mt for the area north of 42° N. lat. and a recreational harvest guideline of 422 mt for the area south of 42° N. lat. The tribes do not have a specific allocation at this time, but are expected to take 25.1 mt of the commercial HG.

c/ "Other species", these are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, Pacific cod is included in the non-commercial HG of "other fish" and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted.

d/ Pacific Cod - The 3,200 mt ABC is based on historical landings data and is set at the same level as it was in 2004. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment. The OY is reduced by 400 mt for the

tribal harvest guideline, resulting in a commercial harvest guideline of 1,200 mt.

e/ Pacific whiting - The most recent stock assessment was prepared in early 2006, and the whiting biomass was estimated to be between 31 percent and 38 percent of its unfished biomass. The U.S. ABC of 518,294 mt is based on the 2006 assessment results with the application of an Fmsy proxy harvest rate of 40%. The U.S. ABC is 73.88 percent of the coastwide ABC. The U.S. total catch OY is being set at 269,069 mt. The total catch OY is reduced by 35,000 mt for the tribal allocation, 200 mt for the amount estimated to be taken during research fishing, and 1,800 mt for the estimated catch in non-groundfish fisheries, resulting in a commercial OY of 232,069 mt. The commercial OY is allocated between the sectors with 42 percent (97,469 mt) going to the shore-based sector, 34 percent (78,903 mt) going to the catcher/processor sector, and 24 percent (55,696 mt) going to the mothership sector. Discards of whiting are estimated from the observer data and counted towards the OY inseason.

f/ Sablefish north of 36° N. lat. - A coastwide sablefish stock assessment was prepared in 2001 and updated for 2002. Following the 2002 stock assessment update, the sablefish biomass north of 34° 27' N. lat. was believed to be between 31 percent and 38 percent of its unfished biomass. The coastwide ABC of 8,175 mt is based on environmentally driven projections with the $F_{MSY}$ proxy of F45%. The ABC for the management area north of 36° N. lat. is 7,885 mt (96.45 percent of the coastwide ABC). The coastwide OY of 7,634 mt (the sum of 7,363 mt in the north and 271 mt in the south) is based on the density-dependent model and the application of the 40-10 harvest policy. The total catch OY for the area north of 36° N. lat is 7,363 mt and is 96.45 percent of the coastwide OY. The OY is reduced by 10 percent (736 mt) for the tribal allocation. Out of the remaining OY, 86 mt will be taken during research activity, and 19 mt will be taken in non-groundfish fisheries, resulting in a commercial HG of 6,522 mt. The open access allocation is 9.4 percent (613 mt) of the commercial HG and the limited entry allocation is 90.6 percent (5,909 mt) of the commercial HG. The limited entry allocation is further divided with 58 percent (3,427 mt) allocated to the trawl fishery and 42 percent (2,482 mt) allocated to the fixed-gear fishery. To provide for bycatch in the at-sea whiting fishery, 15 mt of the limited entry trawl allocation will be set aside.

g/ Sablefish south of 36° N. lat. - The ABC of 290 mt is 3.55 percent of the ABC from the 2002 coastwide stock assessment update. The total catch OY of 271 mt is 3.55 percent of the OY from the 2002 coastwide stock assessment update. There are no limited entry or open access allocations in the Conception area at this time.

h/ Cabezon was first assessed in 2003 and was believed to be at 34.7 percent of its unfished biomass. The ABC of 108 mt is based on a harvest rate proxy of $F_{45\%}$. The OY of 69 mt is based on a constant harvest level for 2005 and 2006.

i/ Dover sole north of 34° 27' N. lat. was assessed in 2001 and was believed to be at 29 percent of its unfished biomass. The ABC of 8,589 mt is the 2006 projection from the 2001 assessment with an $F_{MSY}$ proxy of F40%. Because the biomass is estimated to be in the precautionary zone, the 40-10 harvest rate policy was applied, resulting in a total catch OY of 7,564 mt. The OY is reduced by 60 mt for the amount estimated to be taken as research catch, resulting in a commercial HG of 7,504 mt.

j/ English sole - Research catch is estimated to be 9.7 mt.

k/ Petrale sole was believed to be at 42 percent of its unfished biomass following a 1999 stock assessment. For 2006, the ABC for the Vancouver-Columbia area (1,262 mt) is based on a four year average projection from 2000-2003 with a F40% $F_{MSY}$ proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) are based on historical landings data and continue at the same level as 2005. Management measures to constrain the harvest of overfished species have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment in the Vancouver-Columbia area) used to forecast future harvest were

likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. Research catch is estimated to be 2.9 mt and will be taken out of the OY.

l/ Arrowtooth flounder was last assessed in 1993 and was believed to be above 40 percent of its unfished biomass. Research catch is estimated to be 13.6 mt and will be taken out of the OY.

m/ Other flatfish are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels. The ABC of 6,781 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981-2003 period and on the average landings from the 1994-1998 period for the remaining other flatfish species. The OY of 4,909 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species. Research catch is estimated to be 20.5 mt and will be taken out of the OY.

n/ POP was declared overfished on March 3, 1999. A stock assessment was prepared in 2003 and POP was determined to be at 25 percent of its unfished biomass. The ABC of 934 mt was projected from the 2003 stock assessment and is based on an $F_{MSY}$ proxy of F50%. The OY of 447 mt is based on a 70 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2042 ($T_{MAX}$). The harvest control rule will be F=0.0257. Out of the OY it is anticipated that 4.6 mt will be taken during research activity and 102.6 mt in the commercial fishery (which is being set as a commercial HG), leaving a residual amount of 339.8 mt to be used as necessary during the fishing year.

o/ Shortbelly rockfish remains as an unexploited stock and is difficult to assess quantitatively. A 1989 stock assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the stock assessment. The available OY is reduced by 12 mt for the amount estimated to be taken as research catch, resulting in a commercial HG of 13,888 mt.

p/ The widow rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). The most recent stock assessment was prepared for widow rockfish in 2003. The spawning stock biomass is believed to be at 22.4 percent of its unfished biomass in 2002. The ABC of 3,059 mt is based an F50% $F_{MSY}$ proxy. The 289 mt OY is based on a 60 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2042 ($T_{MAX}$). The harvest control rule is F=0.0093. Out of the OY, it is anticipated that 1.0 mt will be taken during the research activity, 2.3 mt will be taken in the recreational fishery, 0.1 mt will be taken in non-groundfish fisheries, and 285.6 mt will be taken in the commercial fishery (which is being set as the commercial HG). Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 40 mt of widow rockfish in 2006, but do not have a specific allocation at this time. The widow rockfish bycatch limit for the commercial Pacific whiting fisheries is 200 mt. This amount may be adjusted via inseason action.

q/ Canary rockfish was declared overfished on January 4, 2000 (65 FR 221). A stock assessment was completed in 2002 for canary rockfish and the stock was believed to be at 8 percent of its unfished biomass coastwide in 2001. The coastwide ABC of 279 mt is based on a $F_{MSY}$ proxy of F50%. The coastwide OY of 47.1 mt is based on the rebuilding plan, which has a 60 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2076 ($T_{MAX}$) and a catch sharing arrangement that has 58 percent of the OY going to the commercial fisheries and 42 percent going to the recreational fisheries. The harvest control rule will be F=0.0220. Out of the OY, it is anticipated that 2.7 mt will be taken during the research activity, 17.8 mt will be taken in the recreational fishery, 2.1 mt will be taken in non-groundfish fisheries, and 22.7 mt will be taken in the

commercial fishery (which is being set as the commercial HG), leaving a residual amount of 1.8 mt. The residual amount will be further divided with 0.9 mt being available as needed for the recreational and 0.9 mt being available as needed for the commercial fisheries. A recreational HG for the area north of 42° N. lat. will be 8.5 mt. For the area south of 42° N. lat., the recreational HG will be 9.3 mt. Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 2.6 mt of canary rockfish under the commercial HG, but do not have a specific allocation at this time. The canary rockfish bycatch limit for the commercial Pacific whiting fisheries is 4.7 mt. This amount may be adjusted via inseason action.

r/ Chilipepper rockfish - the ABC (2,700 mt) for the Monterey-Conception area is based on a three year average projection from 1999-2001 with a F50% $F_{MSY}$ proxy. Because the unfished biomass is believed to be above 40 percent, the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt to discourage effort on chilipepper, which is taken with bocaccio. Management measures to constrain the harvest of overfished species have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery and 21 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 1,964 mt. Open access is allocated 44.3 percent (870 mt) of the commercial HG and limited entry is allocated 55.7 percent (1,094 mt) of the commercial HG.

s/ Bocaccio was declared overfished on March 3, 1999. A new stock assessment and a new rebuilding analysis were prepared for bocaccio in 2003. The bocaccio stock was believed to be at 7.4 percent of its unfished biomass in 2002. The ABC of 549 mt is based on a F50% $F_{MSY}$ proxy. The OY of 308 mt is based on the rebuilding analysis and has a 70 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2032 ($T_{MAX}$). The harvest control rule is F=0.0498. Out of the OY, it is anticipated that 0.6 mt will be taken during the research activity, 43.0 mt will be taken in the recreational fishery, 1.3 mt will be taken in non-groundfish fisheries, and 75.2 mt will be taken in the commercial fishery (which is being set as the commercial HG), leaving a residual amount of 187.9 mt to be used as necessary during the fishing year.

t/ Splitnose rockfish - The ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data.

u/ Yellowtail rockfish - A yellowtail rockfish stock assessment was prepared in 2003 for the Vancouver-Columbia-Eureka areas. Yellowtail rockfish was believed to be at 46 percent of its unfished biomass in 2002. The ABC of 3,681 mt is based on the 2003 stock assessment with the $F_{MSY}$ proxy of F50%. The OY of 3,681 mt was set equal to the ABC, because the stock is above the precautionary threshold. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 5 mt for the amount estimated to be taken during research activity, and 6 mt for the amount taken in non-groundfish fisheries, resulting in a commercial HG of 3,655 mt. The open access allocation (303 mt) is 8.3 percent of the commercial HG. The limited entry allocation (3,352 mt) is 91.7 percent the commercial HG. Tribal vessels are estimated to land about 506 mt of yellowtail rockfish in 2006, but do not have a specific allocation at this time.

v/ Shortspine thornyhead was last assessed in 2001 and the stock was believed to be between 25 and 50 percent of its unfished biomass. The ABC (1,077 mt) for the area north of Pt. Conception (34° 27' N. lat.) is based on a F50% $F_{MSY}$ proxy.

The OY of 1,018 mt is based on the 2001 survey with the application of the 40-10 harvest policy. The OY is reduced by 7 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 1,011 mt. Open access is allocated 0.27 percent (27 mt) of the commercial HG and limited entry is allocated 99.73 percent (984 mt) of the commercial HG. There is no ABC or OY for the southern Conception area. Tribal vessels are estimated to land about 6.6 mt of shortspine thornyhead in 2006, but do not have a specific allocation at this time.

w/ Longspine thornyhead north of 36° N. lat. is believed to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on a F50% $F_{MSY}$ proxy. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. The total catch OY (2,461 mt) is set equal to the ABC. The OY is reduced by 12 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 2,449 mt.

x/ Longspine thornyhead south of 36° - A separate ABC (390 mt) is established for the Conception area and is based on historical catch for the portion of the Conception area north of 34°27' N. lat. (Point Conception). To address uncertainty in the stock assessment due to limited information, the ABC was reduced by 50 percent to obtain the OY, 195 mt. There is no ABC or OY for the southern Conception Area.

y/ Cowcod in the Conception area was assessed in 1999 and was believed to be less than 10 percent of its unfished biomass. Cowcod was declared as overfished on January 4, 2000 (65 FR 221). The ABC in the Conception area (5 mt) is based on the 1999 stock assessment, while the ABC for the Monterey area (19 mt) is based on average landings from 1993-1997. The OY of 4.2 mt (2.1 mt in each area) is based on the rebuilding plan adopted under Amendment 16-3, which has a 60 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2099 ($T_{MAX}$). The harvest control rule is F=0.009. Cowcod retention will not be permitted in 2006. The OY will be used to accommodate discards of cowcod rockfish resulting from incidental take.

z/ Darkblotched rockfish was assessed in 2000 and a stock assessment update was prepared in 2003. Darkblotched rockfish was declared overfished on January 11, 2001 (66 FR 2338). Following the 2003 stock assessment update, the darkblotched rockfish stock was believed to be at 11 percent of its unfished biomass. A new darkblotched rockfish assessment was prepared for 2005. The 2005 darkblotched rockfish stock assessment found that darkblotched has been rebuilding at a faster rate than had been shown in the 2003 stock assessment. The ABC of 294 mt was projected from the 2003 assessment update and is based on an FMSY proxy of F50%. The 2006 OY will be 200 mt. This OY is 94 mt below the 294 mt OY originally in place for 2006, which was based on the rebuilding plan adopted under Amendment 16-2 and a harvest control rule of F=0.032 [69 FR 77012.] Based on the results of the 2005 assessment, NMFS estimates that reducing the 2006 OY to 200 mt is projected to rebuild the darkblotched rockfish stock to $B_{MSY}$ by March 2010, as compared to the July 2010 rebuilding date that was projected with a 294 mt OY. Out of the OY, it is anticipated that 5.2 mt will be taken during research activity, leaving 194.8 mt available to the commercial fishery.

aa/ Yelloweye rockfish was assessed in 2001 and updated for 2002. On January 11, 2002, yelloweye rockfish was declared overfished (67 FR 1555). In 2002 following the stock assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. The 55 mt coastwide ABC is based on an $F_{MSY}$ proxy of F50%. The OY of 27 mt, based on a revised rebuilding analysis (August 2002) and the rebuilding plan proposed under Amendment 16-3, have a 80 percent probability of rebuilding to $B_{MSY}$ by the year 2071 ($T_{MAX}$) and a harvest control rule of F=0.0153. Out of the OY, it is anticipated that 10.4 mt will be taken in the recreational fishery (the HG for the area north of 40°10' N. lat. is 6.7 mt and the HG for the area south of 40°10' N. lat. is 3.7 mt), 1.0 mt will be taken during research activity, 0.8 mt will be taken in non-groundfish fisheries and 6.4 mt will be taken in the commercial fishery (which

is being set as a commercial HG), leaving a residual amount of 8.4 mt to be used as necessary during the fishing year. Tribal vessels are estimated to land about 2.3 mt of yelloweye rockfish of the commercial HG in 2006, but do not have a specific allocation at this time.

bb/ Black rockfish was last assessed in 2003 for the Columbia and Eureka area and in 2000 for the Vancouver area. The ABC for the area north of 46°16' N. lat. is 540 mt and the ABC for the area south of 46°16' N. lat. is 736 mt. Because of an overlap in the assessed areas between Cape Falcon and the Columbia River, projections from the 2000 stock assessment were adjusted downward by 12 percent to account for the overlap. The ABCs were derived using an $F_{MSY}$ proxy of F50%. The unfished biomass is believed to be above 40 percent. Therefore, the OYs were set equal to the ABCs, 540 mt for the area north of 46°16' N. lat. and 736 mt for the area south of 46°16' N. lat. A harvest guideline of 30,000 lb (13.6 mt) is set for the tribes. The black rockfish OY in the area south of 46°16' N. lat. is subdivided with separate HGs being set for the area north of 42° N. lat (427 mt/58 percent) and for the area south of 42° N. lat (309 mt/42 percent). For the 427 mt attributed to the area north of 42° N. lat. 290-360 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 67-137 mt. A range is being provided because the recreational and commercial shares are not currently available. Of the 309 mt of black rockfish attributed to the area south of 42° N. lat., a HG of 185 mt (60 percent) will be applied to the area north of 40°10' N. lat. and a HG of 124 mt (40 percent) will be applied to the area south of 40°10' N. lat. For the area between 42° N. lat. and 40°10' N. lat., 74 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 111 mt. For the area south of 40°10' N. lat., 101 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 23 mt. Black rockfish was included in the minor rockfish north and other rockfish south categories until 2004.

cc/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. The ABC of 3,680 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY of 2,250 mt, the remaining rockfish ABCs were further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure to address limited stock assessment information. The OY is reduced by 78 mt for the amount estimated to be taken in the recreational fishery, resulting in a 2,172 mt commercial HG. Open access is allocated 8.3 percent (180 mt) of the commercial HG and limited entry is allocated 91.7 percent (1,992 mt) of the commercial HG. Tribal vessels are estimated to land about 28 mt of minor rockfish in 2006, but do not have a specific allocation at this time.

dd/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. The ABC of 3,412 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain a total catch OY of 1,968 mt, the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish, the other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 443 mt for the amount estimated to be taken in the recreational fishery, resulting in a 1,525 mt HG for the commercial fishery. Open access is allocated 44.3 percent (676 mt) of the commercial HG and limited entry is allocated 55.7 percent (849 mt) of the commercial HG.

ee/ Bank rockfish -- The ABC is 350 mt, which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt

towards the minor rockfish OY in the south.

ff/ Blackgill rockfish was believed to be at 51 percent of its unfished biomass in 1997. The ABC of 343 mt is the sum of the Conception area ABC of 268 mt, based on the 1998 stock assessment with an $F_{MSY}$ proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent as a precautionary measure because of the lack of information.

gg/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been assessed quantitatively. The amount expected to be taken during research activity is reduced by 22.1 mt.

hh/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling, and other groundfish species noted above in footnote c/. The amount expected to be taken during research activity is 55.7 mt.

ii/ Minor nearshore rockfish south - The total catch OY is 615 mt. Out of the OY it is anticipated that the recreational fishery will take 383 mt, and 97 mt will be taken by the commercial fishery (which is being set as a commercial HG), leaving a residual amount of 135 mt to be used as necessary during the fishing year.

[FR Doc. 06–4738 Filed 5–19–06; 8:45 am]

**BILLING CODE 3510–22–C**

# Proposed Rules

Federal Register
Vol. 71, No. 98
Monday, May 22, 2006

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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50 and 72

**RIN 3150–AH39**

### Submission of Annual Financial Reports: Elimination of Requirement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations so that licensees who file financial reports with the Securities and Exchange Commission (SEC) or the Federal Energy Regulatory Commission (FERC), need not submit annual financial reports, including the certified financial statements, to the Commission. The Commission is also proposing to amend its regulations so that Independent Spent Fuel Storage Installation (ISFSI) licensees who file financial reports with the SEC or the FERC, need not submit annual financial reports, including the certified financial statements, to the Commission.

**DATES:** Comments on the proposed rule must be received on or before June 21, 2006.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number RIN 3150–AH39 in the subject line of your comments. Comments on rulemakings or petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have receive your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*). Comments can also be submitted via the Federal eRulmaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm on Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking or petition may be viewed electronically on the public computers located at the NRC Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3224, e-mail *MTJ1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

### Background

Section 182.a of the Atomic Energy Act of 1954, as amended, provides that each application for a license shall state such information as the Commission, by rule or regulation, may determine to be necessary to decide the financial qualifications of the applicant as the Commission may deem appropriate for the license. The Act and the Commission's regulations reflect that the fundamental purpose of the financial qualifications provision of that section is the protection of the public health and safety and the common defense and security. Although the Commission's safety determinations required for the issuance of facility licenses are based upon extensive and detailed technical review, an applicant's financial qualifications can also contribute to its ability to meet its responsibilities on safety matters.

### Discussion

NRC considers this action noncontroversial and is publishing this proposed rule concurrently as a direct final rule. The Commission considers this rulemaking action noncontroversial because the annual reports and the certified financial statements currently required by § 50.71(b) and 72.80(b), are typically written for the shareholders, and contain information pertaining to financial qualifications, that may be outdated by the time it is published. The reports can be found posted on the company's Web site as well as on the SEC or FERC Web sites. The NRC has concluded that for licensees that are required to file financial reports with the SEC or the FERC, licensee financial information can be collected in a more cost-effective way than requiring licensees to submit the reports required by 10 CFR 50.71 (b) and 10 CFR 72.80 (b). The NRC has access to other more current sources of information than the annual financial reports to assess the licensees' financial condition, making the submittal of the annual financial report to the NRC unnecessary. Additionally, NRC has the authority to request licensees to submit additional or more detailed information regarding their financial status if the Commission considers this information appropriate. The direct final rule will become effective on August 7, 2006. However, if the NRC receives significant adverse comments on the direct final rule by

June 21, 2006, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when—

(A) The comment causes the staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the staff.

(2) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

**List of Subjects**

*10 CFR Part 50*

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

*10 CFR Part 72*

Administrative practice and procedure, Hazardous waste, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act for 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendment to 10 CFR parts 50 and 72.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(d), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.71, paragraph (b) is revised to read as follows:

### § 50.71 Maintenance of records; making of reports.

* * * * *

(b) With respect to any production or utilization facility of a type described in § 50.21(b) or 50.22, or a testing facility, each licensee and each holder of a construction permit shall submit its annual financial report, including the certified financial statements, to the Commission, as specified in § 50.4, upon issuance of the report. However, licensees and holders of a construction permit who submit a Form 10-Q with the Securities and Exchange Commission or a Form 1 with the Federal Energy Regulatory Commission need not submit the annual financial report or a certified financial statement under this paragraph.

* * * * *

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

3. The authority citation for 10 CFR Part 72 continues to read as follows:

**Authority:** Secs, 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended; 202, 206, 88 Stat. 1242, as amended; 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241; sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under section 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)), Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (U.S.C. 10198).

4. In § 72.80, paragraph (b) is revised to read as follows:

### § 72.80 Other records and reports.

* * * * *

(b) Each licensee shall furnish a copy of its annual financial report, including the certified financial statements, to the Commission. However, licensees who submit a Form 10–Q with the Securities and Exchange Commission or a Form 1 with the Federal Energy Regulatory Commission, need not submit the annual financial report or a certified financial statement under this paragraph.

* * * * *

Dated at Rockville, Maryland, this 2nd day of May, 2006.

For the Nuclear Regulatory Commission.

**Luis A. Reyes,**

*Executive Director for Operations.*

[FR Doc. 06–4741 Filed 5–19–06; 8:45 am]

BILLING CODE 7590–01–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2006–24814; Directorate Identifier 2006–NM–093–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This proposed AD would require repetitive detailed and high frequency eddy current (HFEC) inspections of the station (STA) 1809.5 bulkhead for cracking and corrective actions if necessary. This proposed AD results from fatigue cracks found in the forward outer chord and horizontal inner chord at STA 1809.5. We are proposing this AD to detect and correct cracking in the bulkhead structure at STA 1809.5, which could result in failure of the bulkhead structure for carrying the flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by July 6, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24814; Directorate Identifier 2006–NM–093–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

### Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

### Discussion

We have received a report indicating that two operators found fatigue cracks in the forward outer chord of the station (STA) 1809.5 airframe bulkhead, on four Boeing Model 767 airplanes. Those airplanes had accumulated between 13,942 and 29,588 total flight cycles. Also, three operators reported finding cracks in the horizontal inner chord between stringer 12L and 12R, on several Boeing Model 767 airplanes. Those airplanes had accumulated between 8,448 and 35,991 total flight cycles. Cracking in the bulkhead structure at STA 1809.5 could grow and lead to failure of the bulkhead structure for carrying the flight loads of the horizontal stabilizer. This condition, if not corrected, could result in loss of controllability of the airplane.

### Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006. The service bulletin describes procedures for accomplishing repetitive detailed and high frequency eddy current (HFEC) inspections of the STA 1809.5 bulkhead for cracking and corrective actions as applicable. Specifically, those inspections include the following:

- Part 1 of the service bulletin specifies doing a detailed inspection of the exterior of the skin at STA 1809.5 between stringers 3L and 10L and detailed and HFEC inspections of the forward outer chord and surrounding structure between stringers 3L and 10L.
- Part 2 of the service bulletin specifies doing a detailed inspection of the exterior of the skin at STA 1809.5 between stringers 3R and 10R and detailed and HFEC inspections of the forward outer chord and surrounding structure between stringers 3R and 10R.
- Part 3 of the service bulletin specifies doing detailed and HFEC inspections of the end of the horizontal inner chord and surrounding structure on the left side of the STA 1809.5 bulkhead.
- Part 4 of the service bulletin specifies doing detailed and HFEC inspections of the end of the horizontal inner chord and surrounding structure on the right side of the STA 1809.5 bulkhead.

The corrective actions include the following:

- Repairing any cracking found in the forward outer chord or in the horizontal inner chord. Repairing all cracking in a certain area terminates the repetitive inspections for that area only.
- Contacting the manufacturer for repair instructions if any cracking is found in the skin or in any structure other than the forward outer chord or horizontal inner chord.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or

develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Bulletin.''

### Difference Between the Proposed AD and Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

### Costs of Compliance

There are about 903 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 405 airplanes of U.S. registry. The proposed actions would take about 12 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $388,800, or $960 per airplane, per inspection cycle.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Boeing:** Docket No. FAA–2006–24814; Directorate Identifier 2006–NM–093–AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by July 6, 2006.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to all Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

#### Unsafe Condition

(d) This AD results from cracks found in the forward outer chord and horizontal inner chord at station (STA) 1809.5. We are issuing this AD to detect and correct cracking in the bulkhead structure at STA 1809.5, which could result in failure of the bulkhead structure for carrying the flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane.

#### Compliance

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

#### Repetitive Inspections and Corrective Actions

(f) Before the accumulation of 15,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever is later: Do the detailed and high frequency eddy current (HFEC) inspections for cracking as specified in Parts 1, 2, 3, and 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006; and do all corrective actions before further flight; by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006, except as provided by paragraph (g) of this AD. Repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles. Accomplishing the corrective action for the inspections specified in Part 1, 2, 3, or 4 of the service bulletin, as applicable, terminates the repetitive inspections for that area only.

#### Exception to Service Bulletin

(g) If any cracking is found in the skin or in any structure other than the forward outer chord or horizontal inner chord, during any inspection required by this AD, and Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

#### Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

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

Issued in Renton, Washington, on May 15, 2006.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6–7740 Filed 5–19–06; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Part 250**

**RIN 1010–AD15**

## Oil and Gas and Sulphur in the Outer Continental Shelf (OCS)—Safety and Environmental Management Systems

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Advance Notice of Proposed Rulemaking (ANPR).

**SUMMARY:** MMS is seeking comments on how to improve our regulatory approach to safety and environmental management systems (SEMS) for operations conducted in the OCS. The various approaches for SEMS include voluntary and mandatory implementation of partial and full SEMS. In addition, the MMS is seeking comments on a regulatory scheme that would allow companies with outstanding performance records to operate under an alternative compliance program. MMS is investigating ways to develop an improved regulatory program that is more efficient and responsive to evolving conditions.

**DATES:** MMS will consider all comments received by August 21, 2006. MMS will begin reviewing comments then and may not fully consider comments received after August 21, 2006.

**ADDRESSES:** You may submit comments on the notice by any of the following methods listed below. Please use 1010–AD15 as an identifier in your message. See also Public Comment Policy under **SUPPLEMENTARY INFORMATION.**

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov.* Follow the instructions on the Web site for submitting comments.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Use the Regulatory Identifier Number (RIN) in the subject line.
- Fax: 703–787–1546. Identify with RIN.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Oil and Gas and Sulphur Operations in the OCS—Safety and Environmental Management Systems—AD15'' in your comments.

**FOR FURTHER INFORMATION CONTACT:** David Nedorostek, Safety and Enforcement Branch at (703) 787–1029 or William Hauser, Chief, Regulations and Standards Branch at (703) 787–1613.

**SUPPLEMENTARY INFORMATION:**

### Public Comment Procedures

MMS's practice is to make comments, including names and addresses of respondents, available for public review. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking 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.

### Regulatory Background

Under the OCS Lands Act, all activities conducted on the OCS must be in accordance with existing Federal statutes. MMS is responsible for implementing policies intended to maintain safety and environmental protection practiced by the industry while conducting operations in the OCS. The operator conducting the operation(s) is directly responsible for managing the performance of those operations safely and ensuring they prevent damage to the environment. This is the case whether the management of operations is through operator company personnel, contract personnel, or a mix of both.

### MMS Goal

The MMS goal is twofold. MMS wants to improve upon the current regulatory approach to safety and environmental management systems to further minimize injuries, fatalities, accidents, fires, explosions, collisions, pollution incidents, or damage to the marine environment with respect to all oil and gas operations on the OCS. MMS is considering moving away from prescriptive regulations in areas where industry can demonstrate that a performance-based regulatory approach will increase the current level of safety and environmental protection. MMS also wants to improve the efficiency of the current regulatory system by making it more responsive to innovative approaches and technological and environmental changes. MMS realizes the challenges in attaining such goals and recognizes the progress of industry as a whole in moving toward these goals.

### The Regulatory Program

MMS's implementing regulations have both prescriptive and performance elements. MMS regulations require industry to submit various site-specific plans and permit requests for MMS approval before operations can begin. There are many engineering-based requirements for installing, maintaining, testing, and inspecting of safety control devices by the operator. MMS's operating regulations incorporates 95 referenced standards. The rate of technological change as operations move into increasingly challenging environments has made it difficult for MMS to promulgate regulations and participate in the development of industry standards in a timely manner. MMS's performance-based elements include safety, training, and broad-based environmental protections: Performance Standards, 30 CFR 250.106–124; Disqualification, 30 CFR 250.135 and 136; Subpart O, Well Control and Production Safety Training, 30 CFR 250.1500–1510; Best Available and Safest Technology, 30 CFR 250.105; the use of alternative technologies, 30 CFR 250.141 and 30 CFR 250.408; Pollution Prevention Control, 30 CFR 250.300(a); Drilling Operations, 30 CFR 250.401(e); Well Completions, 30 CFR 250.500; Workover Operations, 30 CFR 250.600; Production Safety Systems, 30 CFR 800; Sulfur Operations, 30 CFR 250.1600; and Decommissioning, 30 CFR 250.1703(f).

### SEMP and API RP 75 History

For the past 15 years, MMS has been engaged in an effort to extend the use of performance-based regulations on the OCS. In 1991, MMS introduced the concept of a Safety and Environmental Management Program (SEMP) with the goal of having operators in the offshore industry voluntarily adopt an active safety and environmental management approach in conducting operations. The American Petroleum Institute (API) responded by developing API RP 75, ''Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities'' in collaboration with industry organizations and MMS.

The SEMP concept in API RP 75 includes the following 12 elements:

1. Safety and Environmental Information,

2. Hazards Analysis,
3. Management of Change,
4. Operating Procedures,
5. Safe Work Practices,
6. Training,
7. Assurance of Quality and Mechanical Integrity of Critical Equipment,
8. Pre-Startup Review,
9. Emergency Response and Control.
10. Investigation of Incidents,
11. Audit of Safety and Environmental Management Program Elements, and
12. Documentation and Record Keeping.

After development of API RP 75, MMS worked with the offshore industry to develop tools that would assist the industry in voluntarily moving toward use of this management-based approach, including: (1) Development of a prototype SEMP program through a Department of Energy funded contract; (2) development of SEMP Auditing Protocols through work with the Offshore Operators Committee (OOC) and API; and (3) participation in a series of six performance measures workshops (1998–2000) focused on continual improvement of safety and environmental management performance.

In 1994, MMS committed to monitor industry implementation of SEMP for 2 years to decide whether voluntary use of API RP 75 was adequately embraced by industry and to determine if SEMP would need to be formally incorporated into our regulations to assure industry's use of this program. In June 1996, MMS extended the observation period. Since that time MMS has continued to observe industry implementation. During 1994–1998, the API developed and distributed surveys to assist the MMS in gauging the degree of industry adoption and implementation of API RP 75.

In 1997, MMS began conducting annual performance reviews of each operator. These annual reviews examine the operator's compliance history as it relates to the MMS Inspection Program, actions MMS has forwarded for civil penalty review or that have resulted in a civil penalty, the operator's safety record as it relates to accidents and incidents, and the operator's progress in implementing SEMP.

In 2002, at the request of MMS, members of API and OOC joined with the agency and formed a Steering Committee to address our concern with enhancing the environmental component of API RP 75. In response, the Steering Committee rewrote API RP 75 to incorporate concepts from the International Organization for Standardization (ISO) 14001—Environmental Management Systems.

**Rationale for Changes in the Regulatory Program**

The overall objective is to improve our regulatory system and industry performance by requiring all operators to manage safety and environmental performance in an integrated system.

Based on incident investigation findings and performance reviews with operators, MMS identified a need for performance improvement in the following areas at a minimum: hazards analysis, operating procedures, mechanical integrity, and management of change. These areas are part of what MMS and industry have recognized as an effective safety management system. Requiring operators to implement these critical elements of an integrated safety management system could address MMS's concerns with performance and ultimately improve safety and environmental compliance on the OCS.

MMS believes that the effective use of SEMS would improve safety and environmental performance on the OCS. MMS evaluated several areas of statistics listed below. In summary, these areas are: panel investigation reports, incident analysis, and incidents of noncompliance (INCs).

Accident panel investigation reports show major accidents that occurred from 2000 to 2005. An analysis of the panel reports reveals that many fatalities and injuries occurred while performing routine tasks. In addition, most of these panel reports made recommendations that relate to one of the following four SEMS elements: hazards analysis, management of change, mechanical integrity, and operating procedures. The panel reports can be viewed by typing in the following address: *http://www.gomr.mms.gov/homepg/offshore/safety/acc_repo/accindex.html.*

CONTRIBUTING CAUSES

| MMS report | Hazard analysis | Operating procedures | Mechanical integrity | Management of change | Injury No. | Fatality No. |
|---|---|---|---|---|---|---|
| *MMS 2005–027* | | X | X | X | | |
| *MMS 2005–007* | | X | X | | | |
| *MMS 2004–078* | X | X | | X | | 1 |
| *MMS 2004–075* | X | X | X | | | |
| *MMS 2004–048* | | | | | | |
| *MMS 2004–046* | X | X | | X | 3 | |
| *MMS 2004–004* | X | | | | | 1 |
| *MMS 2003–068* | | X | | | | |
| *MMS 2003–046* | | X | | X | | |
| *MMS 2003–023* | | | | X | | |
| *MMS 2002–076* | X | | X | X | | 1 |
| *MMS 2002–075* | X | | | | | 1 |
| *MMS 2002–062* | | | | X | 2 | 1 |
| *MMS 2002–059* | X | | X | | 1 | 1 |
| *MMS 2002–040* | | | X | | | |
| *MMS 2001–084* | | | | X | | |
| *MMS 2001–045* | | X | X | | | 1 |
| *MMS 2001–042* | X | | X | X | | 1 |
| *MMS 2001–010* | X | | | X | 1 | |
| *MMS 2001–009* | | X | | X | | |
| *MMS 2001–005* | X | | | X | | |
| *MMS 2000–089* | X | | X | | | 1 |
| Total = 22 | Total = 11 | Total = 9 | Total = 9 | Total = 12 | Total = 7 | Total = 9 |

It is evident from the above table that the accidents covered by 11 of the 22 panel reports resulted in a combined 16 fatalities and injuries. The analysis done on the accidents identified six primary contributing causes: (1) A lack of communication between operator and contractor(s), (2) lack of understanding job hazards analysis (JHA) prior to beginning work or lack of JHA written procedures, (3) onsite supervision not enforcing existing procedures or practices, (4) lack of written safe work procedural guidelines, (5) integrity of the facilities and equipment not maintained according to recommended practices, and (6) workplace hazards not identified and corrected. MMS maintains that these incidents could have been minimized or even prevented if the operator had implemented the four identified SEMS elements.

The MMS also conducted a study of 310 incidents that occurred in OCS waters in 2003 and 2004, to determine if the events were associated with any of the four SEMS elements. The events reviewed included: fatalities, injuries, loss of well control, collisions, fires, pollution, and crane events. This study revealed that there were 13 fatalities and 97 injuries in the 310 incidents. A majority of the incidents had at least one of the following four factors as a contributing reason for the event occurring.

| SEMS element | Number of occurrence(s) |
|---|---|
| Hazard Analysis | 20 |
| Management of Change | 13 |
| Mechanical Integrity | 124 |
| Operating Procedures | 159 |

MMS inspectors issue three primary Incidents of Noncompliance (INCs) that address four key elements of a SEMS program. These INCs are as follows:

- G–110 (Operations conducted in a safe and workmanlike manner),
- G–111 (Equipment maintained in a safe condition), and
- G–112 (Safety of personnel and are all necessary precautions taken to correct and remove any hazards).

MMS issued 1,381 of these types of INCs during 2003–2004 for drilling and production activities. Of these 1,381 INCs, 1,376 or 99.6 percent are directly related to one or more of the following four SEMS elements: hazard analysis, operating procedures, mechanical integrity, and management of change. The following table depicts these G–INCs written for drilling activities and production activities.

| Operational Incs Issued in 2003–2004 | | |
|---|---|---|
| | Drilling | Production |
| SEMS elements | Percentage | Percentage |
| Hazard Analysis. | 6 | 3 |
| Management Of Change. | 19 | 5 |
| Mechanical Integrity. | 42 | 46 |
| Operating Procedures. | 33 | 46 |

**Environmental Compliance**

MMS also reviewed its Environmental Potential Incidents of Noncompliance (PINCs) and Performance Standards. The review of our environmental performance standards and our environmental PINCs indicates that the PINCs do not fully address the range of environmental safeguards covered under our performance standards as they relate to compliance with State and Federal statutes. The environmental PINCs issued by MMS inspectors focus on water quality as it relates to mud/oil spills and marine debris (E–100 thru E–202); flaring and venting violations (P–107 thru P–111); and broad-based noncompliance with lease stipulations and ''approved plans/''applications (G–114 thru G–116). MMS has limited methods to verify and document industry compliance with the regulatory performance standards.

MMS issues hundreds of environmental (E—INCs) every year. There is no discernible trend of improvement by industry over the past 5 years. The number of INCs issued concerning maintenance of pollution inspection records have continually increased from 2000–2005. MMS realizes that our current approach to environmental protection does not allow us to ascertain the level of industry compliance with all applicable environmental laws, regulations, and lease stipulations. We believe that industry's SEMS plan should contain processes and protocols for detailing their compliance with these requirements. MMS is aware that industry may be documenting compliance in ways that MMS does not currently verify and track, and that industry may be investigating ways to better demonstrate environmental compliance. MMS is considering a range of options for ensuring industry compliance with environmental regulations and is seeking comment on how industry can demonstrate to MMS their compliance with these requirements.

**Possible Options for Implementing SEMS**

There are a number of approaches MMS could adopt in moving to a SEMS requirement. We request your views on the following approaches and any others that you would like us to consider for implementing a SEMS program.

1. *Keep the Current Regulatory Program*—the current program is largely based on overarching performance-based regulations supplemented by specific prescriptive safety and environmental regulations and requirements where necessary. The use of API RP 75, while encouraged, is strictly voluntary.

2. *A Mandatory Limited SEMS Approach*—continue the current regulatory regime and add the four critical SEMS elements—hazard analysis, management of change, operating procedures, and mechanical integrity.

3. *A Complete SEMS Approach*—a new performance-based comprehensive safety and environmental management approach. The MMS would develop performance-based regulations that address the 12 elements from API RP 75 and elements similar in nature to those detailed in Section 4 of ISO 14001.

**Enforcement of SEMS Requirement**

A template available to MMS for enforcing a performance-based regulation has been developed as part of our 30 CFR Part 250 Subpart O Well Control and Production Safety Training regulations. Under subpart O, an operator is required to develop and implement a training plan that complies with the provisions of our regulations. These regulations set out broad goals and leave the operator the flexibility to determine how best to comply. Under this system, MMS does not approve the plan, but expects the operator to show us how they have complied with the provisions in their plan when asked. To evaluate an operator's performance under the subpart O regulations, MMS has the following tools available:

1. Informal employee interviews,
2. Audits:
- Formal interviews
- Training plan reviews
- Records review
- Course content evaluations
3. Testing:
- Written
- Verbal
- Hands-on.

MMS views the subpart O approach as a viable option for enforcing additional performance-based regulations, such as SEMS, but welcomes any suggestions and

information concerning other techniques.

**Alternative Compliance Program**

The MMS is considering a SEMS pilot program under which a limited number of companies with outstanding performance records, as demonstrated by incident and compliance data, would manage their operations under a comprehensive SEMS program. For the duration of the pilot program, these companies would operate under a separate regulatory program with far fewer prescriptive requirements.

The intention of the pilot program is threefold:

1. Determine whether SEMS should be expanded beyond a voluntary regulatory program;

2. Provide MMS with experience in auditing and using SEMS as a regulatory program vehicle to ensure safe and clean operations; and

3. Determine if SEMS is practical for the oil and gas industry as a whole or only specific companies. MMS envisions that any company qualifying for the SEMS pilot program would operate according to their SEMS plan and would be relieved from information submissions, certain applications and discrete MMS approval actions except those specifically required by law. If a company is found to be out of compliance with their SEMS plan, then incidents of noncompliance and possibly civil penalties could result. It is projected that the pilot program will operate with companies needing to qualify on a periodic basis. Companies interested in the pilot program should have a fully functioning SEMS program with a verifiable history showing how their program has had a positive impact on the safety of their operations.

**Questions**

The purpose of this ANPR is to seek input from industry and other interested parties on the three SEMS approaches described above. In addition to receiving input on the approaches identified in this ANPR, this process will also allow MMS to evaluate alternative ideas. MMS invites specific comments on the following:

*SEMS Approaches*

- Which of the three identified approaches do you consider most responsive to MMS's stated goals and why?
- Are there other safety and environmental management systems or programs that MMS should review? Please provide as much detail as possible.
- Does the subpart O model using audits, informal employee interviews, and testing described above, provide a suitable model for verifying the implementation of a performance-based safety and environmental management program? Are there alternative approaches to the subpart O model that the MMS should consider?
- Should MMS or a third party verify that a performance-based safety and environmental management program is working? Should audits be periodic or should they be triggered by events or indicators?
- Should MMS review the SEMS plan, review and approve the SEMS plan, or have an independent third party verify, review, and approve the SEMS plan?
- Should SEMS plans be in addition to the current prescriptive regulations or should the SEMS plan be in lieu of certain prescriptive regulations?
- What standards should a SEMS plan include to provide consistent and credible approaches to offshore operational safety and environmental performance?

—Would these documents, standards, or guidelines be domestic or international?

—Would these documents, standards, or guidelines be accepted industry best practices or internal company policies and procedures?

- What criteria should the MMS use to determine whether an operator has a viable SEMS plan?
- Is API RP 75 a sufficient model for addressing all the factors associated with offshore industry practices? If not, please provide the MMS with your suggestions on an appropriate model.
- Are there existing programs or initiatives industry is currently using that can further our ability to verify and track environmental compliance, such as ISO 14001:2004, SempCheck, European Eco-Management and Audit Scheme, or Global Environmental Management Initiative.
- How can MMS improve its current regulatory model to incorporate environmental performance measurement systems?
- What are the most appropriate compliance measures that are responsive to our broad environmental performance standards referenced in the ''The Regulatory Program'' section above?

*Alternative Compliance Program*

Should MMS consider developing a ''pilot program'' to assess an alternative compliance program for outstanding operators?

- What measure(s) should we use to determine who is allowed to participate?
- How should MMS judge prospective ''pilot program'' applicants? Should an applicant be required to submit a complete SEMS program or plan to MMS for evaluation? Should MMS approve such a program?
- Should a pilot program be for a fixed period of time? How long?
- Should performance issues trigger a premature end to an operator's participation in a pilot program?
- What measures should be considered?
- What type of MMS regulatory regime do you recommend for companies in a pilot program?
- What prescriptive regulations and permitting requirements should be excluded from this alternative regulatory program?
- What advantages does a SEMS regulatory approach have for companies compared to prescriptive approach?
- What disadvantage does a SEMS regulatory approach have for companies as compared to a prescriptive approach?
- Should the SEMS pilot program include only four elements as mentioned above or should it be for all 12 elements?

MMS seeks responses to the above questions, an assessment of which option industry considers the most effective and efficient, and any other information deemed relevant that is not specifically asked for. After analyzing the comments received from this notice, MMS will determine the need for a public workshop to further exchange ideas. MMS encourages all interested parties to respond to these questions and to provide comments on the various options.

Dated: May 3, 2006.

**R.M. Johnnie Burton,**

*Director, Minerals Management Service.*

[FR Doc. E6–7790 Filed 5–19–06; 8:45 am]

BILLING CODE 4310–MR–P

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 250

**RIN 1010–AD19**

## Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Incorporate API RP 65 for Cementing Shallow Water Flow Zones

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** MMS is proposing to incorporate by reference the First Edition of the American Petroleum Institute's Recommended Practice for Cementing Shallow Water Flow Zones in Deep Water Wells (API RP 65) into MMS regulations. Since 1987, at least 113 OCS wells have encountered shallow water flow (SWF) to varying degrees. The majority of these wells experienced SWF to only a minor degree; however, there were instances of severe encounters resulting in abandonment of well sites and loss of wells. This action would establish best practices for cementing wells in deep water areas of the OCS that are prone to SWF.

**DATES:** MMS will consider all comments received by July 21, 2006. We will begin reviewing comments then and may not fully consider comments received after July 21, 2006.

**ADDRESSES:** You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD19 as an identifier in your message. See also Public Comment Procedures under Procedural Matters.

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov.* Follow the instructions on the Web site for submitting comments.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Use RIN 1010–AD19 in the subject line.
- Fax: 703–787–1546. Identify with the RIN, 1010–AD19.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Incorporate API RP 65 for Cementing Shallow Water Flow Zones, 1010–AD19'' in your comments and include your name and return address.
- Send comments on the information collection in this rule to: Interior Desk Officer 1010–AD19, Office of Management and Budget; 202/395–6566 (facsimile); e-mail: *oira_docket@omb.eop.gov.* Please also send a copy to MMS.

**FOR FURTHER INFORMATION CONTACT:** Kirk Malstrom, Regulations & Standards Branch (703) 787–1751.

**SUPPLEMENTARY INFORMATION:**

## Background

MMS is authorized to issue and enforce rules to promote safe operations, environmental protection, and resource conservation on the OCS by the OCS Lands Act (43 U.S.C. 1331 *et seq.*). Under this authority, MMS regulates all safety aspects of oil and gas drilling, production, and well-workover operations on the OCS.

Since 1987, OCS operators have reported encountering shallow water flow (SWF) problems while drilling in specific areas of the Gulf of Mexico (GOM), including Garden Banks, Green Canyon, Mississippi Canyon, and Viosca Knoll. SWFs have also been reported to the agency from the Atwater, De Soto Canyon, East Breaks, Ewing Bank, and Port Isabel areas of the GOM. To date, MMS is aware of at least 113 wells, drilled by approximately 25 different operators, that have encountered problems with SWF. Data available to MMS shows that the water depth for these wells ranged from approximately 496 feet to 9,672 feet, with an average water depth of 3,562 feet. These wells encountered SWF from zones at depths ranging from approximately 450 feet below mud line (BML) to 3,005 feet BML, with an average depth of encounter of 1,305 feet BML. These BML depths represent the top of the SWF zone. General information on SWFs, and maps showing the location of areas in the GOM that have had documented cases of SWF, can be viewed at our Web site at: *http://www.gomr.mms.gov/homepg/offshore/safety/wtrflow.html.*

SWF is a phenomenon generally encountered at shallow depths BML in the deepwater areas of the GOM (greater than 500 feet and more commonly in water depths greater than 1,000 feet) and is typically attributable to penetrating abnormally pressured shallow sands. The greater than normal pressures in these sands can result from sediments being deposited at higher than normal rates, resulting in the pressurization of the pore water above normal hydrostatic pressure. The development of a formation, such as a shale body above this sand, may create a seal allowing the development of an abnormally pressured formation. As described, this situation does not represent a problem. However, with the development of appropriate permeability, such a formation, once penetrated, may result in an influx of water or sediment into or around the wellbore, or a SWF. Depending on the severity of the SWF, the flow may result in the creation of a channel behind the casing, creation of a large washout, buckling of casing, cross flow between a localized group of wells, premature permanent abandonment of the well, and expenditure of additional time and expense for the operator to control the well and resume drilling operations.

According to the information available to MMS, the majority of the 113 GOM wells that have encountered SWF did so to only a slight degree. However, some of the SWFs were severe and resulted in abandonment of the well sites, and required moving to an alternate location to drill new wells at great expense. A significant SWF event happened off the mouth of the Mississippi River in deepwater. The field is located in an area where SWF problems have been severe. The sediments in this area contain massive sands at above normal pressures at shallow depths BML. Once the problem of SWF was recognized, the company employed various drilling and cementing techniques while constructing wells in attempts to prevent and control the SWF problem. Ultimately the decision was made to abandon this site because many of the slots at the site were unusable due to the buckling of casing caused by SWF. It is estimated that abandonment of this site cost approximately $100 million. A new, second site, was selected approximately 1 mile from the original site. Selection criteria for this site emphasized SWF avoidance based on seismic data.

Other SWF incidents in GOM have resulted in less expensive, but equally damaging situations. A well located in Garden Banks in deepwater was spudded and drilled in preparation for running conductor casing. The casing was run and cemented with foamed lead cement and higher density tail cement. The day after cement operations were completed, the well experienced a SWF from the drive pipe conductor casing annulus. Three days later the well was abandoned, and the rig was moved to an alternate location to commence drilling another well. The original well was monitored for SWF with a remote operating vehicle while the new well was drilled. Flow on the original well had decreased significantly and the well is currently classified as permanently abandoned. The information included in API RP 65 addressing best cementing practices in SWF environments might have helped prevent the above SWF incidents if it had been incorporated into MMS regulations.

Today, SWF remains an economic and safety issue in the deepwater areas of the GOM. Both MMS and industry have participated in various initiatives to learn about SWF. DeepStar is a joint

industry technology development project focused on advancing the technologies needed to drill and produce hydrocarbons in water depths up to 10,000 feet. Members include oil and gas companies as well as service companies. In the mid 1990's, DeepStar compiled detailed information on SWFs and made it available to interested parties. The Energy Research Clearing House (ERCH), established in 1992, is an organization dedicated to promoting exploration and production research in technical areas of interest to members. Members include oil and gas companies, service companies, and other interested organizations. ERCH continued DeepStar's efforts with SWF, and for several years maintained a database of GOM SWF occurrences, with the goal being to facilitate proper planning for future wells. Due to funding concerns, this effort has recently ended. Various workshops, conferences, forums, and studies have been conducted, both by industry and MMS, to evaluate concerns related to SWF. These initiatives have proven useful in informing interested parties of the problems with SWF and in advancing technological solutions.

MMS and industry realize that one factor with the potential to help control SWF is the use of a proper cementing program. In August, 2000, MMS approached API and requested that it work with MMS in developing a new standard to address how cementing technology can be used to minimize the occurrence of the annular flow of gas or water from OCS wells during or after cementing operations. At that time, MMS presented data to industry which documented that approximately 34 percent (11 out of 32 losses of well control) of all OCS losses of well control reported to MMS from 1995 through 2000 were a result of the annular flow of gas and/or water from the annulus of a well either during or after completion of a casing cement job. This trend has continued since that time. API was receptive to this idea and formed a Task Group composed of experts from the cement manufacturing industry, OCS lessees, drilling contractors, cementing service companies, and cementing consultants to create three new cementing standards to address various aspects of annular flow, including the specialized case of SWF.

The first standard completed by the API Task Group, ''API Recommended Practice 65, Cementing Shallow Water Flow Zones in Deep Water Wells,'' First Edition, September, 2002 (API RP 65) offers a compilation of technology and ''best practices'' for use in well cementing operations in deep water SWF environments. The standard provides flexibility in designing and implementing a cementing program for zones with SWF potential. The information in API RP 65 suggests that no single cementing technique or series of cementing techniques can be used successfully in every situation to prevent SWF. In some situations, it may be possible to use a variety of techniques outlined in the standard to help minimize the risks associated with cementing in a SWF environment. The purpose of this standard is to provide a series of alternatives which should be evaluated to minimize the risks associated with cementing a SWF zone. The majority of the standard focuses on cementing alternatives, and only discusses SWF avoidance through proper site selection in a cursory fashion.

In general, use of the best cementing practices addressed in API RP 65, including casing centralization, pipe movement, light weight cements such as a foam system, proper mud circulation prior to cementing, proper job planning, communication, and job follow-up, should lower the risk of SWF problems. There are a variety of preventative drilling techniques which can also be utilized to minimize or avoid the risks associated with SWF zones in addition to the best cementing practices included in API RP 65. These techniques include: proper planning in regard to site selection, the drilling of pilot holes, setting extra strings of casing, use of measurement-while drilling (MWD) or pressure while drilling (PWD) technology, and use of a drilling riser for shallow sections of a deep water well. These items, though valuable in either avoiding a SWF-prone area or drilling a well in such an area, are beyond the scope of this standard and will not be addressed in this proposed rule.

To assist MMS in determining the best method to use API RP 65 in its regulatory program, we specifically solicit comments on the following questions:

(1) API RP 65 presents a broad range of information on how to minimize problems associated with cementing shallow water flow zones in deep water wells. Is there a benefit to singling out a specific cementing technique or ''best practice'' included in this standard to incorporate into MMS regulations in lieu of incorporating the entire standard?

(2) Are there other cementing applications in MMS regulations (*e.g.*, well abandonment operations, general cementing requirements included in 30 CFR 250.415) where the cementing techniques discussed in API RP 65 could be used to enhance safety if it was incorporated into our regulations?

**The Purpose of This Rule**

This proposed rule would upgrade requirements for cementing operations in 30 CFR Part 250 Subpart A—General, and Subpart D—Oil and Gas Drilling Operations. Subpart A—General, would be amended to incorporate by reference ''API RP 65, Recommended Practice for Cementing Shallow Water Flow Zones in Deep Water Wells,'' First Edition, September, 2002. Subpart D—Oil and Gas Drilling Operations, § 250.415 would be amended by adding new subparagraph (e) to include information on when API RP 65 is to be evaluated in designing a cementing program. Some of the key points of this proposal include the following:

- Use of this standard is not warranted for every OCS well or for all casing strings in a particular well. Its use should be limited to situations where there is a risk of encountering a SWF based upon past drilling activity, seismic data or interpretation, or correlation of data from offset wells, in water depths greater than 500 feet. (SWF has not been encountered in wells in water depths less than 500 feet.)
- The risk associated with encountering a SWF is characterized in one of two ways: an area with an unknown shallow water flow potential, or an area known to contain a shallow water flow hazard.
- For purposes of this proposed rule, these terms are defined as follows:

—*An area with an unknown shallow water flow potential* means a zone or geologic formation where neither the presence nor absence of potential for a SWF has been confirmed,

—*An area known to contain a shallow water flow hazard* means a zone or geologic formation for which drilling has confirmed the presence of SWF.

- Use of this standard is limited to water depths greater than 500 feet for areas with an unknown shallow water flow potential or areas known to contain a shallow water flow hazard. Data available to the MMS on the 113 wells that have encountered SWF shows that the water depths for these wells ranged from approximately 500 feet to 9,675 feet, with an average water depth of 3,560 feet.
- As part of an operator's Application for Permit to Drill (Form MMS–123), a statement needs to be included concerning how API RP 65 was evaluated, and which of the cementing techniques from this standard were used as part of the cementing program for a

well drilled in either ''areas with an unknown shallow water flow potential'' or ''areas known to contain a shallow water flow hazard''. This information will be evaluated by MMS during the review of the application for permit to drill and discussed with the operator as appropriate.

• Particular attention should be placed on evaluating, designing, and implementing the cementing programs of both the surface and conductor casing strings in wells requiring review under API RP 65. Data available to MMS on the 113 wells that have encountered SWF shows that the tops of the SWF zones ranged from approximately 450 feet BML to 3,005 feet BML, with an average depth of encounter of 1,305 feet BML. These depths are typical of the setting depths of either conductor or surface casings.

**Procedural Matters**

*Public Comment Procedures*

All submissions received must include the agency name and Regulation Identifier Number (RIN) for this rulemaking. Our practice is to make comments, including names and addresses of respondents, available for public review. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you want 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. Except for proprietary information, 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.

*Regulatory Planning and Review (Executive Order (E.O.) 12866)*

a. This is not a significant rule under E.O. 12866 and does not require review by the Office of Management and Budget (OMB). The proposed rule would not 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. The proposed rule would not create an adverse effect upon the ability of the United States offshore oil and gas industry to compete in the world marketplace, nor would the proposal adversely affect investment or employment factors locally.

The economic analysis prepared by MMS indicates that, if the techniques included in API RP 65 are evaluated by operating companies in the planning phases of wells drilled in *Areas with an Unknown Shallow Water Flow Potential or Areas Known to Contain a Shallow Water Flow Hazard,* this process would increase the planning costs associated with these wells by no more than $20,000 per well (industry estimate). This cost includes planning associated with a full range of SWF mitigation measures. The measures include casing centralization, pipe movement, use of light weight cements such as a foam system, proper mud circulation prior to cementing, site selection, the drilling of pilot holes, setting extra strings of casing, use of MWD or PWD technology, and use of a drilling riser for shallow sections of a deep water well. Today, most lessees conducting operations in SWF-prone areas of the GOM already use some of these techniques. As a result, additional costs associated with implementing these techniques under this proposed rule would be negligible.

Based on information available to MMS, there have been a total of 1,275 wells drilled on the OCS in water depths of 500 feet or greater for the period 2000–2004. The cost to industry over the past 5 years for SWF mitigation would have been approximately $25.5 million ($20,000 per well × 1,275 wells = $25.5 million) if proper planning were conducted prior to drilling all of these wells. In reality, a significant number of these 1,275 wells would have been located in areas known to be free of shallow water flow and would not have required an operating company to implement the techniques included in API RP 65 as part of their well planning efforts, resulting in a significant decrease to the $25.5 million cost to the offshore industry.

Using the well data trends from 2000–2004, in water depths greater than 500 feet, MMS estimates an average of 200 wells will be drilled per year. Using the average of 200 wells, the estimated annual cost to industry would be approximately $4 million ($20,000 per well × 200 wells = $4 million). Based on actual drilling figures, estimated total well costs are in excess of $40 million per well. Industry estimates of $20,000 per well for SWF mitigation represents only 0.05 percent of total well costs. When $20,000 per well costs for SWF mitigation are compared to $40 million per well total costs, it is clear that the possible consequences of SWF, well abandonment, or well loss are far more severe than the 0.05 percent of well costs for SWF mitigation.

For the above reasons the proposed rule will have a minor economic effect on the offshore oil and gas industry.

b. The proposed rule would not create inconsistencies with other agencies' actions. It would not change the relationships of the OCS oil and gas leasing program with other agencies' actions. These relationships are all encompassed in agreements and memoranda of understanding that will not change with this proposed rule. MMS consulted with experts specializing in the field applications of well cementing, cement manufacturers, lessees, and contractors working both onshore and offshore.

c. The proposed rule would not affect entitlements, grants, loan programs, or the rights and obligations of their recipients. It is strictly a planning requirement for specific well cementing processes to prevent accidents and environmental pollution on the OCS.

d. This proposed rule would not raise novel legal or policy issues. There is a precedent for actions of this type under regulations dealing with the OCS Lands Act and the Oil Pollution Act of 1990.

*Regulatory Flexibility Act (RFA)*

DOI has determined that this proposed rule would not have a significant economic effect on a substantial number of small entities. While it would affect a substantial number of small entities, the economic effects of the rule would not be significant.

Based on information available to MMS, there have been a total of 1,275 wells drilled on the OCS in water depths of 500 feet or greater for the period 2000–2004. Of the total 1,275 wells drilled, 1,107 were drilled by large businesses and 168 by small businesses. The 168 wells were drilled by a total of 15 small businesses. In the GOM with water depths greater than 500 feet the 1,107 large business wells correspond to 87 percent of all wells drilled, leaving 13 percent as small business wells.

Industry estimates of $20,000 for SWF mitigation represents only 0.05 percent of total well costs. With an estimated average of 200 wells drilled per year in water depths greater than 500 feet, the total cost for all SWF mitigation is estimated at $4 million annually. Thirteen percent (26 wells) of the estimated 200 wells drilled, represent small businesses. Twenty-six wells account for approximately $520,000 ($20,000 per well × 26 annual small business wells = $520,000) of the total annual industry cost of $4 million for SWF mitigation.

The proposed rule would have a minor economic effect on the oil and gas offshore platform operators on the OCS, regardless of company size. This is due to the comparison of the relatively small SWF mitigation costs to the high drilling costs. Moreover, in the overwhelming majority of cases, operators choose to perform improved and safer well cementing procedures on their own initiative, not because of an MMS safety inspection. The proposed rule would add relatively little to the cost of a well cementing procedure. Thus, there would not be a significant impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). The proposed rule would not cause the business practices of any of these companies to change.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free at 1–888–734–3247.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This proposed rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. The proposed rule would not increase significantly the cost of well cementing. If there is an increase, it would not be a large cost compared to the overall cost of a well cementing procedure. Moreover, it may reduce significantly the possibility of a damaging and costly incident during the course of a well cementing operation. Such an accident could be economically disastrous for a small entity. Thus, the proposed rule would have a minor economic effect on the small offshore oil and gas operators. Based on our economic analysis:

a. It would not have an annual effect on the economy of $100 million or more. As indicated in our cost analysis, direct annual costs to industry for the entire proposed rule could not be assessed adequately. The proposed rule would have a minor economic effect on the offshore oil and gas industries.

b. It would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. It would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act (UMRA)*

This proposed rule does not contain any unfunded mandates to state, local, or tribal governments, nor would it impose significant regulatory costs on the private sector. Anticipated costs to the private sector will be far below the $100 million threshold for any year that was established by UMRA.

*Takings Implication Assessment (Executive Order 12630)*

DOI certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights.

*Federalism (Executive Order 13132)*

According to E.O. 13132, the proposed rule does not have significant federalism effects. The proposed rule does not change the role or responsibilities of federal, state, and local governmental entities. It does not relate to the structure and role of states and will not have direct, substantive, or significant effects on states.

*Civil Justice Reform (Executive Order 12988)*

According to E.O. 12988, the Office of the Solicitor, Department of the Interior, has determined that this proposed rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act (PRA) of 1995*

The proposed revisions to 30 CFR 250 refer to, but do not change, information collection requirements in current regulations. They propose no new reporting or recordkeeping requirements, and an OMB form 83–1 submission to OMB under the PRA, § 3507(d), is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a number, you are not required to respond. OMB approved the referenced information collection requirements for 30 CFR 250 under OMB control numbers 1010–0114 (22,288 burden hours), expiration October 31, 2007, and 1010–0141 (163,714 burden hours), expiration August 31, 2008.

*National Environmental Policy Act (NEPA) of 1969*

This proposed rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required.

*Energy, Supply, Distribution, or Use (Executive Order 13211)*

Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. This proposed rule is not a significant energy action, and therefore does not require a Statement of Energy Effects, because it:

a. Is not a significant regulatory action under E.O. 12866,

b. Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and

c. Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, as a significant energy action.

*Clarity of This Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(3) Does the format (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Is the description of the proposed rule in the ''Supplementary Information'' section of this preamble helpful in understanding the proposed rule? What else can we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

**List of Subjects in 30 CFR Part 250**

Continental shelf, Environmental impact statements, Environmental protection, Investigations, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: May 10, 2006.

**R.M. ''Johnnie'' Burton,**

*Acting Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR part 250 as follows:

## PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

**Authority:** 43 U.S.C. 1331, *et seq.*, 31 U.S.C. 9701.

2. In § 250.198, the following document incorporated by reference is added to the table in paragraph (e) in alphanumerical order.

**§ 250.198 Documents incorporated by reference.**

* * * * *

(e) * * *

| Title of documents | Incorporated by reference at |
|---|---|
| * * * * * * | * |
| API RP 65, Recommended Practice for Cementing Shallow Water Flow Zones in Deep Water Wells, First Edition, September, 2002. Product No. G56001 | § 250.415(e). |
| * * * * * * | * |

3. In § 250.415, add a new paragraph (e) as set forth below.

**§ 250.415 What must my casing and cementing programs include?**

* * * * *

(e) For wells drilled in water depths greater than 500 feet, show how you evaluated the best practices included in API RP 65, Recommended Practice for Cementing Shallow Water Flow Zones in Deep Water Wells (incorporated by reference as specified in § 250.198), to design your cement program to minimize the consequences of encountering a shallow water flow for the following two areas:

(1) An ''area with an unknown shallow water flow potential'' is a zone or geologic formation where neither the presence nor absence of potential for a shallow water flow has been confirmed.

(2) An ''area known to contain a shallow water flow hazard'' is a zone or geologic formation for which drilling has confirmed the presence of shallow water flow.

[FR Doc. E6–7792 Filed 5–19–06; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 943

**[Docket No. TX–051–FOR]**

## Texas Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; withdrawal of proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the withdrawal of an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to and additions of regulations regarding coal combustion by-products and coal combustion products. Texas intended to revise its program to clarify how the use and disposal of coal combustion by-products and coal combustion products are regulated at coal mine sites in Texas. By letter dated April 11, 2006, Texas withdrew the amendment at its own initiative.

**DATES:** This withdrawal is made on May 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *mwolfrom@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Texas Program
II. Submission of the Proposed Amendment

### I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions on the Texas program at 30 CFR 943.10, 943.15, and 943.16.

### II. Submission of the Proposed Amendment

By letter dated December 9, 2003 (Administrative Record No. TX–656), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the February 3, 2004, **Federal Register** (69 FR 5102). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. At the request of nine citizen groups and two industry groups, we held a public hearing in Austin, Texas, on March 1, 2004. We entered a transcript of the public hearing into the administrative record (Administrative Record No. TX–656.31). At the request of one citizen group, we extended the public comment period on March 3, 2004 (69 FR 9983). The extended public comment period ended on March 19, 2004. We received comments from four industry groups, two State agencies, one Federal agency, one consulting company, and ten citizen groups.

During our review of the amendment, we identified concerns about air pollution control, hydrologic information, performance bond release, recordkeeping and annual reporting, and the definition of ''coal combustion by-products.'' We notified Texas of these concerns by letters dated February 13, 2004, and May 7, 2004 (Administrative Record Nos. TX–656.04 and TX–656.39). On April 11, 2006

(Administrative Record No. TX–656.44), Texas requested that we withdraw the amendment. Texas intends to revise the amendment and submit it at a later date. Therefore, the proposed amendment announced in the February 3, 2004, **Federal Register** is withdrawn.

**List of Subjects in 30 CFR Part 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 28, 2006.

**Charles E. Sandberg,**

*Regional Director, Mid-Continent Region*

[FR Doc. E6–7735 Filed 5–19–06; 8:45 am]

BILLING CODE 4310–05–P

# Notices

Federal Register
Vol. 71, No. 98
Monday, May 22, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Fremont and Winema Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Fremont and Winema Resource Advisory Committee will meet in Klamath Falls Oregon, for the purpose of evaluating and recommending resource management projects for funding in 2007, under the provisions of Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

**DATES:** The meeting will be held on June 19, and 20, 2006.

**ADDRESSES:** The meeting on June 19, 2006 will take place at the Supervisor's Office in the large conference room located at 2819 Dahlia Street.

The meeting on June 20, 2006 will take place at the Shilo Inn in the Mount McLaughlin Room located at 2500 Almond St. Klamath Falls, Oregon.

Send written comments to Fremont and Winema Resource Advisory Committee, c/o USDA Forest Service, P.O. Box 67, Paisley, OR 97636, or electronically to *agowan@fs.fed.us*.

**FOR FURTHER INFORMATION CONTACT:** Amy Gowan, Designated Federal Official, c/o Klamath National Forest, 1312 Fairlane Road, Yreka, CA 96097, telephone (530) 841–4421.

**SUPPLEMENTARY INFORMATION:** The agenda will include a review of the status of a selection of the 2002–2006 projects recommended by the RAC, consideration of Title II project proposals for 2006 submitted by the Forest Service, the public, and other agencies, presentations by project proponents, and final recommendations for funding of fiscal year 2006 projects.

All Fremont and Winema Resource Advisory Committee meetings are open to the public. There will be a time for public input and comment. Interested citizens are encouraged to attend.

Dated: May 8, 2006.

**Amy Gowan,**

*Designated Federal Official, Klamath and Lake Counties, OR., Fremont—Winema Resource Advisory Committee.*

[FR Doc. 06–4667 Filed 5–19–06; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Del Norte County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Del Norte County Resource Advisory Committee (RAC) will meet on June 12 and 13, 2006, in Crescent City, California. The purpose of the meeting is for public presentation of Title II project proposal submitted under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payment to States'' Act.

**DATES:** The meeting will be held on June 12 and 13, 2006, from 6 to 8:30 p.m.

**ADDRESSES:** The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington, Crescent City, California.

**FOR FURTHER INFORMATION CONTACT:** Julie Ranieri, Committee Coordinator, USDA, Six Rivers National Forest, 1300 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3673. E-mail: *jranieri@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Individuals, community-based organization, tribes and government agencies will present the Title II project proposed submitted to the RAC. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: May 16, 2006.

**William Metz,**

*Acting Forest Supervisor.*

[FR Doc. 06–4715 Filed 5–19–06; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Glenn/Colusa County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Web Site Update, (5) Project Proposals/Possible Action, (6) General Discussion, (7) Next Agenda.

**DATES:** The meeting will be held on May 22, 2006, from 1:30 p.m. and end at approximately 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Janet Flanagan, Acting DFO, 825 N. Humboldt Ave., Willows, CA 95988.

**FOR FURTHER INFORMATION CONTACT:** Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95939. (530) 934–1268; E-mail *ggaddini@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by May 19, 2006 will have the opportunity to address the committee at those sessions.

Dated: May 15, 2006.

**Arthur Quintana,**

*Acting Designated Federal Official.*

[FR Doc. 06–4728 Filed 5–17–06; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

**RIN 0596–AB93**

### Forest Service Outdoor Recreation Accessibility Guidelines and Integration of Direction on Accessibility Into Forest Service Manual 2330

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of issuance of final directive.

**SUMMARY:** The Forest Service is issuing a final directive as an amendment to Forest Service Manual 2330, Publicly Managed Recreation Opportunities to ensure that new or reconstructed developed outdoor recreation areas on National Forest System lands are developed to maximize accessibility, while recognizing and protecting the unique characteristics of the natural setting. The amendment guides Forest Service employees regarding compliance with the Forest Service Outdoor Recreation Accessibility Guidelines (FSORAG). The amendment directs that new or reconstructed outdoor developed recreation areas in the National Forest System, including campgrounds, picnic areas, beach access routes, and outdoor recreation access routes, comply with these agency guidelines and applicable Federal accessibility laws, regulations, and guidelines. The FSORAG is linked to and referenced in this amendment.

The Architectural and Transportation Barriers Compliance Board (Access Board) is preparing to publish for public notice and comment proposed accessibility guidelines for outdoor developed areas that would apply to Federal agencies subject to the Architectural Barriers Act. When the Access Board finalizes its accessibility guidelines for outdoor developed areas, the Forest Service will revise the FSORAG to incorporate the Access Board's standards where those provisions are a higher standard, as supplemented by the Forest Service. The supplementation will ensure the agency's application of equivalent or higher guidelines and universal design, as well as consistent use of agency terminology and processes.

**DATES:** This final amendment is effective May 22, 2006.

**ADDRESSES:** The full text of the final amendment to FSM 2330 is available electronically on the World Wide Web at *http://www.fs.fed.us/im/directives*. The administrative record for this final amendment is available for inspection and copying at the office of the Director, Recreation and Heritage Resources Staff, USDA Forest Service, 4th Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, from 8:30 a.m. to 4 p.m., Monday through Friday, except holidays. Those wishing to inspect the administrative record are encouraged to call Janet Zeller at (202) 205–9597 beforehand to facilitate access to the building.

**FOR FURTHER INFORMATION CONTACT:** Janet Zeller, Recreation and Heritage Resources Staff, USDA Forest Service, (202) 205–9597.

### 1. Background

Although the Forest Service is committed to ensuring accessibility of agency facilities and programs to serve all employees and visitors, as well as complying with the Architectural Barriers Act of 1968 (ABA) and Section 504 of the Rehabilitation Act of 1973, agency accessibility requirements for outdoor developed recreation areas have not been integrated into the Forest Service Directives System.

The ABA requires facilities that are designed, constructed, altered, or leased by, for, or on behalf of a Federal agency to be accessible, as well as those funded in whole or in part by a Federal agency. To emphasize the need for accessibility guidelines for outdoor recreation areas, in 1993 the Forest Service developed Universal Access to Outdoor Recreation: A Design Guide. This guidebook blended accessibility into the recreation opportunity spectrum, ranging from urban areas in full compliance with the Uniform Federal Accessibility Standards, the ABA accessibility standards in place at that time, to primitive and wilderness areas.

The Access Board is the federal agency responsible for issuing accessibility guidelines for newly constructed and altered facilities subject to the ABA. The Forest Service served on the Access Board's Regulatory Negotiation Committee on Outdoor Developed Areas (Reg Neg Committee). In 1999, the Reg Neg Committee completed draft accessibility guidelines for outdoor recreation facilities and trails. However, the Access Board was not able to complete the rulemaking process for the guidelines at that time.

While awaiting completion of the rulemaking process for those guidelines, the Forest Service determined that it needed accessibility guidelines that would comply with the public notice and comment process for Forest Service directives pursuant to 36 CFR part 216. These guidelines, which are based on the Reg Neg Committee's draft guidelines, meet the agency's need to integrate accessibility into the development of outdoor recreation facilities and trails. The Forest Service's guidelines incorporate universal design and agency terminology and processes and in some respects establish higher accessibility standards than the Reg Neg Committee's draft guidelines. The Forest Service's guidelines are in two parts, the FSORAG and the Forest Service Trail Accessibility Guidelines (FSTAG), both of which are available at *http://www.fs.fed.us/recreation/programs/accessibility*.

The Forest Service is issuing an amendment to Forest Service Manual (FSM) 2330, ''Publicly Managed Recreation Opportunities,'' to require compliance with the FSORAG. The Forest Service published this policy for public notice and comment as a proposed amendment. Since this policy has been subjected to public notice and comment through publication in the **Federal Register**, the agency has decided to issue the final policy as an amendment to the FSM.

The FSORAG will apply to newly constructed or altered camping facilities, picnic areas, beach access routes, outdoor recreation access routes, and other constructed features, including benches, trash, recycling, and other essential containers, viewing areas at overlooks, telescopes and periscopes, mobility device storage, pit toilets, warming huts, and outdoor rinsing showers in the National Forest System. The FSORAG is linked to and referenced in this amendment.

The FSORAG maximizes the accessibility of outdoor developed recreation areas for all people, while recognizing and protecting the unique characteristics of the natural setting of each outdoor developed recreation area within the National Forest System. The FSORAG integrates the Forest Service policy of universal design to ensure the development of programs and facilities to serve all people, to the greatest extent possible. Universal design requires that all new or reconstructed facilities and associated constructed features, rather than only a certain percentage of those facilities, be accessible to all people. Universal design provides for the integration of all people in outdoor developed recreation areas, without separate or segregated access for people with disabilities. In addition, the final amendment clarifies internal agency procedures and policies related to the accessibility of outdoor developed recreation areas, including compliance with the FSORAG.

Like the proposed accessibility guidelines developed by the Reg Neg Committee, the FSORAG establishes only one level of accessibility for all outdoor developed recreation areas and provides for application of conditions for departure and exceptions when necessary to preserve the uniqueness of each recreation area and when application of the FSORAG would cause a change in an area's setting. Compliance with the FSORAG will not always result in facilities that are accessible to all persons with disabilities because at some locations the natural environment might prevent application of some of the FSORAG's technical provisions.

The Access Board plans to publish a notice of proposed rulemaking (NPRM) seeking public comment on proposed accessibility guidelines for outdoor developed areas. The NPRM will contain the Reg Neg Committee's draft guidelines and will apply to Federal agencies subject to the ABA. The Forest Service will work with the Access Board and the other federal land management agencies as the Access Board develops final accessibility guidelines for outdoor developed areas. When the Access Board finalizes its accessibility guidelines for outdoor developed areas, the Forest Service will revise the FSORAG to incorporate the Access Board's standards, as supplemented by the Forest Service. The supplementation will ensure the agency's application of equivalent or higher guidelines and universal design, as well as consistent use of agency terminology and processes.

In a related notice published elsewhere in this part of today's **Federal Register**, the agency is publishing notice of a final directive to require compliance with the FSTAG, which will apply to trails that are designed for hiker/pedestrian use. The FSORAG and the FSTAG are both available electronically on the World Wide Web at *http://www.fs.fed.us/recreation/programs/accessibility*.

Copies also may be obtained by writing to USDA, Forest Service, Attn: Accessibility Program Manager, Recreation and Heritage Resources Staff, Stop 1125, 1400 Independence Avenue, SW., Washington, DC 20250–0003.

**2. Public Comments on the Proposed Interim Directive**

On February 17, 2005, the Forest Service published the proposed interim directive in the **Federal Register** (70 FR 8060) for public notice and comment. The proposed interim directive was also posted electronically on the World Wide Web on the **Federal Register** site at *http://www.fs.fed.us/programs/recreation/accessibility*. The Forest Service received 37 letters or electronic messages in response to the proposed interim directive. Each respondent was grouped in one of the following categories:

Business: 1
Federal Agencies: 6
Federal Agency Employees: 25
Individuals (unaffiliated or unidentifiable): 5

Most respondents supported the FSORAG. A few respondents were not supportive. One respondent opposed access by people with disabilities on Federally managed lands. Another respondent opposed any improved access and was concerned that improved access would lead to more hunting. Many respondents commented on specific sections of the FSORAG. The agency appreciates the spelling, pagination, and other similar nonsubstantive comments and has incorporated them into the FSORAG posted on the Forest Service's accessibility Web page at *http://www.fs.fed.us/recreation/programs/accessibility*.

*General Comments*

Many respondents appreciated that application of the FSORAG would result in the natural setting being maintained. All respondents who commented on format supported addressing outdoor developed recreation areas in a separate document from trails, as well as integration of the scoping and technical provisions in each document. Several respondents also expressed appreciation for revisions in the order of the technical provisions in the Reg Neg Committee's draft guidelines.

*Comment*. Most respondents supported the Forest Service's policy of universal design. However, several respondents expressed concern that under this policy, developed recreation areas would be forced into a higher level of development or would all look alike, resulting in a change to their setting.

*Response*. The Forest Service policy on universal design is defined in FSM 2330.5 as ''the design of programs and facilities to be usable by all people, to the greatest extent possible, while maintaining the natural setting, providing access to programs and facilities for all, without separate or segregated access for people with disabilities. New or reconstructed buildings, developed recreation sites, associated constructed features and alterations are to comply with the accessibility guidelines.'' Therefore, all constructed features are required to be accessible, rather than only a certain percentage of those facilities, with few exceptions.

In the Forest Service's accessibility guidelines, the policy of universal design is applied by starting with the assumption that all areas and constructed features will be accessible to the extent provided in the guidelines. In contrast to application of universal design to picnic tables and toilet structures, which occupy a small area, application of universal design to camping units and their connecting routes (called ''outdoor recreation access routes'' or ''ORARs) raises a potential concern of over-development. However, under the FSORAG, the uniqueness of the site is preserved because departure from the guidelines is permitted when certain conditions exist at a site. Therefore, not all camping units and ORARs may have to meet the guidelines. The intent of universal design is met by maximizing accessibility while maintaining the character and experience of the setting, given the natural constraints of a site and its level of development.

Page 16 of the Forest Service's Built Environment Image Guide states: ''Under the ABA and other mandates, universal design requires complete integration of accessibility within our facilities. As with sustainable design elements, universal design principles applied to the site or facility from the outset seldom, if ever, have any obvious effect on the architectural character. When skillfully executed, universally designed facilities fit seamlessly within the natural and social environments.''

*Comment*. One respondent expressed confusion concerning turning radius, clear floor or ground space, and other technical aspects of the guidelines.

*Response*. Graphics will be included in the final FSORAG and in the Forest Service Accessibility Guidebook for Outdoor Recreation and Trails, which will be available by the spring of 2006 at *http://www.fs.fed.us/recreation/programs/accessibility*. This guidebook will provide a clear explanation of the accessibility guidelines, with examples of best practices and illustrative photographs, graphics, and design tips.

*Comment*. One respondent requested that technical provisions for parking lots be included in the FSORAG.

*Response*. The FSORAG covers only the developed recreation elements that are not addressed in other accessibility guidelines. Parking lots are already addressed in the Architectural Barriers Act Accessibility Standards (ABAAS).

*Comment*. One respondent requested that the text of all ABAAS provisions cited in the technical provisions of the

FSORAG be integrated into the FSORAG, rather than appearing in an appendix.

*Response*. The Forest Service has decided not to accept this recommendation because many ABAAS provisions are cited repeatedly in the FSORAG. For example, the reference to controls (ABAAS 308 and 309) are referenced ten times in the FSORAG and appear multiple times on the same page in several instances. If these provisions were included each time they were cited, the FSORAG would become unwieldy, as well as difficult to follow. Once a designer has consulted the same ABAAS citation several times in the FSORAG appendix, the designer should become familiar with the ABAAS requirement and not have to reference the appendix as frequently.

*Comment*. One respondent believed that the FSORAG is not needed because there are enough laws and guidelines dealing with accessibility, such as the Americans With Disabilities Act, Section 504 of the Rehabilitation Act, the ADAAG, and the new ABAAS.

*Response.* The FSORAG is needed because no other accessibility guidelines that address outdoor developed recreation areas have completed the rulemaking process.

*Comments on Specific Sections of the FSORAG*

*Section 1.1 Conditions for Departure*. This section contains the conditions that would permit departure from a technical provision.

*Comment*. All but one respondent who commented on the phrase ''or would not be consistent with the applicable forest land and resource management plan'' in the second condition for departure were supportive.

*Response.* The National Forest Management Act requires each national forest and national grassland to develop a land management plan. These plans are developed through extensive public participation and generally are in effect for 10 to 15 years. These plans guide forest management, and the Forest Service is prohibited from authorizing actions that are inconsistent with the plans. The language regarding consistency with the plan was included in the second condition for departure because of this legal constraint.

*Comment*. One respondent requested a definition of the character, setting, and experience of a recreation site. This respondent also requested a quantifiable, formula-based method to determine whether compliance with the guidelines would result in a substantial change to these characteristics.

*Response*. The Forest Service uses the Recreation Opportunity Spectrum (ROS) to characterize a recreation site. The ROS was developed to identify more clearly the relationships among a site's physical characteristics and the recreation activities and experience that the public expects at the site. More information about the ROS is available at *http://roadless.fs.fed.us/data/pdfdocs/rosguide.pdf*.

Determination of a substantial change to the characteristics of a site from compliance with the FSORAG cannot be standardized or quantified because the determination will vary greatly depending on the specific circumstances and because recreational experience is perception-based. ''Managing for recreation requires different kinds of data and management concepts than does most other activities. While recreation must have a physical base of land or water, the product—recreation experience—is a personal or social phenomenon. Although the management is resource based, the actual recreational activities are a result of people, their perceptions, wants, and behavior'' (Final Report of the Committee of Scientists for Implementation of Section 6 of the National Forest Management Act of 1976, February 22, 1979, 44 FR 26628, May 4, 1979). Since people's expectations differ depending on the setting, it is impossible to quantify change, for example, by saying that removing a certain number of trees per acre constitutes substantial change.

The ROS assists landscape architects and recreation managers in evaluating all the factors that affect recreational experiences, including changes to the setting. For example, far more change can occur at a developed site before the effect would be substantial than at a site that has never been developed. Similarly, the surface at a site that has been worn down from heavy use may need to be hardened to accommodate the public's desire to recreate there and to protect the surrounding environment, and a significant amount of change may occur without substantially affecting the setting. However, at a site with a worn-down surface that is located in an environmentally sensitive area, the threshold of substantial change may be lower, and different measures may need to be taken, such as precluding public use of parts of the site or site rehabilitation instead of hardening. Any design solution needs to consider the full range of managerial and environmental needs.

*Comment*. One respondent requested a definition for ''significant natural feature.''

*Response*. A significant natural feature generally has some special meaning and is held in some esteem in its locale. That meaning may be based on its uniqueness, rarity, beauty, historical significance, or other factors. The FSORAG includes a discussion of significant natural features. A significant natural feature may include a large rock, outcrop, tree, or body of water that would block or interfere with or would directly or indirectly be altered or destroyed by construction of the outdoor recreation facility or element at that point. Significant natural features also could include areas protected under Federal or State laws, such as areas with threatened or endangered species or wetlands that could be threatened or destroyed by full compliance with the technical provisions in the FSORAG or areas where compliance would, directly or indirectly, substantially harm natural habitat or vegetation.

Significant cultural features include areas such as archaeological sites, sacred lands, burial grounds and cemeteries, and tribal protected sites. Significant historical features include properties listed or eligible for listing in the National Register of Historic Places and other places of recognized historic value. Significant religious features include tribal sacred sites and other properties held sacred by an organized religion.

*Comment*. One respondent requested a definition for ''significant harm.''

*Response*. The FSORAG and the Reg Neg Committee's draft guidelines utilize the term ''substantial harm,'' not ''significant harm.'' The term ''substantial harm'' is used in the guidelines in conjunction with the term ''significant feature'' in the first condition for departing from the technical provisions. Therefore, this measure of the substance of the change and the harm that change would cause is not to be taken lightly. In this context, to cause ''substantial harm,'' the proposed change would have to have a considerable negative effect on the feature that has been identified as ''significant'' in that locale.

*Comment.* A number of respondents requested that ''infeasible'' be replaced with ''impractical'' in the fourth condition for departure.

*Response*. The American Heritage Dictionary of the English Language, 4th edition (2000), cites ''impractical'' as the definition for ''infeasible.'' Since the words are interchangeable and ''impractical'' is used more commonly, the Forest Service has changed ''would not be feasible'' to ''would be impractical'' in the section-by-section

analysis for the fourth condition for departure and in the fourth condition for departure.

*Section 1.2 Definitions.* This section includes definitions of terms used in the FSORAG, including terminology used by the Forest Service.

Camp Living Area and Parking Spur

*Comment.* All respondents who commented on the terminology used to designate specific areas within a camping unit supported the use of that terminology.

*Response.* For clarity, the FSORAG distinguishes between a camp living area and a parking spur. A parking spur is divided into a vehicle parking area and a driveway, each of which has its own technical provisions. This differentiation allows the designer to integrate a parking spur into the terrain. In many cases, designers need the flexibility to work with each component separately to accommodate a camp living area near a parking spur in a way that respects the lay of the land. In some cases, the camp living space may not be located immediately next to the parking spur because the terrain will not permit it.

Developed Recreation Site and General Forest Area

*Comment.* All respondents who commented on the distinction between a developed recreation site and a general forest area were supportive.

*Response.* The Forest Service distinguishes in its management between developed recreation sites and general forest areas. The Forest Service's Infrastructure database defines a developed site as ''a discrete place containing a concentration of facilities and services used to provide recreation opportunities to the public and evidencing a significant investment in facilities and management under the direction of an administrative unit in the National Forest System.'' Developed recreation sites provide visitor convenience and comfort while protecting natural resources. Most of the agency's recreational improvements are located at developed recreation sites.

The Forest Service defines general forest areas as ''all lands available for recreation use and outside of Wilderness, developed sites, trails and administrative sites. Amenities or constructed features inside general forest areas are primarily for resource protection rather than for visitor comfort.'' While some constructed features (such as picnic tables, fire rings, and toilet buildings) may be provided in general forest areas, these constructed features are usually for resource protection rather than visitor convenience. Any constructed features in general forest areas must be designed appropriately for the setting and must comply with the FSORAG's accessibility requirements.

It is important to the recreating public that not all National Forest System lands be developed to the same extent, level, or intensity.

The FSORAG requires that any constructed feature (such as a picnic table, fire ring, or bench) in a general forest area meet the applicable technical provisions. However, a connection to an ORAR is not required in general forest areas to ensure that these areas are not developed beyond what is desirable from managers' and visitors' perspectives. As a result, accessibility is maximized within the constraints of the outdoor environment, without requiring a fundamental change in the nature of the program.

*Section 2.0 Outdoor Recreation Access Routes (ORARs).* This section of the FSORAG includes the technical specifications for the pathways that connect constructed features in a picnic or camping area or at a trailhead.

*Comment.* All respondents who commented on this provision supported the exception for slope, which is permitted for alterations only, not new construction. One respondent recommended that the same exception for slope permitted in alteration of ORARs should also be permitted in alteration of beach access routes.

*Response.* Due to the terrain where a campground or picnic area was constructed, it may not be possible to meet the running slope requirements of an ORAR during alteration of the site without substantially changing the natural setting. Therefore, exceptions to slope requirements for alteration of ORARs are necessary.

The FSORAG permits exceptions to slope requirements only when an area is being reconstructed or altered. These exceptions are not permitted in new construction because selection of the most appropriate site is part of the new construction process.

While a campground may have been constructed some years ago at a location that would not now be considered appropriate because of its terrain, the location of a beach is generally determined by the best location for accessing the water. Therefore, exceptions to slope requirements for alteration of beach access routes are not appropriate.

*Comment.* All except one respondent who commented on the provision exempting general forest areas from the requirement for ORARs supported the exception.

*Response.* The FSORAG states that ORARs are not required in general forest areas. In general forest areas, a path connecting associated constructed facilities, as well as a path connecting them to a trail, must comply with the technical provisions for a trail enumerated in section 7.0 of the FSTAG. These paths are not ORARs and are not required to meet the technical provisions for ORARs in the FSORAG. ORARs are not required in general forest areas because the resulting additional construction and site modification would substantially alter the nature of the setting.

While some constructed features (such as picnic tables, fire rings, and toilet buildings) may be provided in general forest areas, these constructed features are usually for resource protection rather than visitor convenience. Any constructed features in general forest areas must be designed appropriately for the setting and must comply with the FSORAG so that the facilities can be used by persons with a disability.

*Comment.* Two respondents believed that handrails on ORARs are not appropriate in a recreation setting.

*Response.* The agency agrees. References to handrails on ORARs have been deleted from the FSORAG, just as handrails on ORARs are not included in the Reg Neg Committee's draft guidelines.

*Comment.* One respondent believed that because all picnic tables in a picnic area must be accessible, each picnic table would have to be located along an ORAR, which would result in numerous pathways through picnic areas. One respondent believed that the Reg Neg Committee's draft guidelines would require fewer picnic tables to be located along an ORAR than the FSORAG.

*Response.* The FSORAG does not require all picnic tables to be located along an ORAR. Rather, the FSORAG requires that 20 percent of all picnic tables at a site be located along an ORAR. This requirement yields the same density of picnic tables located along ORARs as the Reg Neg Committee's draft guidelines. The Reg Neg Committee's draft guidelines require that 50 percent of all picnic tables at a site, but no fewer than two, be accessible, and that 40 percent of these accessible picnic tables be located along an ORAR. The FSORAG requirement of 20 percent of 100 percent of the picnic tables at a site equates to the requirement in the Reg Neg Committee's draft guidelines of 40 percent of 50 percent of the picnic

tables at a site. For example, under the FSORAG, if a site has 8 picnic tables, 8 × .20 or 1.6 (rounded up to 2) of them must be located along an ORAR. Under the Reg Neg Committee's draft guidelines, if a site has 8 picnic tables, 8 × .50 or 4 must be accessible, and 4 × .40 or 1.6 (rounded up to 2) of those 4 must be located along an ORAR.

*Section 2.7 Protruding Objects.* This section includes the requirements for clear headroom on a trail.

*Comment.* All respondents who commented on protruding objects supported the exception to the requirement for clear headroom or a warning barrier.

*Response.* The FSORAG provides an exception to the requirement for 80 inches of clear headroom if a warning barrier is installed. However, on a narrow pathway through a cave or through certain types of trees, such as the walkway through the historic cherry trees around the Tidal Basin in Washington, DC, conditions may make it impossible to place a warning barrier and permit passage. In those types of situations, the FSORAG permits an exception to the requirement for 80 inches of clear headroom and installation of a warning barrier. This exception must be retained to address unusual situations in the natural environment.

*Section 3.0 Beach Access Routes.* This section includes technical specifications for pedestrian routes that access beaches.

No comments were received on this section.

*Section 4.0 Constructed Features for Developed Picnic Areas.* This section includes technical specifications for picnic units in developed recreation areas.

No comments were received on this section.

*Section 5.1 Parking Spurs.* This section includes technical specifications for parking spurs in camping units.

*Comment.* All respondents who commented on the distinction between a camping unit and a parking spur and the further breakdown of a parking spur into parking and driveway areas were supportive of those distinctions.

*Response.* The FSORAG identifies two typical components of a camping unit: (1) A camp living area and (2) a parking spur. A parking spur is further divided into a vehicle parking area and a driveway. These distinct components are identified to facilitate application of the scoping requirements and to integrate parking spurs into camping units in an environmentally sensitive manner that maximizes accessibility.

*Comment.* Many respondents agreed that the width of an accessible parking spur may have an impact on the natural setting.

*Response.* The FSORAG requires the same number of 20-foot-wide parking areas for recreational vehicles that are required under the Reg Neg Committee's draft guidelines. The rest of the parking spurs in a campground must be 16 feet wide, where that width would not substantially change the nature of the setting. If that width is not feasible because of the presence of a condition for departure, the width may be reduced to13 feet. If the 13-foot width would not be possible without substantially changing the nature of the setting, the parking spur is exempt from the technical provisions.

This technical provision provides the flexibility to design accessible parking spurs, while taking into account varying terrain. This flexibility in design results in facilities that are not only universally usable, but also respectful of the natural environment, which is a primary reason people recreate outdoors.

Unlike the Reg Neg Committee's draft guidelines, the FSORAG includes technical provisions for parking spur driveways. Because parking spur driveways are not required to be as wide as parking spurs at the end of the driveways that are adjacent to the living area, parking spur driveways have less visual impact on the natural setting than parking spurs. The FSORAG takes this difference into account, thus maximizing accessibility while ensuring the best environmental fit on the ground.

*Comment.* Several respondents thought the parking chart in Figure 5.1 of the February 2005 draft of the FSORAG was confusing.

*Response.* The Forest Service agrees. That chart has been removed from the FSORAG. The only parking chart that appears in the current version of the FSORAG addresses the minimum number of 20-foot-wide parking spurs for recreational vehicles that is required. The FSORAG requires the same percentage of 20-foot-wide parking spurs for recreational vehicles as the Reg Neg Committee's draft guidelines.

*Section 5.2 Tent pads and platforms.* This section includes the technical specifications for tent pads and platforms.

*Comment.* All respondents who commented on this provision supported the flexibility in the FSORAG to determine whether edge protection should be required.

*Response.* The FSORAG states that edge protection, where provided, is to be at least 3 inches high, whereas the Reg Neg Committee's draft guidelines require that all tent platforms have 3-inch edge protection. The FSORAG allows the designer to determine where edge protection should be provided for safety and where edge protection is not needed due to the design or location of a tent platform or absence of a drop-off that would preclude access. Thus, the FSORAG requires edge protection only where it is necessary.

*Comment.* All respondents who commented on the tent pad and platform provisions supported them as they appear in the FSORAG.

*Response.* The FSORAG requires that at least 20 percent of the tent pads or platforms provided at a developed recreation site meet the FSORAG's technical provisions and be connected to an ORAR. The FSORAG requires 5 percent of the tent pads or platforms in a general forest area to meet the technical provisions, but does not require connection to an ORAR in a general forest area. This difference in scoping and the requirement for connection to an ORAR reflects the differences between developed recreation sites and general forest areas. The agency agrees with the respondent who stated that this distinction gives the designer a realistic and reasonable ability to comply with accessibility requirements. Where an area's natural terrain permits, 100 percent of the tent pads or platforms may be accessible and connected to an ORAR.

*Section 5.3 Fire Rings.* This section includes the technical specifications for fire rings.

*Comment.* All except one respondent who commented on this section supported the exception in general forest areas to the requirement for the height of the fire-building surface. The dissenting respondent suggested that rock circles in general forest areas be piled higher and that soil be added inside the rocks to achieve the height required for the fire-building surface at developed recreation sites.

*Response.* To permit the use of a circle of rocks or other low-profile campfires in remote or wilderness settings, the FSORAG provides an exception in general forest areas to the height of the fire-building surface if one or more conditions for departure exist. Without this exception, the fire-building surface in a fire ring would have to be at least 9 inches above the ground, which could have a substantial negative impact in a wilderness setting. The Forest Service is not accepting the suggestion to provide for rock circles in general forest areas to be piled higher and for soil to be added inside the rocks to achieve a 9-inch height for the fire-

building surface because the agency is concerned about the safety of such a structure.

*Comment.* Several respondents expressed concern that the design for accessible fire rings is unsightly and therefore unpopular.

*Response.* The primary accessibility requirement for fire rings is that the fire-building surface be at least 9 inches above the ground. This requirement does not preclude fire ring designs that are innovative, attractive, and appropriate in developed recreation settings. Fifteen years ago, the most common fire ring design that supposedly was accessible looked like a barrel. Today the most common accessible fire ring design is not unattractive. Designers can be creative and check other sources for appropriate designs that fit the developed recreation setting and that are accessible.

*Section 5.4 Wood Stoves and Fireplaces.* This section includes technical specifications for wood stoves and fireplaces at developed recreation sites.

No comments were received on this section.

*Section 5.5 Utilities.* This section includes technical specifications for utilities at developed recreation sites.

No comments were received on this section.

*Section 5.6 Utility Sinks.* This section includes technical specifications for utility sinks at developed recreation sites.

No comments were received on this section.

*Section 6.1 Benches.* This section includes technical specifications for benches at developed recreation sites.

No comments were received on this section.

*Section 6.2 Trash and Recycling Containers.* This section includes technical specifications for trash and recycling containers.

*Comment.* One respondent recommended that bear-proof storage containers be addressed in the FSORAG because none with accessible controls are readily available.

*Response.* The Forest Service agrees. The phrase, ''other essential containers'' has been added to the heading and text of section 6.2. ''Other essential containers'' includes trash, recycling, food storage, and other animal-resistant containers.

*Section 6.3 Viewing Areas at Overlooks.* This section includes technical specifications for viewing areas at overlooks.

No comments were received on this section.

*Section 6.4 Telescopes and Periscopes.* This section includes technical specifications for telescopes and periscopes.

*Comment.* All respondents who commented on this section supported the provision that does not appear in the Reg Neg Committee's draft guidelines for telescopes and periscopes.

*Response.* Unlike the Reg Neg Committee's draft guidelines, the FSORAG requires maneuvering space at each accessible telescope and periscope. Maneuvering space is needed to ensure that telescopes and periscopes are accessible to a person who uses a wheelchair.

*Section 6.5 Mobility Device Storage.* This section includes technical specifications for storage facilities for mobility devices at developed recreation sites.

No comments were received on this section.

*Section 6.6 Pit Toilets.* This section includes technical specifications for pit toilets.

*Comment.* All except one respondent who commented on this section supported the specifications in the FSORAG, including the exception to the requirement for a level entrance into a pit toilet. One respondent believed that there should never be an exception to the requirement for a level entrance to a pit toilet, regardless of the difficulties presented by the structure or location of a pit toilet's waste disposal system.

*Response.* The FSORAG requires that the clear floor or ground space adjacent to a pit toilet comply with ABAAS requirements for toilets. The FSORAG clarifies that pit toilets are permitted only in general forest areas and that privacy screens rather than walls are commonly used for pit toilets in remote areas. To address safety concerns, the agency clarified the FSORAG to provide that grab bars are to be installed only on walls that will withstand 250 pounds of force, in accordance with ABAAS. In addition, the FSORAG now specifies the orientation of the riser inside the pit toilet structure to maximize accessibility of the toilet's interior. These additions will ensure that pit toilets are designed and installed to be accessible for people with disabilities.

The FSORAG permits exceptions to the requirement for a level entrance into a pit toilet. Providing for exceptions is necessary because some pit toilet floors have to be located above the ground due to operation and maintenance requirements of the toilet's waste disposal system. Where the entrance cannot be located at ground level, a trail or ramp, if feasible, must be provided from the ground to the entrance. Where a trail or ramp is not feasible and no other alternative is possible because of the presence of one or more conditions for departure, transfer steps meeting specifications similar to those for play areas in Chapter 10 of ABAAS may be provided. These exceptions allow trail planners and facility designers to work with an area's topography and other physical characteristics, rather than forcing planners and designers to alter the natural setting unreasonably.

*Section 6.7 Warming Huts.* This section includes technical specifications for warming huts at developed recreation sites.

No comments were received on this section.

*Section 6.8 Outdoor Rinsing Showers.* This section includes technical specifications for outdoor rinsing showers at developed recreation sites.

No comments were received on this section.

**3. Regulatory Certifications**

*Environmental Impact*

Section 31.12, paragraph 2, of Forest Service Handbook (FSH) 1909.15 (67 FR 54622, August 23, 2002) excludes from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency concludes that this amendment falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

*Regulatory Impact*

This amendment has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that the amendment is significant because of its relationship to the accessibility guidelines to be established by the Access Board. Accordingly, this amendment has been reviewed by OMB pursuant to Executive Order 12866. A cost and benefits analysis of this action was developed and is available at *http://www.fs.fed.us/programs/recreation/accessibility.* The remaining portions of the proposed amendment, which addressed other aspects of the agency's accessibility program not related to the accessibility guidelines, were not deemed significant by OMB and were issued as a final interim directive on July 13, 2005.

Moreover, this amendment has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). It

has been determined that this amendment will not have a significant economic impact on a substantial number of small entities as defined by the act because the amendment will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market. The amendment will establish accessibility guidelines that will apply internally to the Forest Service and that will have no direct effect on small businesses. No small businesses have been awarded contracts for construction or reconstruction of recreation facilities covered by these accessibility guidelines.

*No Takings Implications*

This amendment has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that this amendment does not pose the risk of a taking of private property.

*Civil Justice Reform*

This amendment has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this amendment, (1) All State and local laws and regulations that conflict with this amendment or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this amendment; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

*Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this amendment on State, local, and Tribal governments and the private sector. This amendment will not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

*Federalism and Consultation and Coordination With Indian Tribal Governments*

The agency has considered this amendment under the requirements of Executive Order 13132 on federalism and has determined that the amendment conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Moreover, this amendment does not have Tribal implications as defined by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' and therefore advance consultation with Tribes is not required.

*Energy Effects*

This amendment has been reviewed under Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined that this amendment does not constitute a significant energy action as defined in the Executive Order.

*Controlling Paperwork Burdens on the Public*

This amendment does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: April 10, 2006

**Dale N. Bosworth,**

*Chief, Forest Service.*

[FR Doc. E6–7775 Filed 5–19–06; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Forest Service

**RIN 0596–AB92**

### Forest Service Trail Accessibility Guidelines and Integration of Direction on Accessibility Into Forest Service Manual 2350

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of issuance of final directive.

**SUMMARY:** The Forest Service is issuing a final directive as an amendment to Forest Service Manual 2350, Trail, River, and Similar Recreation Opportunities to ensure that new or altered trails designed for hiker/pedestrian use on National Forest System lands are developed to maximize accessibility for all people, including people with disabilities, while recognizing and protecting the unique characteristics of the natural setting of each trail. The amendment guides Forest Service employees regarding compliance with the Forest Service Trail Accessibility Guidelines (FSTAG) and directs that these trails comply with the FSTAG and applicable Federal laws, regulations, and guidelines. In addition, the amendment clarifies agency procedures and policies related to the accessibility of trails. The FSTAG is linked to and referenced in this amendment.

The Architectural and Transportation Barriers Compliance Board (Access Board) is preparing to publish for public notice and comment proposed accessibility guidelines for outdoor developed areas that would apply to Federal agencies subject to the Architectural Barriers Act. When the Access Board finalizes its accessibility guidelines for outdoor developed areas, the Forest Service will revise the FSTAG to incorporate the Access Board's standards where those provisions are a higher standard, as supplemented by the Forest Service. The supplementation will ensure the agency's application of equivalent or higher guidelines and universal design, as well as consistent use of agency terminology and processes.

**DATES:** This final directive is effective May 22, 2006.

**ADDRESSES:** *The full text of the amendment* is available electronically on the World Wide Web at *http://www.fs.fed.us/im/directives*. The administrative record for this final amendment is available for inspection and copying at the office of the Director, Recreation and Heritage Resources Staff, USDA Forest Service, 4th Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, from 8:30 a.m. to 4 p.m., Monday through Friday, except holidays. Those wishing to inspect the administrative record are encouraged to call Janet Zeller at (202) 205–9597 beforehand to facilitate access to the building.

**FOR FURTHER INFORMATION CONTACT:** Janet Zeller, Recreation and Heritage Resources Staff, USDA Forest Service, (202) 205–9597.

**SUPPLEMENTARY INFORMATION:**

#### 1. Background

Although the Forest Service is committed to ensuring accessibility of agency facilities and programs to serve all employees and visitors, as well as to comply with the Architectural Barriers Act of 1968 and section 504 of the Rehabilitation Act of 1973, agency

accessibility requirements for outdoor recreation areas have not been integrated into the Forest Service Directives System. In addition, no accessibility guidelines have completed the rulemaking process that apply to the construction or alteration of trails designed hiker/pedestrian use within the National Forest System (NFS), while considering the uniqueness of the setting and maximizing accessibility for persons with disabilities.

In 1999, using a regulatory negotiation committee (Reg Neg Committee), the Access Board completed draft accessibility guidelines to address outdoor developed areas, including trails. However, the Access Board was not able to complete the rulemaking process for the guidelines at that time. The Forest Service determined that it needed accessibility guidelines for trails that would comply with the public notice and comment process for Forest Service directives pursuant to 36 CFR part 216. Based on the Reg Neg Committee's draft accessibility guidelines, the Forest Service developed the FSTAG. Application of the FSTAG will ensure that the full range of trail opportunities continues to be provided, from primitive, long-distance trails to highly developed trails and popular scenic overlooks. All Interagency Trail Data Standards trail classes and terminology will remain unchanged. The FSTAG will apply only in the NFS.

Like the Reg Neg Committee's draft guidelines, the FSTAG applies to trails designed for hiker/pedestrian use, establishes only one level of accessibility, and includes specific conditions for departure and exceptions when necessary to preserve the uniqueness of each trail or when application of the technical provisions would cause a change in a trail's setting or in the purpose or function for which a trail was designed. Thus, most primitive trails would not be subject to the FSTAG. However, the FSTAG could apply to portions of these trails where they pass through a more urban area. The FSTAG contains exceptions that would prevent accessibility from being pointlessly applied piecemeal throughout a trail when access between segments is not possible. In addition, the FSTAG requires accessibility to special features where possible.

The Access Board plans to publish a notice of proposed rulemaking (NPRM) seeking public comment on proposed accessibility guidelines for outdoor developed areas. The NPRM will contain the Reg Neg Committee's draft accessibility guidelines and will apply to Federal agencies subject to the Architectural Barriers Act. The Forest Service will work with the Access Board and the other federal land management agencies as the Access Board develops final accessibility guidelines for outdoor developed areas. When the Access Board finalizes its accessibility guidelines for outdoor developed areas, the Forest Service will revise the FSTAG to incorporate the Access Board's standards, as supplemented by the Forest Service. The supplementation will ensure the agency's application of equivalent or higher guidelines and universal design, as well as consistent use of agency terminology and processes.

In a related notice published elsewhere in this part of today's **Federal Register**, the agency is publishing notice of a final directive to require compliance with the Forest Service Outdoor Recreation Accessibility Guidelines (FSORAG), which apply to new or reconstructed outdoor developed recreation areas. The FSTAG and FSORAG are both available electronically on the World Wide Web at *http://www.fs.fed.us/recreation/programs/accessibility*.

Copies also may be obtained by writing to the USDA Forest Service, Attn: Accessibility Program Manager, Recreation and Heritage Resources Staff, Stop 1125, 1400 Independence Avenue, SW., Washington, DC 20250–0003.

**2. Public Comments on the Proposed Interim Directive**

On February 17, 2005, the Forest Service published the proposed interim directive in the **Federal Register** (70 FR 32) for public notice and comment. The proposed interim directive was also posted electronically on the World Wide Web on the **Federal Register** site at *http://www.fs.fed.us/programs/recreation/accessibility.* The Forest Service received 79 letters or electronic messages in response to the proposed interim directive. Each respondent was grouped in one of the following categories:

Nonprofit Organizations: 38
Businesses: 1
Federal Agencies: 6
Federal Agency Employees: 21
Individuals (unaffiliated or unidentifiable): 13

Most respondents generally supported the FSTAG. One respondent was not supportive. One respondent opposed access by people with disabilities on Federally managed lands. Another respondent expressed general opposition to any improved access based on the belief that improved access would lead to more hunting. Many respondents commented on specific sections of the FSTAG. The spelling, pagination, and other similar nonsubstantive comments that respondents shared were appreciated and have been incorporated into the FSTAG.

**General Comments**

Many respondents commented that the FSTAG is superior in its recognition of situations encountered in trail building and its detailed explanations, use of terminology employed by the trails community, and step-by-step implementation processes. All respondents who commented on format strongly supported separating the FSTAG from the FSORAG, as well as integration of the scoping and technical provisions in each document. Respondents appreciated the appendices containing the overview of the FSTAG implementation process, related technical provisions from the FSORAG, and provisions from the Architectural Barriers Act Accessibility Standards cited in the FSTAG.

*Comment:* Many respondents expressed the need for a more user-friendly document that details the process of applying the FSTAG.

*Response:* The *Forest Service Accessibility Guidebook for Outdoor Recreation and Trails (Guidebook)* is expected to be available on the Forest Service's Web site by the spring of 2006 at *http://www.fs.fed.us/recreation/programs/accessibility.* The *Guidebook* will explain the FSTAG in simple terms, with examples of how to apply the guidelines, helpful graphics and photographs, and design tips.

*Comment:* Several respondents expressed a concern that the FSTAG would be changed to apply to all trails in the NFS as well as trail maintenance.

*Response:* The Architectural Barriers Act applies only to new or altered facilities, elements, and constructed features and to the routes that connect them. Although section 504 of the Rehabilitation Act applies to all agency programs, it also requires that there be no fundamental alteration of those programs for purposes of making them accessible. Therefore, the scope of the FSTAG, which applies to new or altered trails as long as the character or experience of the trail is not changed, will not be broadened to include all trails in the NFS or trail maintenance.

*Comment:* Several respondents commented on the need for supplemental educational materials and training opportunities for the FSTAG, both for Forest Service employees and trail volunteers.

*Response:* The Forest Service has offered centralized training on the

FSTAG and FSORAG. However, attendance revealed that cooperators and volunteers had difficulty meeting the travel and time constraints for the training. Therefore, in addition to developing the *Guidebook,* the Forest Service will offer to provide training locally when trail cooperators provide the opportunity at a meeting or training session. Because the FSTAG applies only to construction or alteration of trails, not to trail maintenance, the FSTAG will be used in designing, constructing, and altering trails. The FSTAG will not be used by cooperators and volunteers performing trail maintenance.

*Comment:* Several respondents expressed the concern that an accessible trailhead or trails will allow all-terrain and other motor vehicles to be used on nonmotorized trails.

*Response:* Nothing in the FSTAG permits the use of a motorized vehicle on a trail restricted to nonmotorized use. However, a person who uses a wheelchair as defined in 36 CFR 212.1 (70 FR 68264, November 9, 2005) is permitted anywhere foot travel is permitted.

To prevent use of motor vehicles in nonmotorized areas and on nonmotorized trails on NFS lands, gates, rocks, berms, posts, or other restrictive devices may be used. However, under section 504 of the Rehabilitation Act, people with disabilities may not be denied participation in an agency program open to all other people. Thus, when foot travel is allowed beyond a restrictive device, as at a trailhead, at least 32 inches of clearing width must be provided around or through the device to ensure that a person in a wheelchair can travel beyond the restriction. Thirty-two inches of clearing width has been deemed sufficient, since that is the minimum width required for a door under the Architectural Barriers Act Accessibility Standards. If the trail beyond the entry point does not meet the criteria for applicability of the FSTAG, there is no requirement to make the trail accessible simply because there is a clearing width of 32 inches at the trailhead.

A wheelchair or mobility device, including one that is battery-powered, is a device that is designed solely for use by a mobility-impaired person for locomotion and that is suitable for use in an indoor pedestrian area. ''Designed solely for use by a mobility-impaired person for locomotion'' means that the wheelchair was designed and manufactured solely for use for mobility by a person with a disability. Thus, ''wheelchair or mobility device'' does not include a motorized unit that has been retrofitted to make it useable by a person with a disability. ''Suitable for use in an indoor pedestrian area'' means useable inside a home, mall, courthouse, or other indoor pedestrian area.

*Comment:* Several respondents questioned how the FSTAG will affect trail maintenance backlogs.

*Response:* Since the FSTAG does not apply to trail maintenance, the FSTAG will not affect trail maintenance backlogs.

*Comment:* Several respondents expressed concern that the FSTAG will require increased maintenance on trails.

*Response:* Routine maintenance on a trail that is accessible is not required to occur more frequently solely because the trail was constructed in compliance with the FSTAG. Trail maintenance is conducted in accordance with the standards established for each trail based on its trail class and designed use. While accessible trails are likely to be within the trail classes that receive more frequent maintenance based on the established maintenance standards for those trail classes, there may be a period when a trail segment does not meet conditions for accessibility or availability due to normally occurring conditions in the outdoor environment, such as fallen branches.

*Comment:* Several respondents expressed concern that the Interagency Trail Data Standards (ITDS) designation of managed use of hiker/pedestrian was not correct because managed use does not address the technical aspects of a trail's design and construction. These respondents believed that the ITDS designation of designed use of hiker/pedestrian would be more appropriate.

*Response:* ''Managed use'' and ''designed use'' are terms used in the Interagency Trail Data Standards and the Forest Service's trail classification system. Managed uses of a trail are the modes of travel for which the trail is actively managed. The designed use of a trail is determined by the managed use that requires the most demanding design, construction, and maintenance parameters. The Forest Services agrees that the FSTAG should apply to trails with a designed use, rather than a managed use, of hiker/pedestrian because the FSTAG applies to construction and alteration of trails, not to management of trails. Accordingly, the FSTAG has been revised to provide that it applies to trails with a designed use of hiker/pedestrian.

*Comment:* All comments on the requirement that buildings (such as toilets and shelters) be accessible if they are constructed in conjunction with a trail subject to the FSTAG were supportive.

*Response:* The construction of any building is a disturbance to the setting. Designing a building that is appropriate to the setting and is accessible takes planning, but ensures that all people can use it. The resulting structure is large enough for any person to fit through the door and turn around inside while carrying a backpack. As one respondent stated, ''Hiking is challenge by choice. Using a toilet is not a choice, so it shouldn't be a challenge.''

*Comments on Specific Sections of the FSTAG*

*Section 7.1.1 Conditions for Departure.* This section enumerates the conditions that would permit departure from a specific FSTAG technical provision for the distance those conditions impact a trail.

*Comment:* Several respondents expressed a concern that the FSTAG would change the fundamental character of trails.

*Response:* The Forest Service firmly believes that the primitive character of trails designed as simple footpaths must not be compromised. The FSTAG reflects this belief through the use of tight criteria for triggering the technical provisions and the use of conditions for departure and exceptions from the technical provisions. The FSTAG applies only to trails within the National Forest System that (1) are new or altered (an alteration to a existing trail is a change in the original purpose, intent, or design of a trail); (2) have a designed use of hiker/pedestrian under the Interagency Trail Data Standards and Forest Service Trail Planning and Management Fundamentals; and (3) connect directly to a currently accessible trail or to a trailhead. A trailhead is a site designed and developed by the Forest Service, a trail association, trail maintaining club, trail partners, or other cooperators to provide staging for trail use. For purposes of the FSTAG, the following are not trailheads: (1) Junctions between trails where there is no other access and (2) intersections where a trail crosses a road or users have developed an access point, but no improvements have been provided by the Forest Service, a trail association, a trail maintaining club, trail partners, or other cooperators beyond minimal signage for public safety.

In addition, the FSTAG includes four specific conditions for departing from the guidelines if meeting a technical provision, such as trail width, would change the character or experience of the trail at a specific point. If one or more of those conditions exist, then

exceptions to the technical provisions, on a case-by-case basis, are provided.

By applying the guidelines, but allowing for exceptions if applying the guidelines would change the character or experience of a trail, trails that are designed to meet the full range of visitor choice will be available, from the paved trails at a visitor center to long-distance, primitive footpaths. Visitors can then choose the type of recreation they want to pursue and the setting for that experience.

*Comment:* All respondents who commented on the distinction in the FSORAG between developed recreation sites and general forest areas were supportive.

*Response:* The Forest Service distinguishes in its land management between developed recreation sites and general forest areas. The Forest Service's Infrastructure database defines a developed recreation site as ''a discrete place containing a concentration of facilities and services used to provide recreation opportunities to the public and evidencing a significant investment in facilities and management under the direction of an administrative unit in the National Forest System.'' Developed recreation sites provide visitor convenience and comfort without adversely impacting natural resources. Most of the agency's recreational improvements are located at developed recreation sites.

In contrast, general forest areas are ''all lands available for recreation use and outside of Wilderness, developed sites, trails and administrative sites. Amenities or constructed features inside general forest areas are primarily for resource protection rather than for visitor comfort.'' While some constructed features (such as picnic tables, fire rings, and toilet buildings) may be provided in general forest areas, these constructed features are usually for resource protection rather than visitor convenience. Any constructed features in general forest areas must be designed appropriately for the setting and must comply with the FSORAG's accessibility requirements.

It is important to the recreating public that not all NFS lands be developed to the same extent, level, or intensity.

*Comment:* All but one respondent who commented on the provision in the FSORAG exempting general forest areas from the requirement for outdoor recreation access routes (ORARs) supported the exemption.

*Response:* The FSORAG states that ORARs are not required in general forest areas. In general forest areas, a path connecting associated constructed facilities, as well as a path connecting them to a trail, must comply with the technical provisions for a trail enumerated in section 7.0 of the FSTAG. These paths are not ORARs and are not required to meet the technical provisions for ORARs in the FSORAG. ORARs are not required in general forest areas because the resulting additional construction and site modification would substantially alter the nature of the setting.

*Comment:* A number of respondents requested that ''infeasible'' be replaced with ''impractical'' in the fourth condition for departure.

*Response:* The American Heritage Dictionary of the English Language, 4th edition, (2000), cites ''impractical'' as the definition for ''infeasible.'' Since the words are interchangeable and ''impractical'' is used more commonly, the Forest Service has changed ''would not be feasible'' to ''would be impractical'' in the section-by-section analysis for the fourth condition for departure and the fourth condition for departure.

*Comment:* One respondent expressed concern that the second condition for departure in the FSTAG differs from the Reg Neg Committee's draft guidelines in citing inconsistency with the applicable land management plan as a basis for allowing utilization of an exception in the technical provisions.

*Response:* The National Forest Management Act requires each national forest and national grassland to develop a land management plan. These plans are developed through extensive public participation and generally are in effect for 10 to 15 years. These plans guide forest management, and the Forest Service is prohibited from authorizing actions that are inconsistent with the plans.

*Comment:* All except one respondent expressed support for inclusion of the Interagency Trail Data Standards (ITDS) trail classes in the second condition for departure.

*Response:* The second condition for departure in the Reg Neg Committee's draft guidelines permits deviation from the guidelines ''[w]here compliance would substantially alter the nature of the setting or the purpose of the facility, or portion of the facility.'' Trails are very different from campgrounds and picnic areas, where there is a high degree of development due to the nature of the use. Trails generally cause little change to the nature of the setting because trails merely traverse an area. This difference should be reflected in the conditions for departure that, when met, allow utilization of an exception to the technical provisions.

When the first draft of the FSTAG was posted on the Forest Service website in late 2002, the trails community immediately requested clarification of the phrase the ''nature of the setting'' of the trail for purposes of applying the second condition for departure. The trails community suggested that the ITDS trail classes be added to that condition for departure because they take into account user preferences, setting, protection of sensitive resources, and other management activities. The ITDS trail classes match the Forest Service's trail classes, which range from minimally developed (Trail Class 1) to fully developed (Trail Class 5). There are substantial differences among the five trail classes. In addition, respondents suggested that the ITDS trail class chart and terminology be added to the FSTAG as a reference tool. The Forest Service agrees with these comments and has added trail class as a factor to consider in applying the second condition for departure. The agency also has added the ITDS trail class chart as an appendix to the FSTAG.

If compliance with a specific technical provision of the FSTAG would trigger a change in the ITDS trail class, the trail designer is alerted to the potential for a substantial change in the setting of the trail if that provision is applied. A substantial change in the setting of the trail would constitute a condition for departure from the technical provisions. However, the presence of a condition for departure does not exempt a trail from the FSTAG. An exception is permitted only where one or more conditions for departure exist and an exception applies (see section 7.1.1). Moreover, some exceptions in the FSTAG provide for applicability of a technical provision with modifications (see, e.g., section 7.3.4, Clear Tread Width, Exception 1, and section 7.3.7, Protruding Objects, Exception 1).

*Section 7.1.2 General Exceptions.* This section contains the two general exceptions to applicability of the FSTAG.

*Comment:* One respondent asked why there were two general exceptions instead of one.

*Response:* The first general exception addresses four trail characteristics or limiting factors that may make complying with the technical provisions difficult or impractical. The second general exception addresses the reasonableness of applying the technical provisions when one or more conditions for departure result in deviations from the technical provisions for over 15 percent of the length of a trail. When

either of these two exceptions applies, the trail would not need to comply with the technical provisions beyond a certain point. However, since these exceptions address different situations, they are not interchangeable nor can they be combined. The loss of either one would result in different coverage of the technical provisions.

*Comment:* Several respondents requested that direction be added to the FSTAG concerning the impact or cumulative effects of applying the technical provisions and resulting change to the user experience and physical characteristics of the trail.

*Response:* The second general exception addresses the reasonableness of applying the technical provisions if deviations from the provisions occur on over 15 percent of the length of a trail due to conditions for departure. This situation could result in trails that have a few segments that comply with all the technical provisions interspersed with segments that do not comply with one or more provisions. The second exception provides a means of quantifying the cumulative effect of many deviations from the guidelines on the overall trail experience. The overview of the FSTAG implementation process in Appendix A of the FSTAG can be used when laying out the flag line on a trail to tally the segments of the trail where one ore more conditions for departure result in deviations from the technical provisions. If one or more conditions for departure result in deviations from the technical provisions for over 15 percent of the length of the trail, then the second general exception does not require compliance with the technical provisions beyond a certain point.

*Comment:* The third limiting factor in the first general exception allows for deviation from all the technical provisions (provided one or more conditions for departure exist) when the minimum trail width is 18 inches or less for a distance of at least 20 feet. These narrow segments of trail are referred to as ''pinch points.'' One respondent believed that no one with a disability would be able to get through an 18-inch-wide pinch point, even if it extended a short distance.

*Response:* A person with a disability may be able to get over or around a pinch point that extends for a short distance. However, if a pinch point extends for a long distance, it is less likely that the pinch point can be negotiated successfully. The Reg Neg Committee established the limit of over 20 feet for a nonnegotiable pinch point. The Reg Neg Committee also determined the minimum width of that pinch point to be 12 inches. The Forest Service increased the minimum width of a nonnegotiable pinch point to 18 inches in the FSTAG because any passageway with no possibility of a detour, such as a path along the side of a cliff, that is narrower than 18 inches should not be considered passable.

*Comment:* The fourth limiting factor in the first general exception allows for deviation from all the technical provisions (provided one or more conditions for departure exist) when a trail obstacle of at least 30 inches in height extends across the full width of the trail. One respondent suggested that the minimum height of 30 inches in this limiting factor be reduced to 10 to 12 inches.

*Response:* The Reg Neg Committee established the minimum height of 30 inches in the fourth limiting factor because a trail obstacle at that height would be extremely difficult for a person with a mobility impairment to navigate. At a height of 10 to 12 inches, a person with a disability could maneuver over the obstacle, albeit with considerable effort.

*Section 7.1.3 Documentation.* This section addresses the requirement for documentation of a determination that the FSTAG does not apply to a trail.

*Comment:* Respondents shared both support and concern regarding the requirement to document a decision that the FSTAG does not apply to construction or alteration of a trail that is designed for hiker/pedestrian use.

*Response:* Often when trail managers leave their positions, they take with them the institutional knowledge and memory for a particular project. Therefore, the Forest Service needs to require documentation of a determination that the FSTAG does not apply to construction or alteration of a trail that is designed for hiker/pedestrian use. If a determination is made that the FSTAG does not apply to the entire trail or cannot be met on portions of the trail, a brief statement must be written and retained in the project file enumerating the rationale for that determination, which conditions for departure and exceptions apply, the date of the determination, and the name of the individuals who made the determination. There is no standard format for this documentation; each administrative unit may develop its own format to meet its specific needs. This documentation need not be lengthy; one page should be sufficient. This documentation will show that applicability of the FSTAG was considered at the onset of the project and that a good-faith effort was made to consider accessibility.

*Section 7.2 Definitions.* This section includes definitions of terms used in the FSTAG.

Alteration

*Comment:* All respondents who commented on terminology supported the definition of the term ''alteration.''

*Response:* The definition for alteration is taken from page 5 of the Reg Neg Committee's draft guidelines (1999 Committee Report), which distinguish maintenance from alteration: ''This type of work [maintenance] is not an alteration; it does not change the original purpose, intent, or design of the trail.'' Accordingly, the FSTAG defines ''alteration'' as ''a change in the original purpose, intent, or design of a trail.''

Trail Terminus and Trail Segment

*Comment:* Several respondents requested that definitions for ''trail terminus'' and ''trail segment'' be added to the FSTAG.

*Response:* The Forest Service agrees. Both definitions now appear in section 7.2 of the FSTAG. A trail terminus is defined as ''the beginning or ending point of a trail or trail segment, where the trail assessment or trail work begins or ends.'' A trail segment is defined as ''the portion of a trail being planned, evaluated, or constructed.''

Trailhead

*Comment:* Several respondents expressed confusion concerning the two definitions for ''trailhead,'' i.e., the definitions for ''designated trailhead'' and ''developed trailhead.'' Respondents requested that the definitions be clarified so that a dirt road crossing a trail where there is no developed parking area or other facilities would not be considered a trailhead.

*Response:* The Forest Service agrees that clarification and consolidation of these definitions are needed. The two definitions have been revised and combined to reflect the definition for a trailhead in the Recreation and Heritage Resources Integrated Business Systems and the level of development required to constitute a trailhead. In addition, the definition now specifies what is not a trailhead. The resulting single definition for a trailhead is: ''A site designed and developed by the Forest Service, a trail association, a trail maintaining club, trail partners, or other cooperators to provide staging for trail use. For purposes of the FSTAG the following are not trailheads:

- Junctions between trails where there is no other access.

• Intersections where a trail crosses a road or users have developed an access point, but no improvements have been provided by the Forest Service, a trail association, a trail maintaining club, trail partners, or other cooperators beyond minimal signage for public safety.''

*Section 7.3.1 Trail Grade and Cross Slope.* This section includes the technical requirements for trail grade and cross slope.

*Comment:* Several respondents requested more specific guidance on the distance between points of measurement when determining trail grade, cross slope, and other trail features.

*Response:* The distance between points of measurement has not been specified because it will vary greatly depending on the area being evaluated for construction or alteration of a trail. When laying out the flag line for construction or alteration of a trail, the trail designer can best determine how frequently measurements need to be made to obtain the needed level of detail, depending on the terrain, changes in soil type, and other trail characteristics. Appendix A of the FSTAG contains an overview of the FSTAG implementation process that may be used when laying out flag line for construction or alteration of a trail.

*Section 7.3.2 Resting Interval.* This section includes the technical specifications for a resting interval, where one is required.

No comments were received on this section.

*Section 7.3.3 Surface.* This section includes the technical requirements for trail surface.

*Comment:* All respondents who commented on the method for evaluating a firm and stable surface in the FSTAG expressed strong support for the practicality of the method.

*Response:* While the Forest Service supports the scientific approach to the evaluation of a firm and stable surface, the agency also recognizes that the expense of the equipment required for that approach may be prohibitive. Therefore, trail designers must have a mental tool to use to evaluate trail surface.

*Comment:* Several respondents expressed concern that a firm and stable surface may not remain that way in all weather conditions.

*Response:* The FSTAG recognizes that various types of weather can have a significant effect on trail surface. Page 19 of the FSTAG states: ''Surface firmness should be determined and documented during the planning process for the primary seasons for which a trail is managed, under normally occurring weather conditions.'' If it is not clear what those seasons are, the determination of surface firmness may be based on the primary seasons for which similar trails in the area are managed.

*Comment:* One respondent recommended adding to the examples of types of actions that constitute maintenance the hardening of trail surfaces under certain conditions, such as installation of a boardwalk in an area that has become wet. The respondent believed that this addition was needed to clarify that this type of work would not trigger application of the FSTAG.

*Response:* The agency does not believe that this change is necessary. The FSTAG specifically states that it applies only to trails within the National Forest System that (1) are new or altered (an alteration is a change in the original purpose, intent, or design of a trail; (2) have a designed use of hiker/pedestrian under the ITDS and Forest Service Trail Planning and Management Fundamentals; and (3) connect directly to a currently accessible trail or to a trailhead. Constructing a boardwalk over a wet area of a trail would not constitute construction or alteration of a trail. Therefore, this type of work would not trigger the FSTAG.

*Section 7.3.4 Tread Width.* This section includes the technical requirements for tread width.

*Comment:* Several respondents were confused about the terms ''minimum tread width'' and ''minimum trail width.''

*Response:* The tread width is the width of a constructed trail. The minimum tread width is the width of the useable part of the tread width (i.e., that is not blocked by obstructions) at the narrowest point on a trail. The tread width does not include usable area adjacent to the constructed trail tread.

The trail width is the width of the trail tread and the adjacent useable area. The minimum trail width is the width of the trail tread and the adjacent useable area at the narrowest point on a trail. An example of minimum trail width is where there is a rock outcropping on both sides of a trail that narrows the width of the trail tread as well as the adjacent useable area, and there is no way around the obstruction.

Clear tread width is the width of the useable trail tread and adjacent usable surface.

*Comment:* All except one respondent expressed support for the FSTAG's approach to trail bridges, boardwalks, and puncheon.

*Response:* In accordance with the Forest Service Trail Planning and Management Fundamentals, trail bridges, boardwalks, and puncheon are constructed features of a trail and part of the trail tread. Therefore, they must be constructed in accordance with the width and other features of a trail. Thus, if a segment of a trail designed for hiker/pedestrian use is subject to the FSTAG's technical provisions, the trail bridges, boardwalks, and puncheon on that trail segment are also subject to those provisions.

*Section 7.3.5 Passing Space.* This section includes the technical specifications for passing space, where it is required.

No comments were received on this section.

*Section 7.3.6 Tread Obstacles.* This section includes the technical specifications for allowable tread obstacles.

No comments were received on this section.

*Section 7.3.7 Protruding Objects.* This section includes the technical requirements for clear headroom on a trail.

*Comment:* All respondents who commented on protruding objects supported the exception to the requirement for clear headroom or a warning barrier.

*Response:* The FSTAG requires that if the vertical clearance of a trail is reduced to less than 80 inches because of a condition for departure, a barrier to warn people who are blind or visually impaired must be provided. However, the FSTAG also recognizes that in the outdoor recreation environment there are some areas, such as pathways through caves or specific types of trees, where the natural environment precludes both 80 inches of clear headroom and placement of a warning barrier. Therefore, the FSTAG allows an exception to these requirements where a condition for departure prevents providing 80 inches of clear headroom and installation of a warning barrier without changing the character of the setting.

*Section 7.3.8 Openings.* This section includes the technical specifications for allowable openings in the trail tread.

No comments were received on this section.

*Section 7.3.9 Edge Protection.* This section includes the technical requirements for the height of edge protection provided along trail tread.

*Comment:* All respondents who commented on the use of edge protection strongly agreed with the approach taken in the FSTAG that it should not be required for trails or tent pads and platforms.

*Response:* Under the FSTAG, edge protection, where provided, must be at least 3 inches high. However, edge protection is not required. The trail designer determines where edge protection should be provided for safety and where it should be eliminated because it would preclude full access. The FSTAG also provides for flexibility in determining the use of edge protection because of concerns regarding accessibility of trails and tent pads and platforms in general forest areas adjacent to trails.

*Section 7.3.10 Signs.* This section requires posting information signs at the trailhead of new or altered trails and trail segments that fall into Trail Class 4 or 5 and trails that have been evaluated for accessibility.

*Comment:* All respondents strongly supported the requirement to post information signs at the trailhead of new or altered trails and trail segments that fall into Trail Class 4 or 5 and trails that have been evaluated for accessibility. One respondent recommended that the requirements for information signs be extended to all trails.

*Response:* The Forest Service strongly supports providing trail information that is useful to all visitors. Providing information about the typical and maximum trail grade, typical and maximum cross slope, typical and minimum tread width, surface type and firmness, and obstacles helps visitors choose their own hiking experience. While it would be desirable to post this information at the trailhead of all trails, the Forest Service cannot require this type of signage at this time.

*Appendices.* The appendices provide additional information to assist trail designers and managers in determining when and how to apply the FSTAG.

*Comment:* Several respondents requested inclusion in the FSTAG of the ITDS and Forest Service trail class chart and related information.

*Response:* In response to these requests, the Forest Service has added the ITDS and Forest Service trail class chart and related information as an appendix to the FSTAG.

**3. Regulatory Certifications**

*Environmental Impact*

Section 31.12, paragraph 2, of Forest Service Handbook (FSH) 1909.15 (67 FR 54622, August 23, 2002) excludes from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency concludes that this amendment falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

*Regulatory Impact*

This amendment has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that the accessibility guidelines portion of the amendment is significant because of its relationship to the accessibility guidelines to be established by the Access Board. Accordingly, this amendment has been reviewed by OMB pursuant to Executive Order 12866. A cost and benefits analysis of this action was developed and is available at *http://www.fs.fed.us/programs/recreation/accessibility.* The remaining portions of the proposed amendment, which addressed other aspects of the agency's accessibility program not related to the accessibility guidelines, were not deemed significant by OMB and were issued as a final interim directive on July 13, 2005.

Moreover, this amendment has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). It has been determined that this amendment will not have a significant economic impact on a substantial number of small entities as defined by the act because the amendment will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market. The amendment will establish accessibility guidelines that will apply internally to the Forest Service and that will have no direct effect on small businesses. No small businesses have been awarded contracts for construction or reconstruction of recreation facilities covered by these accessibility guidelines.

*No Takings Implications*

This amendment has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. The agency has determined that this amendment does not pose the risk of a taking of private property.

*Civil Justice Reform*

This amendment has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this amendment, (1) all State and local laws and regulations that conflict with this amendment or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this amendment; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

*Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this amendment on State, local, and Tribal governments and the private sector. This amendment will not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

*Federalism and Consultation and Coordination With Indian Tribal Governments*

The agency has considered this amendment under the requirements of Executive Order 13132 on federalism and has made an assessment that the amendment conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Moreover, this amendment does not have Tribal implications as defined by Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments,'' and therefore advance consultation with Tribes is not required.

*Energy Effects*

This amendment has been reviewed under Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined that this amendment does not constitute a significant energy action as defined in the Executive Order.

*Controlling Paperwork Burdens on the Public*

This amendment does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and

its implementing regulations at 5 CFR part 1320 do not apply.

Dated: April 10, 2006.

**Dale N. Bosworth,**

*Chief, Forest Service.*

[FR Doc. E6–7753 Filed 5–19–06; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Risk Management Agency

### Notice of Intent To Seek Approval To Conduct an Information Collection

**AGENCY:** Risk Management Agency, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Risk Management Agency to request approval for the collection of information in support of the agency's mission under section 522(d) of the Federal Crop Insurance Act to develop and implement risk management tools for producers of agricultural commodities through partnership agreements.

**DATES:** Written comments on this notice will be accepted until close of business July 21, 2006.

**ADDRESSES:** Interested persons are invited to submit written comments to Virginia Guzman, United States Department of Agriculture (USDA), Research and Evaluation Division, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Mail Stop 813, Kansas City, MO 64133. Written comments may also be submitted electronically to: *RMARED.PRA@rma.usda.gov*.

**FOR FURTHER INFORMATION CONTACT:** Virginia Guzman or David Fulk, at the Kansas City, MO address listed above, telephone (816) 926–6343.

**SUPPLEMENTARY INFORMATION:**

*Title:* Agricultural Risk Management, Research and Evaluation, Organic Transition Simulation Model and Online Training Course Project.

*OMB Number:* 0563–NEW.

*Type of Request:* New Information Collection.

*Abstract:* The Risk Management Agency intends to collect information for purposes of product development and program evaluation. The product development data collection is necessary to obtain feedback from experts and potential users of a Web-based simulation model designed to assist farmers and agricultural extension specialists in understanding the economic and environmental consequences in making a transition from traditional to organic production techniques. Results of this collection will be used to revise and improve the simulation model. The program evaluation component of the data collection is required to assess the effectiveness of the fully developed simulation model and the accompanying training course. All data collections will be conducted online using an automated web-survey system. We are asking the Office of Management and Budget (OMB) to approve this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public concerning the information collection activities. These comments will help us:

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 information;

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

4. Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, *e.g.* permitting electronic submission of responses.

*Estimate of Burden:* The public reporting burden for this collection of information is estimated to average 3 to 10 minutes per response, depending on the survey.

*Respondents/Affected Entities:* Farmers who are growing organic crops or are considering the production of organic crops and Cooperative Extension specialists who advise farmers and educators on the basics of organic production and marketing.

*Estimated annual number of respondents:* 1,660.

*Estimated annual number of responses:* 8,120.

*Estimated total annual burden on respondents:* 1,111 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on May 16, 2006.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E6–7752 Filed 5–19–06; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**[Docket No. 060505121–6121–01]**

### Establishment of Advisory Committee and Clarification of Deemed Export-Related Regulatory Requirements

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Industry and Security (BIS) is announcing the creation of a Federal Advisory Committee that will review and provide recommendations to the Department of Commerce on deemed export policy. The Deemed Export Advisory Committee (DEAC) will help ensure that the deemed export licensing policy most effectively protects national security while ensuring the U.S. continues to be at the leading edge of technological innovation. This notice also provides an overview of steps that BIS has taken to improve understanding of deemed export policy within academia and industry, including outreach activities conducted by BIS.

**ADDRESSES:** Although there is no official comment period for this notice, you may submit comments, identified by Docket No. 060505121–6121–01, by any of the following methods:

*E-mail: publiccomments@bis.doc.gov.* Include ''060505121–6121–01'' in the subject line of the message.

*Fax:* (202) 482–3355.

*Mail or Hand Delivery/Courier:* U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: Docket No. 060505121–6121–01.

**FOR FURTHER INFORMATION CONTACT:** Marcus Cohen, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, telephone: (202) 482–2440 or e-mail: *mcohen@bis.doc.gov.* Copies of the referenced Department of Commerce Office of Inspector General (OIG) Report are available at: *http://www.oig.doc.gov/oig/reports/2004/BIS-IPE-1676-03-2004.pdf.*

Public comments received by BIS in response to the ANPR are available at: *http://efoia.bis.doc.gov/.*

**Background**

BIS is proposing the establishment of a ''Deemed Export Advisory Committee'' (DEAC) under the terms of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C., App. 2). The DEAC will serve as forum to address complex questions related to an evolving deemed export control policy. Specifically, the DEAC will be charged with reviewing the current deemed export policy and determining whether to recommend any changes to that policy. A separate notice will specifically address the comments received in response to the ''*Advance Notice of Proposed Rulemaking: Revision and Clarification of Deemed Export Related Regulatory Requirements*'' (ANPR) published in the **Federal Register** on March 28, 2005.

*A. Deemed Export Advisory Committee (DEAC); Notice of Recruitment of Private-Sector Members*

The nature of research and technological development is constantly changing and there is evidence of growing participation of foreign nationals in U.S.-based research as well as their employment in U.S.-based high-technology industries. There is also an increasing interdependence between commercial and academic research. Over the course of the past decade, these changes have inevitably led to the increased transfer of controlled information to foreign nationals in the course of research and commercial technology development.

To ensure that the deemed export policy best protects U.S. national security, while striving not to impede the ability of U.S. industry and academic research to continue at the leading edge of technological innovation, BIS is establishing a ''Deemed Export Advisory Committee'' (DEAC) under the terms of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C., App. 2). The DEAC will undertake a comprehensive review of the national security, technology, and competitiveness dimensions of the deemed export issue and provide recommendations for potential changes to the current deemed export policy. The DEAC's review will include, but not be limited to, the recommendations made in the Department of Commerce Office of Inspector General (OIG) Report entitled ''*Deemed Export Controls May Not Stop the Transfer of Sensitive Technology to Foreign Nationals in the U.S.*'' (Final Inspection Report No. IPE–16176–March 2004).

The DEAC, which will not exceed 12 members, will be structured to ensure a balanced membership that will offer a comprehensive point of view on the complex technical and policy questions at issue. The advisory committee will consist of representatives from industry, academia, and other experts in the field to ensure a full discussion of all aspects of deemed exports and knowledge transfer from the corporate, academic, and national security perspectives. Members will be called upon to advise BIS on highly technical issues surrounding technology transfer and to help ensure that BIS effectively carries out its critical national security function. To that end, the DEAC shall have a diverse membership with expertise in national security affairs, scientific research and development (R&D) policy, and the various forms of technology subject to the EAR, such as nuclear, chemical, missile, electronics, computer, telecommunications, and avionic technology. For a full list of technology and software subject to the EAR, *see* 15 CFR part 774, Supp. 1.

DEAC members will be appointed by the Secretary of Commerce and serve a term of not more than one year. DEAC members must obtain a secret security clearance prior to appointment. These clearances are necessary so that members may be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. The DEAC will convene as appropriate, but in no case less than quarterly. To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at *Yspringer@bis.doc.gov.* This Notice of Recruitment will be open until July 21, 2006.

*B. Current Deemed Export Policy*

Given the extended public discussion of the OIG recommendations and the coming review of the deemed export policy by the DEAC, a reiteration of the current BIS deemed export policy regarding country of birth, the existing definition of ''use'' in the Export Administration Regulations (EAR), and the relationship of fundamental research to deemed exports is warranted. BIS has decided *not* to make any changes at this time to current regulations and policy on these three issues.

*C. BIS Activities Related to Deemed Exports*

In the past year, BIS has undertaken an enhanced and targeted deemed export outreach program. Since the issuance of the report by the OIG, BIS has significantly increased its outreach to the academic and research communities. This outreach has focused on the concerns identified by the OIG report to raise the level of awareness and to improve the understanding of the deemed exports regulatory requirements. In fiscal year 2004 and fiscal year 2005, over 120 outreach events were conducted annually, almost tripling that conducted in previous years. A third of these events—which range in content from presentations to large audiences, seminars, one-on-one consultations, and site visits—have been with the university and government research organizations and laboratories. These organizations were identified by the OIG report as needing additional knowledge of the EAR's deemed export requirements. BIS is on track to conduct over 100 deemed export outreach events in the current fiscal year. BIS has already seen the benefit of increased outreach to, and communication with, the regulated community and believes that the DEAC will provide a particularly advantageous forum for further in-depth technical information exchange between and among BIS and the academic, corporate, and other interested sectors.

In addition to onsite visits, seminars, and the information provided in Supplement No.1 to Part 734 of the EAR, BIS has also provided deemed export related guidance on its Web site. (*See* Deemed Export FAQ's at *http://www.bis.doc.gov/policiesandregulations/index.htm*) In particular, this guidance has addressed issues related to a foreign national's country of origin—an issue highlighted by the OIG report. This particular guidance explains that if the status of a foreign national is uncertain, it is important to consult with BIS to determine where the stronger ties lie, based on the facts of the specific case. BIS is committed to providing continued deemed export guidance and assistance to the regulated community on this important issue.

BIS has also participated in several Task Forces to address the deemed export issue, including an American Association of Universities/Council on Government Relations Task Force, the National Academies' Government-University-Industry-Research Roundtable, the Federal Bureau of Investigation's National Security Higher Education Advisory Board, and a White House, Office of Science and Technology Policy Interagency Working Group comprised of agency representatives with research laboratories (e.g., Department of Energy, Department of Defense, Department of

Health and Human Services, Department of Agriculture, National Institutes of Health, Food and Drug Administration, National Institute of Standards and Technology, etc.). The goal of each of these groups is to assess the impact of the OIG's recommendations and to address concerns raised by the regulated communities.

BIS has also increased its enforcement focus on deemed exports. A number of cases involving violations of deemed export requirements have been concluded with criminal and civil penalties and BIS will continue to pursue violations of the EAR's deemed export requirements to ensure U.S. national security is not compromised by unauthorized technology transfers to foreign nationals. In addition, BIS is collaborating with the Federal Bureau of Investigation on related enforcement issues through the National Security Higher Education Advisory Board.

Finally, BIS received funding in the FY2006 budget to implement an Enhanced Deemed Export Control Initiative. This initiative has two components—licensing and enforcement. The initiative will enable BIS to: (1) Process an increased volume of license applications in a timely manner, in order to ensure that U.S. entities are able to gain access to the expertise of foreign nationals who do not pose security concerns; and (2) ensure that U.S. entities are aware of and comply with U.S. deemed export license requirements through expanded outreach and enforcement activities. Both aspects are necessary to enhance U.S. national and economic security.

Dated: May 17, 2006.

**Matthew Borman,**

*Deputy Assistant Secretary of Commerce for Export Administration.*

[FR Doc. E6–7778 Filed 5–19–06; 8:45 am]

**BILLING CODE 3510–33–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–900]**

### Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 22, 2006.

**SUMMARY:** On December 29, 2005, the Department of Commerce (''the Department'') published its preliminary determination of sales at less than fair value (''LTFV'') and preliminary determination of partial affirmative critical circumstances in the antidumping investigation of certain diamond sawblades and parts thereof (''diamond sawblades'') from the People's Republic of China (''PRC''). The period of investigation (''POI'') is October 1, 2004, through March 31, 2005. The investigation covers four manufacturers/exporters which are mandatory respondents and twenty–one separate rate applicants. We invited interested parties to comment on our preliminary determination of sales at LTFV and partial affirmative critical circumstances. Based on our analysis of the comments we received, we have made changes to our calculations for certain of the mandatory respondents and the weight–averaged margins for the separate rate applicants.[1] We have also granted a separate rate to four additional applicants. The final dumping margins for this investigation are listed in the ''Final Determination Margins'' section below.

**FOR FURTHER INFORMATION CONTACT:** Anya Naschak or Carrie Blozy, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6375 or 482–5403, respectively.

**SUPPLEMENTARY INFORMATION:**

### Final Determination

We determine that diamond sawblades from the PRC are being, or are likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

### Case History

The Department published its preliminary determination of sales at LTFV on December 29, 2005. *See Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 70 FR 77121 (December 29, 2005) (''*Preliminary Determination*''). The Department conducted verification of Bosun Tools Group Co., Ltd. (''Bosun''), Beijing Gang Yan Diamond Product Company (''BGY''), and Hebei Jikai Industrial Group Co. Ltd. (''Hebei Jikai'') (collectively, ''respondents''), the three mandatory respondents participating in this investigation[2] in both the PRC and the United States (where applicable), and Shanghai Deda Industry & Trading Co. Ltd. (''Shanghai Deda''), one of the separate rate applicants. See the ''Verification'' section below for additional information.

On February 6, 2006, the Department solicited comments from all interested parties regarding changes to its calculation of financial ratios. On February 7, 2006, Bosun and Petitioner submitted additional comments on the valuation of factors of production (''FOPs'') for the final determination. On February 13, 2006, BGY also submitted additional comments on the valuation of FOPs for the final determination. On February 21, 2006, Bosun submitted a rebuttal to Petitioner's February 7, 2006, comments.

On February 1, 2006, the Department received a separate rate application from Qingdao Shinhan. The Department determined on February 24, 2006, that Qingdao Shinhan's separate rate application was timely filed. *See* Memorandum to the File from Catherine Bertrand dated February 24, 2006. On March 22, 2006, the Department preliminarily determined that the information contained in Qingdao Shinhan's separate rate application demonstrated that it qualified for a separate rate in this investigation.

We invited parties to comment on the *Preliminary Determination*. We received comments from the Diamond Sawblade Manufacturers' Coalition (''Petitioner''),

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[1] Danyang NYCL Tools Manufacturing Co., Ltd., Danyang Youhe Manufacturing Co. Ltd., Fujian Quanzhou Wanlong Stone Co. Ltd., Guilin Tebon Superhard Material Co. Ltd., Huzhou Gu Import & Export Co., Ltd, Jiangsu Fengtai Diamond Tools Manufacturing Co. Ltd., Jiangyin LIKN Industry Co. Ltd., Quanzhou Zhongzhi Diamond Tool Co., Ltd., Rizhao Hein Saw Co. Ltd., Shanghai Deda Industry & Trading Co. Ltd., Sichuan Huili Tools Co., Weihai Xiangguang Mechanical Industrail Co., Ltd., Wuhan Wanbang Laser Diamond Tools Company, Ltd., Xiamen ZL Diamond Tools Co. Ltd., Zhejiang Tea Import & Export Co. Ltd., Zhejiang Wanli Tools Group Co., Ltd. (''Wanli''), Zhenjiang Inter-China Import & Export Co., Ltd., (collectively, ''preliminary separate rate applicants''), as well as four additional separate rate companies, Qingdao Shinhan Diamond Industrial Co., Ltd. (''Qingdao Shinhan''), Shijiazhuang Global New Century Tools Co., Ltd. (''Global''), Shanghai Robtol Tool Manufacturing Co., Ltd. (''Robtol''), and Huachang Diamond Tools Manufacturing Co., Ltd. (''Huachang'') (collectively with preliminary separate rate applicants, ''final separate rate companies'').

[2] One mandatory respondent, Saint-Gobain Abrasives (Shanghai) Co., Ltd. (''Saint Gobain'') did not participate in this investigation.

the mandatory respondents, Quanzhou Shuangyang Diamond Tool Co., Ltd. (''QSY''), Global, Robtol, Electrolux Construction Products (Xiamen) Co., Ltd. (''Electrolux''), and Huachang.

On April 3, 2006, parties submitted case briefs. On April 10, 2006, parties submitted rebuttal briefs. On April 14, 2006, the Department rejected the case brief of Petitioner and the rebuttal briefs of Petitioner and BGY, because they contained unsolicited new factual information. Petitioner and BGY resubmitted their respective briefs on April 18, 2006.

On January 6, 2006, Bosun requested that the Department hold a public hearing in this proceeding. On January 19, 2006, Petitioner requested the Department hold a public hearing in this proceeding. On April 3, 2006, Petitioner requested that the hearing held by the Department be a closed hearing. On April 25, 2006, the Department held a hearing in this proceeding.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *Issues and Decision Memorandum for the Final Determination in the Investigation of Diamond Sawblades and parts thereof from the People's Republic of China*, dated May 15, 2006, which is hereby adopted by this notice (''*Issues and Decision Memorandum*''). A list of the issues which parties raised and to which we respond in the *Issues and Decision Memorandum* is attached to this notice as an Appendix. The Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made changes in the margin calculation for Bosun, BGY, and Hebei Jikai as follows:

The Department has revised the surrogate financial ratios to utilize a source placed on the record by Petitioner after the *Preliminary Determination*. *See Issues and Decision Memorandum*, at Comment 1 for a discussion of this issue. *See also* Memorandum to the File: Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China: Recalculation of Surrogate Financial Ratios for the Final Determination, dated May 15, 2006.

*Bosun*

The Department made corrections to Bosun's factors of production (''FOP'') database based on the minor corrections submitted by Bosun on the first day of the PRC verification, and changes to Bosun's constructed export price (''CEP'') database based on the minor corrections submitted by Bosun on the first day of the U.S. sales verification. *See* Memorandum to the File: Verification of the Sales and Factors Response of Bosun Tools Group Co., Ltd. in the Antidumping Investigation of Diamond Saw Blades and Parts Thereof from the People's Republic of China dated March 24, 2006 (''Bosun PRC Verification Report''), at Exhibit 2; Memorandum to the File: Verification of the U.S. CEP Sales Response of Bosun Tools Group Co., Ltd. in the Antidumping Investigation of Diamond Saw Blades and Parts Thereof from the People's Republic of China dated March 27, 2006 (''Bosun US Verification Report'') at Exhibit 1 for a list of the corrections submitted by Bosun. For a description of how these changes were incorporated, *see* Memorandum to the File: Bosun Tools Group Co., Ltd. Program Analysis for the Final Determination dated May 15, 2006 (''Bosun Final Analysis Memo''). The Department has also corrected three clerical errors identified by Bosun after the *Preliminary Determination*. *See*, *e.g.*, *Issues and Decision Memorandum* at Comment 33; Bosun Final Analysis Memo.

In addition, the Department made changes to Bosun's FOP and CEP databases based on comments received by Bosun and Petitioner. For a description of these changes, *see Issues and Decision Memorandum*, and Bosun Final Analysis Memo.

*BGY*

Based on the Department's determination in the Preliminary Determination to treat as a single entity with BGY, Advanced Technology & Materials Co., Ltd. (''AT&M''), and Yichang HXF Circular Saw Industrial Co., Ltd (''HXF''), the Department requested U.S. sales and FOP databases from the AT&M single entity.[3] The AT&M single entity certified that BGY and HXF were the only entities within the AT&M single entity to have exported, or sold for export, subject merchandise to the United States during the POI, and submitted complete U.S. sales and FOP information with respect to HXF. The Department has continued to find that BGY, AT&M, and HXF should be treated as a single entity for purposes of this final determination and, therefore, has incorporated HXF's and BGY's U.S. sales and FOP information in the calculation of a margin for the AT&M single entity. *See* ''Affiliation'' section below, and Memorandum to the File: Advanced Technology & Materials Co., Ltd. Entity Program Analysis for the Final Determination, dated May 15, 2006 (''AT&M Final Analysis Memo''), for a more detailed explanation of these changes.

The Department made corrections to BGY's FOP database based on the minor corrections submitted by BGY on the first day of the PRC verification, and changes to BGY's CEP database based on the minor corrections submitted by BGY on the first day of the U.S. sales verification. *See* Memorandum to the File: Verification of the Sales and Factors Response of Beijing Gang Yan Diamond Product Company in the Antidumping Duty Investigation on Diamond Sawblades and Parts Thereof from the People's Republic of China, dated March 27, 2006 (''BGY Verification Report'') at Exhibit 3; Memorandum to the File: Verification of the Sales and Factors Response of Gang Yan Diamond Products, Inc. in the Antidumping Duty Investigation on Diamond Sawblades and Parts Thereof from the People's Republic of China, dated March 27, 2006 (''GYDP Verification Report''). For a complete description of how these changes were made *see* AT&M Final Analysis Memo. *See also Issues and Decision Memorandum* at Comment 19.

In addition, the Department made changes to the AT&M entity's FOP and U.S. sales databases based on comments received by parties. For a description of these changes *see Issues and Decision Memorandum*, and AT&M Final Analysis Memo.

*Hebei Jikai*

The Department made corrections to Hebei Jikai's FOP database based on the minor corrections submitted by Hebei Jikai on the first day of the verification. *See* Memorandum to the File: Verification of the Sales and Factors Response of Hebei Jikai Industrial Group Co. Ltd. in the Antidumping Investigation of Diamond Saw Blades and Parts Thereof from the People's Republic of China dated March 23, 2006 (''Hebei Jikai Verification Report''), at Exhibit 1. The Department also made corrections to the gross weight in Hebei Jikai's U.S. sales database based on information collected at the verification of Hebei Jikai. *See* Hebei Jikai Verification Report at 3. For a

[3] As discussed below under ''Affiliation,'' the AT&M entity includes BGY and HXF.

description of how these changes were incorporated in the final margin program, *see* Memorandum to the File: Hebei Jikai Industrial Group Co. Ltd. (''Hebei Jikai'') Program Analysis for the Final Determination, dated May 15, 2006 (''Hebei Jikai Final Analysis Memo'').

In addition, the Department made changes to Hebei Jikai's FOP and U.S. sales databases based on comments received by Hebei Jikai and Petitioner. For a description of these changes *see Issues and Decision Memorandum*, and Hebei Jikai Final Analysis Memo.

**Scope of Investigation**

The products covered by this investigation are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of this investigation are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non–steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the investigation. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the investigation. Circular steel plates that have a cutting edge of non–diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of this investigation. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the investigation. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the investigation.

Merchandise subject to this investigation is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. The tariff classifications are provided for convenience and U.S. Customs and Border Protection purposes; however, the written description of the scope of this investigation is dispositive.

**Scope Rulings**

During the course of this investigation, the Department issued several scope rulings, all of which are affirmed through this final determination. Specifically, in the *Preliminary Determination*, the Department ruled that concave and convex cores, and finished diamond sawblades produced from such cores, are within the scope of this investigation. *See* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to Thomas F. Futtner, Acting Office Director, ''Consideration of Scope Exclusion and Clarification Requests,'' dated December 20, 2005, at page 8. The Department also ruled that metal–bonded 1A1R grinding wheels are within the scope of this investigation. *Id.* at 11. On April 7, 2006, the Department found granite contour diamond sawblades within the scope of the investigation. *See* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to Thomas F. Futtner, Acting Office Director, ''Consideration of Scope Exclusion Request,'' dated April 7, 2006. In this decision, the Department confirmed that the Rockwell C hardness threshold contained in the scope of the investigation applies only to cores, and not to finished diamond sawblades. *Id.* at 7. Lastly, the term ''sawblade'' is defined as those products that meet the 1A1R specification, where the segment thickness is larger than the thickness of the core. *See* Petitioner's May 3, 2005, submission at Exhibit I–10 (''The segment or rim is slightly wider than the steel blade to allow the attacking edge to penetrate the material without the steel blade rubbing against it''); Petitioner's May 10, 2005, submission, at page 14 (''the segment or rim is slightly wider than the steel blade to allow the attacking edge to penetrate the material without the steel blade rubbing against it''); Transcript to April 25, 2006, Public Hearing in the companion investigation of diamond sawblades from the People's Republic of China (statement by the petitioner that the ''international codes for sawblades are 1A1R, 1A1RS, and 1A1RSS, where the R means recessed. And that refers to the core, {where} the core is thinner than the segments''); and ITC Investigation No. 731–TA–1093, August 2005 (''The segment, or rim, is slightly wider than the steel blade to permit the leading edge to penetrate the material without the steel blade rubbing against it and to discourage blade binding''). For this final determination, the Department has determined not to revise the scope of the investigation. *See also Issues and Decision Memorandum* at Comment 3.

**Verification**

As provided in section 782(i) of the Act, we verified the information submitted by the respondents and one separate rate applicant for use in our final determination. *See* the Department's verification reports on the record of this investigation in the CRU with respect to Bosun, BGY, Hebei Jikai, and Shanghai Deda. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

**Critical Circumstances**

On November 21, 2005, Petitioner alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of diamond sawblades and parts thereof from the PRC. In the *Preliminary Determination*, the Department found that critical circumstances exist for imports of diamond sawblades from Bosun and the PRC–wide entity, but that critical circumstances did not exist for the preliminary separate rate applicants, BGY, or Hebei Jikai. *See* Memorandum to Stephen J. Claeys: Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Partial Affirmative Determination of Critical Circumstances, dated December 20, 2005 (''Prelim Critical Circumstances Memo''). Based on the changes made to Bosun, BGY, Hebei Jikai, and the final separate rate companies' margins, and as discussed further in the *Issues and Decision Memorandum* at Comment 10, the Department has re–examined its preliminary finding that critical circumstances exist for imports of diamond sawblades from Bosun, and Hebei Jikai, and the PRC–wide entity, but that critical circumstances did not exist for the AT&M entity. In addition,

the Department has examined the final separate rate companies.

Section 735(2)(3) of the Act provides that a final critical circumstances determination will include a finding that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.''

As discussed in detail in the *Issues and Decision Memorandum* at Comment 10, the Department continues to find that there is a reasonable basis to believe or suspect that the importer knew or should have known that there was likely to be material injury by means of sales at LTFV of subject merchandise from the PRC. In the *Preliminary Determination*, the Department found that (1) Bosun and the PRC–wide entity had margins of more than 25 percent for export price sales and more than 15 percent for constructed export price sales, and (2) BGY, Hebei Jikai, and the preliminary separate rate applicants did not have margins of more than 25 percent for export price sales and more than 15 percent for constructed export price sales. *See* Prelim Critical Circumstances Memo at Attachment II. For this final determination, Bosun, Hebei Jikai, and the PRC–wide entity each have margins of more than 25 percent for export price sales and more than 15 percent for constructed export price sales, while the AT&M single entity and the final separate rate companies have margins less than 25 percent for export price sales and more than 15 percent for constructed export price sales. Therefore, the Department finds, for this final determination, that Bosun, Hebei Jikai, and the PRC–wide entity have sufficient margins to impute importer knowledge of sales at less than fair value. *See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002); Issues and Decision Memorandum at Comment 10. However, the AT&M single entity and the final separate rate companies' margins are insufficient to impute importer knowledge of sales at less than fair value. In addition, as no party in this proceeding has called into question the Department's preliminary determination of massive imports with respect to Bosun, BGY, Hebei Jikai, the final separate rate companies, and the PRC–wide entity, the Department also continues to find that there have been massive imports of the subject merchandise over a relatively short period for Bosun, the AT&M single entity, Hebei Jikai, the final separate rate companies, and the PRC–wide entity. *See Issues and Decision Memorandum* at Comment 10 and Prelim Critical Circumstances Memo at Attachment I.

Therefore, given the analysis summarized above, and described in more detail in the *Issues and Decision Memorandum* at Comment 10, we determine that critical circumstances exist for imports of diamond sawblades from Bosun, Hebei Jikai, and the PRC–wide entity. However, we do not find that critical circumstances exist for the AT&M single entity or the final separate rate companies.

**Surrogate Country**

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. *See Preliminary Determination*, 70 FR at 77124–77125. For the final determination, we made no changes to our findings with respect to the selection of a surrogate country.

**Affiliation**

In the *Preliminary Determination*, based on the evidence on the record, we preliminarily found that BGY was affiliated with AT&M and HXF pursuant to sections 771(33)(E), (F), and (G) of the Act. In addition, based on the evidence presented in BGY's questionnaire responses, we preliminarily found that BGY, HXF, and AT&M should be treated as a single entity for the purposes of the antidumping duty investigation of diamond sawblades from the PRC. *See* Memorandum to the File from Anya Naschak: Affiliation and Treatment as a Single Entity of Beijing Gang Yan Diamond Product Company, Advanced Technology & Materials Co., Ltd., and Yichang HXF Circular Saw Industrial Co., Ltd.; Affiliation of Gang Yan Diamond Products, Inc. and Beijing Gang Yan Diamond Product Company; and Affiliation of Gang Yan Diamond Products, Inc., SANC Materials, Inc., and Cliff (Tianjin) International, Ltd., dated December 20, 2005 (''AT&M Affiliation Memo''). This finding was based on the determination that BGY, HXF, and AT&M are affiliated, that BGY and HXF have production facilities for ''identical products,'' and no substantial retooling of either facility would be necessary in order to ''restructure manufacturing priorities.'' *See* 19 CFR 351.401(f)(1). Additionally, based on levels of common ownership and control, and intertwined operations, the Department found that there is significant potential for manipulation of price or production between the parties. *See* 19 CFR 351.401(f)(2). Accordingly, the Department requested after the Preliminary Determination that the AT&M single entity provide complete responses to sections C and D of the Department's questionnaire with respect to all of the AT&M single entity's sales to the first U.S. unaffiliated customer and factors of production for these sales. *See* Letter from Carrie Blozy to BGY dated December 23, 2005. On January 26, 2006, the AT&M Group submitted the requested information. Based on the information contained in the AT&M single entity's responses to date, and based on information collected at verification (*see* BGY Verification Report), the Department finds no evidence to countermand the Department's finding in the *Preliminary Determination* that BGY, HXF, and AT&M are affiliated pursuant to sections 771(33)(E), (F), and (G) of the Act, and that these companies should be treated as a single entity for the purposes of the antidumping duty investigation of diamond sawblades from the PRC, in accordance with 19 CFR 351.401(f)(1) and (2). Therefore, the Department continues to find, for this final determination, that BGY, HXF, and AT&M are a single entity, and will calculate a single antidumping margin for the AT&M entity.

In addition, the Department also found in its *Preliminary Determination* that Gang Yan Diamond Products, Inc. (''GYDP''), is affiliated with BGY, pursuant to section 771(33)(E) of the Act, and that GYDP, SANC Materials, Inc. (''SANC''), and Cliff (Tianjin)

International, Ltd. (''Cliff'') are affiliated with each other pursuant to sections 771(33)(B), (E), and (F) of the Act. *See* BGY Affiliation Memo. Since the *Preliminary Determination*, the Department has found no information that would rebut this determination. Therefore, the Department continues to find GYDP, SANC, and Cliff to be affiliated with each other pursuant to sections 771(33)(B), (E), and (F) of the Act, and that BGY and GYDP are affiliated with each other pursuant to section 771(33)(E) of the Act, for this final determination.

**Separate Rates**

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 assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by *Notice of 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*''), and Section 351.107(d) of the Department's regulations.

In the *Preliminary Determination*, we found that BGY, Bosun, Hebei Jikai, and the Separate Rate Applicants demonstrated their eligibility for separate–rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by the AT&M entity, Bosun, Hebei Jikai, and the Separate Rate Applicants demonstrate both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate rate status.

*The AT&M Single Entity*

With respect to the AT&M single entity, in the *Preliminary Determination*, based on the evidence on the record, we preliminarily found that BGY had both *de jure* and *de facto* control over its export activities, but noted that the Department would further examine this issue for the final determination. In light of the Department's decision in the *Preliminary Determination* that BGY was affiliated with AT&M and HXF, and that BGY, AT&M, and HXF should be treated as a single entity, the Department further examined AT&M, BGY, and HXF's claim to a separate rate.

The Department finds, based on information submitted on the record of this proceeding after the *Preliminary Determination*, that the AT&M single entity has demonstrated both a *de jure* and *de facto* absence of government control and should be granted a separate rate. As discussed further in the *Issues and Decision Memorandum* at Comment 16, the evidence provided by HXF and AT&M after the *Preliminary Determination* supports a finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies.[4] The evidence on the record with respect to HXF also supports a finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) It sets its own export prices independent of the government and without the approval of a government authority; (2) it retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) it has the authority to negotiate and sign contracts and other agreements; and (4) it has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22586–87. Therefore, because the Department found no evidence that AT&M made shipments of subject merchandise to the United States during the POI, and because AT&M is a single entity including BGY and HXF, and BGY and HXF have demonstrated a *de facto* independence from government control, we find that the AT&M single entity has demonstrated a *de facto* independence from government control with respect to its export activities. *See Issues and Decision Memorandum*, at Comment 16.

*Other Separate Rate Applicants*

Additionally, in the *Preliminary Determination*, the Department considered for a separate rate only the seventeen applicants whose applications were considered complete by the sixty-day deadline established by the application, and these companies, the Separate Rate Applicants, were granted a separate rate. For the final determination, we continue to find that the evidence placed on the record of this investigation for the Separate Rate Applicants that we granted a separate rate to in the *Preliminary Determination* demonstrates a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate rate status. Therefore, for the final determination we are continuing to grant these seventeen applicants a separate rate.

On February 1, 2006, the Department received a separate rate application from Qingdao Shinhan, and determined that Qingdao Shinhan's separate rate application was timely filed. *See* Memorandum to the File from Catherine Bertrand dated February 24, 2006. On March 22, 2006, the Department preliminarily determined that the information contained in Qingdao Shinhan's separate rate application demonstrated that it qualified for a separate rate in this investigation. *See* Memorandum to the File from Catherine Bertrand: Separate Rates Application of Qingdao Shinhan Diamond Industrial Co., Ltd. dated March 22, 2006. For the final determination, we continue to find that the evidence placed on the record of this investigation by Qingdao Shinhan demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under investigation, and, thus is eligible for separate rate status. For a further discussion of this issue *See Issues and Decision Memo* at Comment 15.

In addition, the Department received case briefs from QSY, Global, Robtol, Electrolux, and Huachang, arguing that the Department should grant these companies a separate rate. These companies had been denied a separate rate in the *Preliminary Determination* because the Department determined these applications were not filed in a complete manner by the deadline. *See* Memorandum to James C. Doyle from Carrie Blozy: Antidumping Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China: Deficient Separate Rate Applications, dated October 12, 2005.

With respect to Global, Robtol, and Huachang the Department finds that, after analyzing their separate rates applications, these companies have demonstrated both a *de jure* and *de facto* absence of government control and should be granted a separate rate. The evidence provided by these companies in their respective separate rates applications supports a finding of *de*

[4] *See Sparklers* 56 FR 20588 and *Silicon Carbide* 59 FR 22585.

*jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. *See, e.g., Sparklers*, 56 FR 20588 and *Silicon Carbide*, 59 FR 22586–87. The evidence on the record with respect to these companies also supports a finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following for each company: (1) It sets its own export prices independent of the government and without the approval of a government authority; (2) it retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) it has the authority to negotiate and sign contracts and other agreements; and (4) it has autonomy from the government regarding the selection of management. *See Sparklers*, 56 FR 20589; *Silicon Carbide*, 59 FR 22586–87. Therefore, the Department is granting Global, Robol, and Huachang a separate rate. *See Issues and Decision Memorandum*, at Comment 13 and 14 for a further discussion of this issue.

Further, the Department is continuing to deny a separate rate to QSY and Electrolux because the Department still finds that the separate rate applications of QSY and Electrolux are deficient. Therefore, the Department will not conduct a separate rates analysis for these two companies. *See Issues and Decision Memorandum* at Comment 12 and 14.

**The PRC–Wide Rate**

In the *Preliminary Determination*, the Department found that certain companies and the PRC–wide entity did not respond to our request for Q&V information and Saint Gobain, one of the largest exporters of the merchandise under investigation,[5] did not respond to the Department's questionnaire. In the *Preliminary Determination* we treated these PRC producers/exporters as part of the PRC–wide entity because they did not demonstrate that they operate free of government control. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination*. The PRC–wide entity, including Saint Gobain, has not provided the Department with the requested information. Therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC–wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). *See also ''Statement of Administrative Action''* accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) (''*SAA*''). We find that, because the PRC–wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate.

Because we begin with the presumption that all companies within a NME country are subject to government control and because only the companies listed under the ''Final Determination Margins'' section below have overcome that presumption, we are applying a single antidumping rate—the PRC–wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706 (May 3, 2000). The PRC–wide rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the ''Final Determination Margins'' section below (except as noted).

**Corroboration**

At the *Preliminary Determination*, in accordance with section 776(c) of the Act, we corroborated our adverse facts available (''AFA'') margin using information submitted by certain respondents. *See* Memorandum to the File: Corroboration of the PRC–Wide Facts Available Rate for the Preliminary Determination in the Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China, dated December 20, 2005 (''Corroboration Memo''). The *Statement of Administration Action* also clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value, *i.e.*, reliable and relevant. *See ''Statement of Administrative Action''* accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) (''*SAA*'') at 870.

To assess the probative value of the total AFA rate it has chosen for Saint Gobain and the PRC–wide entity, the Department compared the final margin calculations of certain respondents in this investigation with the rate of 164.09 percent from the petition. We find that the rate is within the range of the highest margins we have determined in this investigation. *See* Memorandum to the File: Corroboration of the PRC–Wide Facts Available Rate for the Final Determination in the Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China, dated May 15, 2006 (''Final Corroboration Memo''). Since the record of this investigation contains margins within the range of the petition margin, we determine that the rate from the petition continues to be relevant for use in this investigation. As discussed therein, we found that the margin of 164.09 percent has probative value. *See* Final Corroboration Memo. Accordingly, we find that the rate of 164.09 percent is corroborated within the meaning of section 776(c) of the Act.

**Combination Rates**

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*, 70 FR 35625, 35629. This change in practice is described in *Policy Bulletin 05.1*, available at http://www.trade.gov/ia/. The *Policy Bulletin 05.1* states:

> ''[w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise

[5] *See* Respondent Selection Memo.

both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.'' *See Policy Bulletin 05.1*, at page 6.

Therefore, for the final determination, we have assigned a combination rate to respondents that are eligible for a separate rate.

As discussed in the *Issues and Decision Memorandum* at Comment 18, the Department will continue to not issue a combination rate for exports made by Cliff and manufactured by BGY, as these sales were made by BGY. Further, the Department continues to find that BGY should be treated as a single entity with AT&M and HXF, and the AT&M single entity has demonstrated its eligibility for a separate rate in this case. Therefore, the Department will apply a single combination rate for the AT&M single entity as the producer and exporter. However, exports where Cliff acted as a facilitator for the AT&M single entity are eligible to claim AT&M's antidumping duty cash deposit rate. For a further discussion of this issue, *see Issues and Decision Memorandum*, at Comments 16–18.

**Final Determination Margins**

We determine that the following percentage weighted–average margins exist for the POI:

| Exporter | Producer | Weighted–Average Deposit Rate |
|---|---|---|
| Advanced Technology & Materials Co., Ltd. | Advanced Technology & Materials Co., Ltd. | [6]2.50% |
| Bosun Tools Group Co., Ltd. | Bosun Tools Group Co., Ltd. | 34.19% |
| Danyang Huachang Diamond Tools Manufacturing Co., Ltd. | Danyang Huachang Diamond Tools Manufacturing Co., Ltd. | 20.72% |
| Danyang NYCL Tools Manufacturing Co., Ltd. | Danyang NYCL Tools Manufacturing Co., Ltd. | 20.72% |
| Danyang Youhe Tool Manufacturer Co., Ltd. | Danyang Youhe Tool Manufacturer Co., Ltd. | 20.72% |
| Fujian Quanzhou Wanlong Stone Co., Ltd. | Fujian Quanzhou Wanlong Stone Co., Ltd. | 20.72% |
| Guilin Tebon Superhard Material Co., Ltd. | Guilin Tebon Superhard Material Co., Ltd. | 20.72% |
| Hebei Jikai Industrial Group Co., Ltd. | Hebei Jikai Industrial Group Co., Ltd. | 48.50% |
| Huzhou Gu's Import & Export Co., Ltd. | Danyang Aurui Hardware Products Co., Ltd. | 20.72% |
| Huzhou Gu's Import & Export Co., Ltd. | Danyang Huachang Diamond Tools Manufacturing Co., Ltd. | 20.72% |
| Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd. | Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd. | 20.72% |
| Jiangyin Likn Industry Co., Ltd. | Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd. | 20.72% |
| Jiangyin Likn Industry Co., Ltd. | Wuhan Wanbang Laser Diamond Tools Co. | 20.72% |
| Qingdao Shinhan Diamond Industrial Co., Ltd. | Qingdao Shinhan Diamond Industrial Co., Ltd. | 20.72% |
| Quanzhou Zhongzhi Diamond Tool Co., Ltd. | Quanzhou Zhongzhi Diamond Tool Co., Ltd. | 20.72% |
| Rizhao Hein Saw Co., Ltd. | Rizhao Hein Saw Co., Ltd. | 20.72% |
| Shanghai Deda Industry & Trading Co., Ltd. | Hua Da Superabrasive Tools Technology Co., Ltd. | 20.72% |
| Shanghai Robtol Tool Manufacturing Co., Ltd. | Shanghai Robtol Tool Manufacturing Co., Ltd. | 20.72% |
| Shijiazhuang Global New Century Tools Co., Ltd. | Shijiazhuang Global New Century Tools Co., Ltd. | 20.72% |
| Sichuan Huili Tools Co. | Chengdu Huifeng Diamond Tools Co., Ltd. | 20.72% |
| Sichuan Huili Tools Co. | Sichuan Huili Tools Co. | 20.72% |
| Weihai Xiangguang Mechanical Industrial Co., Ltd. | Weihai Xiangguang Mechanical Industrial Co., Ltd. | 20.72% |
| Wuhan Wanbang Laser Diamond Tools Co. | Wuhan Wanbang Laser Diamond Tools Co. | 20.72% |
| Xiamen ZL Diamond Tools Co., Ltd. | Xiamen ZL Diamond Tools Co., Ltd. | 20.72% |
| Zhejiang Tea Import & Export Co., Ltd. | Danyang Dida Diamond Tools Manufacturing Co., Ltd. | 20.72% |
| Zhejiang Tea Import & Export Co., Ltd. | Danyang Tsunda Diamond Tools Co., Ltd. | 20.72% |
| Zhejiang Tea Import & Export Co., Ltd. | Wuxi Lianhua Superhard Material Tools Co., Ltd. | 20.72% |
| Zhejiang Wanli Tools Group Co., Ltd. | Zhejiang Wanli Super–hard Materials Co., Ltd. | 20.72% |
| Zhenjiang Inter–China Import & Export Co., Ltd. | Danyang Weiwang Tools Manufacturing Co., Ltd. | 20.72% |
| PRC–Wide Rate | | 164.09% |

[6] Including Beijing Gang Yan Diamond Products Company as an exporter when merchandise was also produced by Beijing Gang Yan Diamond Products Company, and Yichang HXF Circular Saw Industrial Co., Ltd. as an exporter when merchandise was also produced by Yichang HXF Circular Saw Industrial Co., Ltd.

**Disclosure**

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Continuation of Suspension of Liquidation**

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption as follows: for the final separate rate companies, on or after the date of publication of the *Preliminary Determination* in the **Federal Register**, December 29, 2005; for Bosun, Hebei Jikai, and the PRC–wide entity, on or after the date which is 90 days prior to the date of publication of the *Preliminary Determination*, September 30, 2005, due to the final determination of critical circumstances. *See e.g., Preliminary Determination; Issues and Decision Memorandum* at Comment 10. CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. In addition, with respect to the AT&M single entity, in the *Preliminary Determination*, due to BGY's *de minimus* preliminary margin, the Department did not require any cash deposit or posting of a bond. However, based on this final determination that the AT&M single entity does not have a *de minimus* margin rate, the Department will instruct CBP to suspend liquidation of all entries of subject merchandise from the AT&M single entity[7] entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the *Final Determination* in the **Federal Register**. These instructions suspending liquidation will remain in effect until further notice.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is

[7] Including BGY and HXF.

materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

**Notification Regarding APO**

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 15, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

**List of Issues**

**General Issues**

*Comment 1:* Whether The Department Should Revise Its Selection of Surrogate Financial Ratios
*Comment 2:* Whether Process Materials and Energy Inputs Should Be Valued As Factors of Production
*Comment 3:* Preliminary Scope Determinations
*Comment 4:* Country of Origin Determination
*Comment 5:* Whether the Department Should Revise the Physical Characteristics and Model Match Criteria
*Comment 6:* Whether Employee Benefits Should Be Moved from Direct Labor To Manufacturing Overhead
*Comment 7:* Treatment of Negative Margins
*Comment 8:* Application of Sigma Cap
*Comment 9:* Treatment of Packing Costs and Byproducts
*Comment 10:* Whether the Department Should Reevaluate its Preliminary Partial Determination of Critical Circumstances
*Comment 11:* Surrogate Value Issues
A. Cores
B. Oxygen
C. Graphite and Steel Molds
D. Copper Powder
E. Diamonds
F. Steel Sheet 5

**Separate Rate Applicant–Specific Issues**

*Comment 12:* Separate Rate Status of Electrolux
*Comment 13:* Separate Rate Status of Huachang
*Comment 14:* Separate Rate Status of QSY, Robtol, and Global
*Comment 15:* Separate Rate Status of Qingdao Shinhan

**Company–Specific Issues**

BGY Issues:

*Comment 16:* Whether the Department should Deny a Separate Rate to BGY, Yichang HXF Circular Saw Industrial Co., Ltd. (''HXF''), and Advanced Technology & Materials Co., Ltd. (''AT&M'')
*Comment 17:* Whether BGY was the Seller of Sawblades to the United States
*Comment 18:* Whether the Department Should Revise the Combination Rates for BGY
*Comment 19:* Whether the Department should Apply Total Adverse Facts Available to BGY
*Comment 20:* Whether the Department should Calculate CEP Profit Based on BGY's U.S. and Third Country Sales
*Comment 21:* Whether the Department Should Adjust BGY's Reported Electricity and Labor FOPs.
*Comment 22:* Whether to Modify the Steel Surrogate Values for BGY
*Comment 23:* Whether to Continue to Apply an Inflator to Market Economy (''ME'') Purchases of Diamond Powder Made Prior to the POI
*Comment 24:* Whether the Department Should Revise the Surrogate Value for Gasoline
*Comment 25:* Whether to Deduct BGY's Reported Interest Revenue from Gross Unit Price
*Comment 26:* Whether BGY's Reported Billing Adjustments Should Be Considered Direct Selling Expenses
*Comment 27:* Whether the Department Erred in Certain Statements in the BGY and GYDP Verification Reports

Bosun Issues:

*Comment 28:* Whether Returns Should Be Treated As A Selling Expense
*Comment 29:* Whether Bosun's U.S. Indirect Selling Expenses Should Be Revised
*Comment 30:* Whether Movement Expenses and Repacking Expenses Should Be Included In The Calculation of CEP Profit
*Comment 31:* Surrogate Value for Tape
*Comment 32:* Surrogate Value for Acrylic Lacquer and Pallet Lacquer
*Comment 33:* Whether The Department Should Correct Certain Ministerial Errors
*Comment 34:* Whether The Surrogate Value For International Freight Should Be Revised
*Comment 35:* Whether The Department Should Make Additional Adjustments to Bosun's U.S. Sales Data and Supplier Databases

Hebei Jikai Issues:

*Comment 36:* Whether to apply AFA to Hebei Jikai's Process Materials
*Comment 37:* Whether International Freight to Two U.S. Customers Should Be Deducted
*Comment 38:* Whether Labor and Electricity Should Be Adjusted For Certain Product Codes
*Comment 39:* Surrogate Value for Nickel
*Comment 40:* Surrogate Value for Copper Plate
*Comment 41:* Surrogate Value Packaging Film
*Comment 42:* Valuation of Steel

[FR Doc. E6–7763 Filed 5–19–06; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–855]**

### Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 22, 2006.

**SUMMARY:** On December 29, 2005, the Department of Commerce (the Department) published its preliminary determination of sales at less than fair value (LTFV) in the antidumping duty investigation of diamond sawblades and parts thereof from the Republic of Korea (Korea). The period of investigation (POI) is April 1, 2004, through March 31, 2005.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted–average dumping margins for the investigated companies are listed below

in thesection entitled ''Final Determination Margins.'' Finally, we determine that critical circumstances do not exist with regard to certain exports of subject merchandise from Korea by Ehwa Diamond Industrial Co., Ltd. (Ehwa) and Hyosung Diamond Industrial Co. (Hyosung). However, we find that critical circumstances do exist with respect to Shinhan Diamond Industrial Co., Ltd. (Shinhan) and the companies covered by the ''All Others'' rate.

**FOR FURTHER INFORMATION CONTACT:** Maisha Cryor or Thomas Martin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5831 or (202) 482–3936, respectively.

**SUPPLEMENTARY INFORMATION:** We determine that diamond sawblades from Korea are being, or are likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice. In addition, we determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of the subject merchandise produced by Ehwa and Hyosung. However, we find that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of the subject merchandise produced by Shinhan and companies covered by the ''All Others'' rate.

## Case History

The preliminary determination in this investigation was published on December 29, 2005. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Critical Circumstances Determination: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 70 FR 77135 (December 29, 2005) (*Preliminary Determination*).

Since the preliminary determination, the following events have occurred.

In February 2006 and March 2006, we verified the questionnaire responses of the three participating respondents in this case, Ehwa, Shinhan, and Hyosung.

On April 17, 2006, we received case briefs from the petitioner,[1] Ehwa, Shinhan, and Hyosung. We also received rebuttal briefs on April 24, 2006, from the petitioner, Ehwa, Shinhan, and Hyosung. The Department held a public hearing on May 1, 2006, at the request of the petitioner, Ehwa, Shinhan, and Hyosung.

## Period of Investigation

The period of investigation is April 1, 2004, through March 31, 2005.

## Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the ''Issues and Decision Memorandum'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated May 15, 2006, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

## Scope of Investigation

The products covered by this investigation are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of this investigation are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non–steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of this investigation. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of this investigation. Circular steel plates that have a cutting edge of non–diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of this investigation. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the petition. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of this investigation. Merchandise subject to this investigation is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. The tariff classification is provided for convenience and U.S. Customs and Border Protection purposes; however, the written description of the scope of this investigation is dispositive.

## Scope Rulings

During the course of this investigation, the Department issued several scope rulings, all of which are affirmed through this final determination. Specifically, in the *Preliminary Determination*, the Department ruled that concave and convex cores, and finished diamond sawblades produced from such cores, are within the scope of this investigation. *See* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to Thomas F. Futtner, Acting Office Director, ''Consideration of Scope Exclusion and Clarification Requests,'' dated December 20, 2005, at page 8. The Department also ruled that metal–bonded, diamond 1A1R grinding wheels are within the scope of this investigation. *Id.* at 11. On April 7, 2006, the Department found granite contour diamond sawblades within the scope of the investigation. *See* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to Thomas F. Futtner, Acting Office Director, ''Consideration of Scope Exclusion Request,'' dated April 7, 2006. In this decision, the Department confirmed that the Rockwell C hardness threshold contained in the scope of the investigation applies only to cores, and not to finished diamond sawblades. *Id.* at 7. Lastly, the term ''sawblade'' is

[1] The petitioner in this investigation is the Diamond Sawblade Manufacturers' Coalition.

defined as those products that meet the 1A1R specification, where the segment thickness is larger than the thickness of the core. *See* the petitioner's May 3, 2005, submission at Exhibit I–10 (''The segment or rim is slightly wider than the steel blade to allow the attacking edge to penetrate the material without the steel blade rubbing against it''); the petitioner's May 10, 2005, submission, at page 14 (''the segment or rim is slightly wider than the steel blade to allow the attacking edge to penetrate the material without the steel blade rubbing against it''); Transcript to April 25, 2006, Public Hearing in the companion investigation of diamond sawblades from the People's Republic of China (statement by the petitioner that the ''international codes for ... sawblades are 1A1R, 1A1RS, and 1A1RSS, where the R means recessed. And that refers to the core, {where} the core is thinner than the segments''); and ITC Investigation No. 731–TA–1093, August 2005 (''The segment, or rim, is slightly wider than the steel blade to permit the leading edge to penetrate the material without the steel blade rubbing against it and to discourage blade binding'').

**Changes Since the Preliminary Determination**

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, see the ''Margin Calculations'' section of the Issues and Decision Memorandum.

Critical Circumstances

In our preliminary determination, we found that critical circumstances did not exist for any mandatory respondent or any company subject to the ''All Others'' rate. *See Preliminary Determination*, 70 FR at 77142–77144. We received comments on our critical circumstances determination from the petitioner, Ehwa, and Shinhan. Based upon those comments, we have revised our analysis to include the margins listed in the ''Final Determination Margins'' section below, and we based our analysis of whether imports were massive according to the value of shipments, rather than quantity. *See* Memorandum from Mark J. Manning, Acting Program Manager, to Thomas F. Futtner, Acting Office Director, ''Final Determination of Critical Circumstances,'' dated May 15, 2006. Due to the changes made in our analysis, we determine that critical circumstances do not exist for imports of subject merchandise from Ehwa and Hyosung because, as required section 735(a)(3)(A)(ii) of the Act, there is no evidence that importers knew, or should have known, that the exporter was selling subject merchandise at LTFV. In addition, we also note that the requirements of section 735(a)(3)(B) of Act are not met for Ehwa and Hyosung because their imports were not massive. However, we find that critical circumstances do exist for imports of subject merchandise from Shinhan and the ''All Others'' companies because, pursuant to section 735(a)(3)(A)(ii) of the Act, there is evidence that importers knew, or should have known, that the exporter was selling subject merchandise at LTFV. In addition, we also note that Shinhan and the ''All Others'' companies satisfy section 735(a)(3)(B) of Act because their imports were massive. *Id.*

**Verification**

As provided in section 782(i) of the Act, we verified the information submitted by Ehwa, Shinhan and Hyosung for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after December 29, 2005, the date of publication of the preliminary determination in the **Federal Register**. However, since we have determined that critical circumstances exist with respect to subject merchandise produced by Shinhan and the companies covered by the ''All Others'' rate, we will instructed CBP to suspend liquidation of all unliquidated entries of merchandise produced and/or exported by these companies that entered on or after September 30, 2005, which is 90 days before the date of publication of the *Preliminary Determination*. *See* section 735(c)(4)(B). We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted–average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

**Final Determination Margins**

We determine that the following weighted–average dumping margins exist for the period April 1, 2004, through March 31, 2005:

| Exporter/Manufacturer | Weighted–Average Margin Percentage | Critical Circumstances |
|---|---|---|
| Ehwa | 12.76% | No |
| Shinhan | 26.55% | Yes |
| Hyosung | 6.43% | No |
| All Others | 16.39% | Yes |

In accordance with section 735(c)(5)(A) of the Act, we have based the ''All Others'' rate on the weighted–average of the dumping margins calculated for the exporters/manufacturers investigated in this proceeding. The ''All Others'' rate is calculated exclusive of all *de minimis* margins and margins based entirely on adverse facts available.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine within 45 days whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of

their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: May 15, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

## Appendix

### List of Issues in the Issues and Decision Memorandum

*Comment 1*: Whether the Department Should Revise the Physical Characteristics and Model Match Criteria.
*Comment 2:* Whether the Department Should Reaffirm Its Preliminary Scope Conclusions In the Final Determination And Include These Conclusions in Instructions to Customs.
*Comment 3:* Whether the Department Should Treat the Location of Segment Manufacture As the Country of Origin for DSB.
*Comment 4:* Whether U.S. Repacking Expenses, U.S. Warehousing Expenses, and U.S. Movement Expenses Should Be Treated as Selling Expenses for Purposes of Calculating CEP Profit.
*Comment 5:* Whether Further Manufacturing Costs Should be Deducted from the Calculation of Net U.S. Price When Such Sales are Not Reported.
*Comment 6:* Whether Further Manufacturing Costs and Revenues Should be Included in the Calculation of CEP Profit When Such Sales are Not Reported.
*Comment 7:* Whether the Department Should Use the Adjustments to Respondents' Costs to Account for NME Inputs in the Calculation of CEP Profit.
*Comment 8:* Whether the Department Should Correct VCOM and TCOM for any Changes it Makes to the Reported Costs.
*Comment 9:* Whether the Department Should Reconsider its Preliminary Critical Circumstances Determination.
*Comment 10:* Whether the Department Should Adjust Ehwa's and Shinhan's Purchases from Affiliated Suppliers.
*Comment 11:* Whether the Department Should Provide Offsets to Dumping.
*Comment 12:* Whether the Department Should Adjust the Reported Costs for Purchases from Unaffiliated NME Suppliers.
*Comment 13:* Whether the Department's Preliminary Decision to Collapse Ehwa and Shinhan was Contrary to Law and the Department's Longstanding and Consistent Past Practice.
*Comment 14:* Whether the Department Should Treat Information Regarding a Particular Relationship Between Ehwa and Shinhan as Public Information.
*Comment 15:* Whether the Department Should Collapse Ehwa with its Chinese Affiliates.
*Comment 16:* Whether Ehwa's Other Discounts and Certain Billing Adjustments Should be Treated As Selling Expenses for Purposes of Calculating CEP Profit.
*Comment 17:* Whether Ehwa Placed Conflicting Values Related to its Indirect Selling Expenses on the Record.
*Comment 18:* Whether the Department Should Correct Formulas Used in Ehwa's Calculation of Indirect Selling Expenses.
*Comment 19:* Whether the Department Should Disallow Ehwa's Allocation of Indirect Selling Expenses Between the Industrial and the Stone & Construction Divisions because Ehwa's Sales of 1A1R Merchandise are from the Industrial Division.
*Comment 20:* Whether the Department Should Calculate the Indirect Selling Expense Ratio for Each of Ehwa's U.S. Affiliates.
*Comment 21:* Whether Ehwa Properly Excluded its Sales of Refurbished Products from its HM Sales Database.
*Comment 22:* Whether the Department Should Adjust Costs Related to the Allocation of Costs Between Indirect Selling and G&A Expenses.
*Comment 23:* Whether Ehwa's Use of Surrogate Costs Was Appropriate.
*Comment 24:* Whether the Department Should Adjust G&A Expenses to Account for the Over–Accrual of the Provision for Retirement Expenses.
*Comment 25:* Whether Shinhan Failed to Report COM for SHINUS04 and SHINHM04.
*Comment 26:* Whether the Department Should Base Shinhan's Starting Price on INVNPRU Rather than GRSUPRU.
*Comment 27:* Whether the Department Should Apply AFA to Shinhan's Inland Freight Expenses.
*Comment 28:* Whether the Department Should Allocate Shinhan's Freight Revenue on the Same Basis as Inland Freight.
*Comment 29:* Whether the Department Double–Counted Shinhan's Freight Revenue.
*Comment 30:* Whether the Department Should Recalculate Shinhan's HM and International Movement Expenses.
*Comment 31:* Whether the Department Should Exclude Shinhan's Sales of Refurbished DSB from Shinhan's HM Sales Database or Weight–Average the Sales and Costs Databases for Refurbished and Non–Refurbished DSB.
*Comment 32:* Whether the Department Should Collapse Shinhan With Its Korean Affiliates.
*Comment 33:* Whether the Department Should Collapse Shinhan with Its Chinese Affiliate.
*Comment 34:* Whether the Department Should Make Symmetric Adjustments to Shinhan's Reported Sales and Cost Data.
*Comment 35:* Whether the Department Should Ensure that Segments are not Compared with DSB in the Dumping Margin Calculations.
*Comment 36:* Whether the Department Should Allow Shinhan's Residual Cost Variance Adjustment.
*Comment 37:* Whether the Department Should Use SG&A Methodology Submitted During the Cost Verification.
*Comment 38:* Whether the Department Should Adjust for Items in Shinhan's G&A Expense Rate Calculation.
*Comment 39:* Whether the Department Should Correct Certain Minor Errors in Its Proposed Cost Adjustments.
*Comment 40:* Whether the Department Should Use the Costs Based on Shinhan's Normal Accounting System.
*Comment 41:* Whether the Department Should Adjust Shinhan's Costs for Certain CONNUMs.
*Comment 42:* Whether the Department Should Reduce Shinhan's Materials Rebate Adjustment.
*Comment 43:* Whether the Department Should Adjust the Production Quantities of CONNUMS not Produced in the POI.
*Comment 44:* Whether the Department Should Base Shinhan's Financial Expense Rate on Facts Available.
*Comment 45:* Whether The Department Should Revise Certain Freight Expenses in Hyosung's U.S. Sales Database.
*Comment 46:* Whether the Department Should Apply AFA to Hyosung's Reported HM Inland Freight.
*Comment 47:* Whether the Department Should Revise the Indirect Selling Expense Ratio for Domestic and Export Sales.
*Comment 48:* Whether Hyosung Fully and Accurately Reported all HM and U.S. Sales of Subject Merchandise.
*Comment 49:* Whether the Department Should Allow a Duty Drawback Adjustment for Hyosung.
*Comment 50:* Whether the Department Should Recalculate Credit Expense for the EP Sales with Revised Shipment Dates in the Final Determination.
*Comment 51:* Whether the Department Should Use Hyosung's Originally Reported Costs of Production.

*Comment 52:* Whether the Department Should Adjust Hyosung's Reported Costs for Unreconciled Differences.
*Comment 53:* Whether the Department Should Exclude Hyosung's Prior Period Income Tax Payments From G&A Expenses.
*Comment 54:* Whether the Department Should Allow the Short–Term Income Generated From Investment Securities as an Offset to Hyosung's Financial Expenses.
*Comment 55:* Whether the Department Should Correct the Surrogate CONNUM for two Products on the COP Database.
*Comment 56:* Whether the Department Should Ensure that the Products Purchased from Unaffiliated Suppliers Should be Assigned the Reported Costs of Production for Those Products.
*Comment 57:* Whether the Department Should Reject the Petitioner's Case Brief for Failure To Comply With the Department's Regulations.

[FR Doc. E6–7771 Filed 5–19–06; 8:45 am]
**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–533–809**

### Certain Forged Stainless Steel Flanges From India; Notice of Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On March 7, 2006, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping order covering certain forged stainless steel flanges from India. *See Certain Forged Stainless Steel Flanges From India: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 11379 (March 7, 2006) (*Preliminary Results*). The merchandise covered by this order is certain forged stainless steel flanges as described in the ''Scope of the Order'' section of this notice. The period of review (POR) is February 1, 2004, through January 31, 2005. We invited parties to comment on our *Preliminary Results*. We received no comments. Therefore, the final results are unchanged from those presented in the preliminary results. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.''

**EFFECTIVE DATE:** May 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mark Flessner (Paramount Forge) (Paramount), David Cordell (Echjay Forgings Ltd.) (Echjay), or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6312, (202) 482–0408, or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 7, 2006, the Department published the preliminary results of the 2004–2005 antidumping duty administrative review of certain forged stainless steel flanges from India. *See Preliminary Results*. The review covers Paramount Forge (Paramount) and Echjay Forgings Ltd. (Echjay), and the period February 1, 2004, through January 31, 2005. In the *Preliminary Results*, we invited parties to comment. We received no comments.

#### Scope of the Order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

#### Final Results of the Review

We determine the following percentage weighted–average margins exist for the period February 1, 2004, through January 31, 2005:

| Manufacturer / Exporter | Weighted Average Margin (percentage) |
|---|---|
| Echjay Forgings, Ltd. | 0.38 |
| Paramount Forge | 210.00 |

#### Liquidation

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), where appropriate, we have calculated exporter/importer–specific assessment rates. To calculate these rates, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. *Id*. Pursuant to 19 CFR 351.106(c)(2), we shall instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.5 percent). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. We will direct CBP to assess the appropriate assessment rate against the entered Customs values for the subject merchandise on each of the importer's entries under the relevant order during the POR.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act): (1) For the companies named above, the cash deposit rates will be the rates for these firms shown above, except that, for exporters with *de minimis* margins (*i.e.*, less than 0.5%), no deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be

the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 162.14 percent. This rate is the ''All Others'' rate from the amended final determination in the LTFV investigation. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges From India*, 59 FR 5994 (February 9, 1994). These deposit requirements shall remain in effect until the publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(b)(5).

Dated: May 16, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–7770 Filed 5–19–06; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Development and Implementation of Cross-border Privacy Rules in the Asia Pacific Cooperation Group

**Authority:** 15 U.S.C. 1501 *et seq.*

**ACTION:** Announcement of meeting and comment period.

**SUMMARY:** The Office of Technology and Electronic Commerce (OTEC) invites stakeholders to submit comments on the development and implementation of ''cross-border privacy rules'' in the Asia-Pacific Economic Cooperation Group (APEC). OTEC will also hold a public meeting at the U.S. Department of Commerce in Washington, DC on June 13, 2006. Written and electronic comments will be accepted until June 14, 2006. Topics to be discussed at the public meeting will include: the efficacy or need of cross-border privacy rules, obstacles to their creation, among other related issues.

**DATES:** Written and electronic comments are due by June 14, 2006. If you would like to attend the meeting please respond by June 9, 2006. The public meeting will take place on June 13, 2006. The meeting time is TBD.

**ADDRESSES:** All comments concerning this notice and requests to attend the meeting should be sent to the attention of Eric M. Holloway at one of the following addresses. See supplementary information for additional instructions on submitting comments.

Eric Holloway: 1401 Constitution Ave. NW., Room 2806, Washington, DC 20230 *eric.holloway@mail.doc.gov.*

Meeting Location: 1401 Constitution Ave. NW., Washington, DC 20230, Room TBD.

**FOR FURTHER INFORMATION CONTACT:** Eric Holloway, Policy Analyst, Office of Technology and Electronic Commerce, Office of Manufacturing and Services, International Trade Administration by telephone at (202) 482–4936 (this is not a toll-free number) or by e-mail at *eric.holloway@mail.doc.gov.*

**SUPPLEMENTARY INFORMATION:** The principles-based ''APEC Privacy Framework'' (Framework) is an important tool in encouraging the development of appropriate information privacy protections and ensuring the free flow of information between the member economies of APEC. There are 21 APEC member economies: Australia, Brunei Darussalam, Canada, Chile, the People's Republic of China, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, the United States, and Vietnam.

The Framework can be accessed on the APEC Web site at *http://203.127.220.112/content/apec/apec_groups/som_special_task_groups/electronic_commerce.downloadlinks.0004.LinkURL.Download.ver5.1.9.* This Framework, which aims at promoting electronic commerce throughout the Asia-Pacific region, is consistent with the core values of the Organization for Economic Cooperation and Development's 1980 Guidelines on the Protection of Privacy and Trans-Border Flows of Personal Data, and reaffirms the value of privacy to individuals and to the information society. The Framework is also intended to provide clear guidance and direction to businesses in APEC economies on common privacy issues and the impact of privacy issues upon the way legitimate businesses are conducted.

An important element of the Framework is the development and implementation of ''cross-border privacy rules'' (CBPRs) in the APEC region. The purpose of CBPRs would be to enable global organizations that collect, access, use, or process data in APEC member economies to develop and implement uniform approaches within their organizations for global access to and use of personal information. A uniform approach to CBPRs in APEC would allow for one approval system for CBPRs instead of the potential for approval systems for each of the 21 member economies.

The Office of Technology and Electronic Commerce requests comments on the development and implementation of CBPRs in the APEC region. The Office of Technology and Electronic Commerce encourages comments on all aspects of CBPRs. General areas of discussion could include: (1) Impediments to the cross-border flow of information, (2) issues related to personal information protection, (3) the verification process for CBPRs' compliance with the APEC Privacy Principles, (4) mechanisms for the approval of CBPRs, (5) mechanisms to demonstrate compliance with CBPRs, (6) mechanisms to enforce compliance of CBPRs, (7) mechanisms to ensure support of the concept of CBPRs by APEC member economies, and (8) mechanisms to foster cooperation among various regulatory bodies to resolve cross-border disputes related to CBPRs.

**Request for Public Comments**

Interested parties may submit written comments from the date of publication of this notice through June 14, 2006. Comments can be written or sent electronically. All written comments must be legible and postmarked by June 14, 2006. Written comments should be sent to Eric Holloway, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 2806, Washington, DC 20230. Electronic comments should be sent to *eric.holloway@mail.doc.gov.* All written and electronic comments should include your name, title, and company or organization affiliation.

**Public Meeting**

A public meeting will take place at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230 on June 13, 2006. If you would like to attend this meeting please respond electronically to Eric Holloway at *eric.holloway@mail.doc.gov* by June 9, 2006. Please include your name, title, company or organization affiliation, telephone number, and electronic mail address when responding. If you are not a U.S. citizen, please note this fact when responding to attend the public meeting. Non-U.S. citizens are required to supply the following additional information: full name, nationality, date of birth, and passport identification number.

Dated: May 17, 2006.

**Eric M. Holloway,**

*Policy Analyst, Office of Technology and Electronic Commerce, U.S. Department of Commerce.*

[FR Doc. E6–7779 Filed 5–19–06; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 051706C]**

## Gulf of Mexico 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 Gulf of Mexico Fishery Management Council will convene public meetings.

**DATES:** The meetings will be held on June 5–8, 2006.

**ADDRESSES:** These meetings will be held at the Quorum Hotel, 700 North Westshore Boulevard, Tampa, FL 33607

*Council address*: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

**SUPPLEMENTARY INFORMATION:**

**Council**

*Wednesday, June 7, 2006*

*8:30 a.m.* - Convene.

*8:45 a.m. - 9:15 a.m.* - Hear a report on the Implications of the National Research Council (NRC) Review of Recreational Data Collection.

*9:15 a.m. - 9:30 a.m.* - Receive public testimony on exempted fishing permits (if any).

*9:30 a.m. - 10:30 a.m.* - Open public comment period regarding any fishery issue or concern.

*10:30 a.m. - 11:30 a.m.* - Hear a report on the Coastal Ocean Observing System.

*1 p.m. - 1:15 p.m.* - Receive the Administrative Policy Committee Report.

*1:15 p.m. - 2:30 p.m.* - Receive the Sustainable Fisheries/Ecosystem Committee Report.

*2:30 p.m. - 4 p.m.* - Receive the Joint Reef Fish/Shrimp Committees Report.

*4 p.m. - 4:45 p.m.* - Receive the Southeast Data Assessment and Review Panel (SEDAR) Selection Committee Report and select persons to serve on the SEDAR 12 panels (CLOSED SESSION).

*4:45 p.m. - 5:30 p.m.* - Hold the AP Selection Committee/Council meeting in CLOSED SESSION to review fishery violations.

*Thursday, June 8, 2006*

*8:30 a.m. - 9:30 a.m.* - Continue with the Joint Reef Fish/Shrimp Committees Report.

*9:30 a.m. - 9:45 a.m.* - Publicly report the Council action on the SEDAR Committee and AP Selection Committee/Council sessions.

*9:45 a.m. - 10 a.m.* - Receive the Joint Reef Fish/Mackerel/Red Drum Committees Report.

*10 a.m. - 10:30 a.m.* - Receive the Shrimp Committee Report.

*10:30 a.m. - 11:30 a.m.* - Receive the Reef Fish Committee Report.

*11:30 a.m. - 12 noon* - Other Business (Includes miscellaneous reports filed under Tabs O, P, Q, and R of briefing book).

**Committee**

*Monday, June 5, 2006*

*1 p.m. - 2 p.m.* - The Administrative Policy Committee will meet to review the Statement of Organization Practices and Procedures' (SOPPs) provisions on the Standing Scientific and Statistical Committee (SSC) operations; review the proposed NMFS Operating Agreement for Regulatory Streamlining; and hear a presentation on the draft Council communications plan.

2 p.m. - 5:30 p.m. The Sustainable Fisheries/Ecosystem Committee will review and comment on Congressional bills on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

*Tuesday, June 6, 2006*

*8:30 a.m. - 12 noon* - The Joint Reef Fish/Shrimp Management Committees will receive a report on the decline in effort for selected recreational fisheries; and receive a report on the Ad Hoc Shrimp Effort Work Group. The Committees will also review a Partial Draft Joint Reef Fish 27/Shrimp 14 Amendment. This Amendment considers changes to regulations for the directed red snapper fishery, alternatives to reduce bycatch in the directed red snapper fishery and shrimp fishery, and alternatives to limit effort in the shrimp fishery.

*1:30 p.m. - 2:15 p.m.* - The Shrimp Management Committee will receive a report on the near-shore areas where juvenile red snapper congregate. The Committee will also review the Draft Options Paper for Shrimp Amendment 15 that considers limits on trawling gear, restrictions on the transfer of vessel permits, bycatch quotas, and possible time/area closures.

*2:15 p.m. - 3:30 p.m.* - The Joint Reef Fish/Mackerel/Red Drum Committees will receive a presentation on the siting of aquaculture facilities and an update on actions for drafting the Generic Amendment for Regulating Offshore Aquaculture. The Committee will also hear a report on Florida's Best Management Practices for Net Pens.

*3:30 p.m. - 5 p.m.* - The Reef Fish Management Committee will receive a report of the Ad Hoc Grouper Individual Fishing Quota (IFQ) Advisory Panel (AP) and a report on the status of the Grouper Allocation Amendment. The Committee will also review a report on the implications of the SEDAR 9 stock assessment to the stocks of greater amberjack, vermilion snapper, and gray triggerfish. The Committee will also approve the Red Snapper IFQ outreach workshops for the IFQ program.

The committee reports will be presented to the Council for consideration on Wednesday and Thursday, June 7–8.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Act, those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas 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 action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: May 17, 2006.

**Tracey L. Thompson,**

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

[FR Doc. E6–7768 Filed 5–19–06; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 051706D]**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Committee Meeting in June, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on Tuesday, June 6, 2006, at 9:30 a.m. and Wednesday, June 7, 2006, at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 337–8677.

*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; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Committee will review and recommend for Council consideration essential fish habitat (EFH) designation alternatives for inclusion in Phase 1 of the EFH Omnibus Amendment 2 for all Council-managed species (with the exception of Atlantic Salmon). The committee will also review and recommend for Council consideration a prey species identification section for inclusion in Phase 1 of the EFH omnibus Amendment 2 for all Council-managed species (with the exception of Atlantic Salmon). In addition, the committee will discuss and consider topics covered at the May 8, 2006 Habitat Advisory panel meeting. Other topics may be covered at the committee's discretion.

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 Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 17, 2006.

**Tracey L. Thompson,**

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

[FR Doc. E6–7769 Filed 5–19–06; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 051706B]**

### North Pacific 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 North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings/hearing in Kodiak, AK.

**DATES:** The meetings will be held on June 5, 2006 through June 13, 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for specific locations of meetings/hearing.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Council staff, telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** The Council will begin its plenary session at 8 a.m. on Wednesday, June 7, continuing through June 13, 2006. The Council will hold a Groundfish Rationalization Public Hearing on June 6, 2006, from 9 a.m. to 5 p.m. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, June 5 and continue through Saturday June 10, 2006. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, June 5 and continue through Wednesday, June 7, 2006. The Enforcement Committee will meet Monday, June 5, from 1 p.m. to 5 p.m. in the Harbor Room. All meetings are open to the public except executive sessions.

The meetings/hearing will be held at the following locations:

*Council meeting address*: Westmark Kodiak Inn, 236 Rezanof Drive, Harbor Room, Kodiak, AK.

*AP meeting address*: Elks Club, 102 Marine Way, Kodiak, AK.

*SSC meeting address*: Fishermen's Hall, 503 Marine Way, Kodiak, AK.

*Public hearing address*: Kodiak Island Borough School District, 722 Mill Bay Road, Commons A&B, Kodiak, AK.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports
   a. Executive Director's Report
   b. NMFS Management Report (including report on total allowable catch (TAC) setting EIGH alternatives and potential comment)
   c. NMFS Enforcement Report
   d. U.S. Coast Guard Report
   e. NMFS Enforcement Report
   f. Alaska Department of Fish & Game Report
   g. U.S. Fish & Wildlife Service Report
   h. Protected Species Report (seabird report, Steller Sea Lion (SSL) compendium, SSL recovery plan, Right whale Critical Habitat, Fishery Management Plan Biological Opinion.
2. Improved Retention/Improved Utilization (IR/IU): Final action on Amendment 80; Review proposed data collection programs, and take action as necessary. Initial review of Maximum Retainable Amount (MRA) adjustments.
3. Community Development Communities: Status report on legislation and implication for Amendment 71.
4. Trawl Catcher Vessel (CV) eligibility: Progress report on analysis.
5. Halibut Charter: Review and refine moratorium alternatives, Receive stakeholder, committee report and determine direction: NMFS report on enforcement of Guideline Harvest Level (GHL) preferred alternative (5–fish annual limit).
6. Observer Program: Final action on Observer Program analysis; Review discussion paper on video monitoring.
7. Halibut/Sablefish Individual Fishing Quota (IFQ) Program: Final action on IFQ Omnibus 5 amendments.
8. Groundfish Management: Review Experimental Fishery Permit to test halibut excluder for Gulf of Alaska cod trawl fishery; Receive progress report on trawl excluder research.
9. Essential Fish Habitat (EFH): Review discussion paper on Bering Sea habitat conservation alternatives, and take action as necessary; Receive discussion paper on Bering Sea crab habitat and fishery interactions, and take action as necessary.
10. Crab Management: Preliminary review of Crab Overfishing definition (SSC only): Receive report from Crab Plan Team; Receive State/Federal Action Plan.
11. Ecosystem Based Management: Receive Committee report and take action as necessary.
12. Staff Tasking: Review Committees and tasking and take action as necessary.
13. Other BusinessThe SSC agenda will include the following issues:
1. Protected Species Report
2. IR/IU MRA data
3. AI CV Eligibility
4. Observer Program
5. Groundfish Management
6. EFH
7. Crab Management
8. Ecosystem Management

The Advisory Panel will address the same agenda issues as the Council.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: May 17, 2006.

**Tracey L. Thompson,**

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

[FR Doc. E6–7767 Filed 5–19–06; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## Patent And Trademark Office

## Patent Prosecution Highway (PPH) Pilot Program

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), 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 the new information collection, 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 July 21, 2006.

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

*E-mail: Susan.Brown@uspto.gov.* Include ''0651–00XX PPH Pilot Program comment'' in the subject line of the message.

*Fax:* 571–273–0112, marked to the attention of Susan Brown.

*Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

*Federal e-Rulemaking Portal: http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Robert J. Spar, Director, Office of Patent Legal Administration, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7700; or by e-mail at *Bob.Spar@uspto.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The Patent Prosecution Highway (PPH) pilot program is being established between the United States Patent and Trademark Office (USPTO) and the Japan Patent Office (JPO). This program will allow applicants whose claims are determined to be patentable in the office of first filing to have the corresponding application that is filed in the office of second filing be advanced out of turn for examination. At the same time, this program will allow the office of second filing to exploit the search and examination results of the office of first filing. The one-year pilot program will begin on July 3, 2006.

In order to participate in this program, applicants must meet certain requirements. Some of the requirements are: (1) The U.S. application must validly claim foreign priority to the JPO application; (2) the JPO application must have at least one claim that was determined to be patentable; (3) all the claims in the U.S. application must be amended to sufficiently correspond to the patentable claims in the JPO application; (4) examination of the U.S. application has not begun; (5) applicant must submit copies of the JPO office actions and English translations thereof; and (6) applicant must file a petition to make special along with the required petition fee.

This information collection includes one proposed form, Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the JPO and the USPTO (PTO/SB/20), which may be used by applicants to request participation in the pilot program and to ensure that they meet the program requirements.

### II. Method of Collection

Requests to participate in the PPH pilot program must be submitted by fax to the Office of the Commissioner for Patents (571–273–0125) to ensure that the request is processed in a timely manner. The USPTO will consider alternative methods of submission under this program after the one-year pilot period is concluded.

### III. Data

*OMB Number:* 0651–00XX.
*Form Number(s):* PTO/SB/20.
*Type of Review:* New collection.
*Affected Public:* Individuals or households; businesses or other for-

profits; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.

*Estimated Number of Respondents:* 500 responses per year.

*Estimated Time Per Response:* The USPTO estimates that it will take the public approximately two hours (2.0 hours) to gather the necessary information, prepare the form, and submit the completed request to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 1,000 hours per year.

*Estimated Total Annual Respondent Cost Burden:* $304,000 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of $304 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for this collection will be approximately $304,000 per year.

| Item | Estimated time for response | Estimated annual responses | Estimated annual burden hours |
|---|---|---|---|
| Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the JPO and the USPTO. | 2.0 hours ..... | 500 | 1,000 |
| Total ..... | ..... | 500 | 1,000 |

*Estimated Total Annual Non-hour Respondent Cost Burden:* $65,000 per year. There are no capital start-up, maintenance, postage, or recordkeeping costs associated with this collection. However, this collection does have annual (non-hour) costs in the form of filing fees. The filing fee for a request to participate in the PPH pilot program is $130 under 37 CFR 1.17(h), and up to 500 filings are expected per year. Therefore, the total non-hour respondent cost burden for this collection is estimated to be $65,000 per year.

## 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, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2006.

**Susan K. Brown,**

*Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.*

[FR Doc. E6–7737 Filed 5–19–06; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[No. DoD–2006–OS–0084]**

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by June 21, 2006.

*Title and OMB Number:* Commercial Solicitation on DoD Installation; OMB Control Number 0704–TBD.

*Type of Request:* New.

*Number of Respondents:* 15.

*Responses per Respondent:* 1.

*Annual Responses:* 15.

*Average Burden per Response:* 2.27 hours.

*Annual Burden Hours:* 34.

*Needs and Uses:* No person has authority to enter upon a DoD installation to transact personal commercial solicitation without meeting specific requirements. This information collection is necessary to ensure established annual procedures for DoD registration for the sale of insurance on U.S. military overseas installations are met. Insurers are required to submit a letter of application certifying that they meet all criteria. The letter received from the applicant's provides information relative to the areas they intend to do business in and attest to agreement to satisfy application prerequisites.

*Affected Public:* Business or other for-profit.

*Frequency:* Annually.

*Respondent Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DoD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 10, 2006.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 06–4717 Filed 5–19–06; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[No. USAF–2006–0006]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, Air Force Office of Scientific Research (AFOSR), Department of Defense.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Department of the Air Force, Air Force Office of Scientific Research announces a proposed new public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by July 21, 2006.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name, docket number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submission available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Air Force Office of Scientific Research, ATTN: AFOSR/PD, 875 North Randolph Street, Suite 325, Room 3112, Arlington, VA 22203–1768. Requests may be e-mailed to *NDSEG@afosr.af.mil*, or call AFOSR/PID at 703–696–7323. Information on this proposed collection may be downloaded from *http://www.afosr.mil/pages/afrpgamf.htm* or *http://www.asee.org/resources/fellowship/ndseg*.

*Title and OMB Number:* DoD National Defense Science and Engineering Graduate (NDSEG) Fellowships Program; OMB number 0701–TBD.

*Needs and Uses:* The on-line, electronic application provides information necessary for evaluation and selection of fellowships. The NDSEG fellowships allow recipients to pursue their graduate studies at whichever United States institution they choose to attend. Respondents are students enrolled in doctoral programs in science and engineering desiring to complete their education. Failure to respond renders the student ineligible for a fellowship.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 33,600.

*Number of Respondents:* 2,800.

*Responses per Respondent:* 1.

*Average Burden per Response:* 12 hours.

*Frequency:* Annually.

**SUPPLEMENTARY INFORMATION:**

### Summary of Information Collection

Support of Science, Mathematics, and Engineering Education, 10 U.S.C. 2191, states that ''the Secretary of Defense shall prescribe regulations providing for the award of fellowships to citizens and nationals of the United States who agree to pursue graduate degrees in science, engineering or other fields of study designated by the Secretary (of Defense) to be of priority interest to the DoD.'' * * * ''a fellowship awarded pursuant to regulations prescribed under this * * * shall be known as a *National Defense Science and Engineering Graduate* Fellowship.'' ''* * * Recipients shall be selected on the basis of a nationwide competition.''

The DoD is committed to increasing the number and quality of the nation's scientists and engineers. The goal is to provide the United States with talented, doctorally trained American men and women who will lead state of the art research projects in disciplines having the greatest payoff to national defense requirements. Approximately 180–200 3-year fellowships are anticipated to be awarded in the fields of Aeronautical and Astronautical Engineering, Biosciences, Chemical Engineering, Chemistry, Civil Engineering, Cognitive, Neural, and Behavioral Sciences, Computer and Computational Sciences, Electrical Engineering, Geosciences, Material Science and Engineering, Mathematics, Mechanical Engineering, Naval Architecture and Ocean Engineering, Oceanography, and Physics.

The on-line, electronic application provides information necessary for evaluation and selection of fellowships. The NDSEG fellowships allow recipients to pursue their graduate studies at whichever United States institution they choose to attend. Respondents are students enrolled in doctoral programs in science and engineering desiring to complete their education.

Dated: May 10, 2006.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 06–4716 Filed 5–19–06; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the U.S. Naval Academy Board of Visitors

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

**DATES:** The open session of the meeting will be held on Monday, June 5, 2006, from 8 a.m. to 10 a.m. The closed Executive Session will be held on Monday, June 5, 2006, from 10 a.m. to 1 p.m.

**ADDRESSES:** The meeting will be held in the U.S. Naval Academy in the Midshipmen Common Area of Mitscher Hall, Annapolis, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Marc D. Boran, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone 410–293–1503.

**SUPPLEMENTARY INFORMATION:** This notice of meeting is provided per the Federal Advisory Committee Act (5

U.S.C. App. 2). The Executive Session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c)(2), (5), (6), (7), and (9) of title 5, United States Code.

Dated: May 11, 2006.

**Saundra K. Melancon,**

*Paralegal Specialist, Alternate Federal Register Liaison Officer.*

[FR Doc. E6–7729 Filed 5–19–06; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent to Grant Exclusive Patent License; NanoDynamics, Inc.

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to NanoDynamics, Inc., a revocable, nonassignable, exclusive license to practice in the field of Halloysite microtubules for the elution of biocidal, antifungal, or other antimicrobial agents for the prevention of growth of bacteria and/or mold in Building Materials in the residential, commercial, institutional, and healthcare construction products market excluding paint, stain, varnish and other finish coatings associated with structures in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 5,492,696: Controlled Release Microstructures, Navy Case No. 76,896.//U.S. Patent No. 5,651,976: Controlled Release of Active Agents Using Inorganic Tubules, Navy Case No. 76,652.//U.S. Patent No. 5,705,191: Sustained Delivery of Active Compounds from Tubules, with Rational Control, Navy Case No. 77,037.//U.S. Patent No. 6,280,759: Method of Controlled Release and Controlled Release Microstructures, Navy Case No. 78,215 and any continuations, divisionals or re-issues thereof.

**DATES:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than June 6, 2006.

**ADDRESSES:** Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

**FOR FURTHER INFORMATION CONTACT:** Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–7230. Due to U.S. Postal delays, please FAX 202–404–7920, e-mail *techtran@utopia.nrl.navy.mil*, or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: May 16, 2006.

**Saundra K. Melancon,**

*Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.*

[FR Doc. E6–7730 Filed 5–19–06; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF EDUCATION

RIN 1865–ZA03

### Grants for School-Based Student Drug-Testing Programs

**AGENCY:** Office of Safe and Drug-Free Schools, Department of Education.

**ACTION:** Notice of proposed priority, eligibility and application requirements, and selection criteria.

**SUMMARY:** The Assistant Deputy Secretary for Safe and Drug-Free Schools proposes a priority, eligibility and application requirements, and selection criteria under the Safe and Drug-Free Schools and Communities National Programs for the School-Based Student Drug-Testing Programs grant program. The Assistant Deputy Secretary may use the priority, requirements, and selection criteria for competitions in fiscal year 2006 and later years. We take this action to focus Federal financial assistance on an identified national need. We intend for the priority, requirements, and selection criteria to contribute substantially to existing knowledge about the efficacy of mandatory random student drug testing as a means of deterring student drug use.

**DATES:** We must receive your comments on or before June 21, 2006.

**ADDRESSES:** Address all comments about the priority, requirements, and selection criteria to Robyn L. Disselkoen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E251, Washington, DC 20202–6450. If you prefer to send your comments through the Internet, use the following address: *OSDFSdrugtesting@ed.gov.*

You must include the term ''Comments on 2006 Student Drug-Testing Notice'' in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Robyn Disselkoen at (202) 260–3954.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:**

#### Invitation to Comment

We invite you to submit comments regarding the proposed priority, requirements, and selection criteria. To ensure that your comments have maximum effect in developing the notice of final priority, eligibility and application requirements, and selection criteria, we urge you to identify clearly the specific priority, requirement, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priority, requirements, and selection criteria. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority, requirements, and selection criteria in room 3E251, 400 Maryland Avenue, SW., Washington DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

#### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority, requirements, and selection criteria. If you want to schedule an appointment

for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

## Background

Although drug use among America's youth has declined in recent years, far too many young people continue to use these harmful substances. Results of the 2005 Monitoring the Future survey, for example, show that in the 12 months prior to the survey, 15.2 percent of 8th-grade students, 31.1 percent of 10th-grade students, and 38.8 percent of 12th-grade students indicated that they had used illicit drugs. (Johnston, L.D., O'Malley, P.M., Bachman, J.G., & Schulenberg, J.E. (2005). *Monitoring the Future national survey results on drug use, 1975–2004. Volume I: Secondary school students* (NIH Publication No. 05–5727). Bethesda, MD: National Institute on Drug Abuse, p. 201).

The consequences of drug use by this vulnerable population are clear. According to the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA), students who use illegal drugs are more likely than students who do not use illegal drugs to have negative attitudes about school and to have demonstrated the following delinquent behaviors: Engaged in a serious fight at school or work, attacked someone with the intent to inflict serious injury, carried a handgun, sold illegal drugs, or stole or tried to steal something worth $50 or more. (Results from the 2002 National Survey on Drug Use and Health: National Findings [DHHS Publication No. SMa 03–3836 NSDUH Series H–22] Rockville, MD: Substance Abuse and Mental Health Services Administration).

The National Drug Control Strategy, issued by the Office of National Drug Control Policy (ONDCP) in February 2006, (*http://www.whitehousedrugpolicy.gov/publications/policy/ndcs06/ndcs06.pdf*) notes: ''The greatest pressure on young people to start using drugs does not come from drug pushers but from their peers. It is, therefore, important to continue to educate young people about the dangers of drug use and build a cultural norm that views illicit drug use as unacceptable.'' An important part of promoting a culture that supports healthy, drug-free choices by young people requires providing disincentives to using drugs. According to the Strategy: ''Screening for drugs is an important way to send the message that drug use is unacceptable. * * * Screening for drug use gives young people an 'out' to say no to drugs.''

Several recent studies have contributed to a growing body of knowledge about the potential effectiveness of drug testing in deterring drug use by youth. None of these studies, however, has employed a randomized control trial, the type of research design needed to make a valid determination of whether mandatory random student drug testing deters drug use.

Therefore, the U.S. Department of Education (ED), through these grants to reduce student drug use, proposes to conduct the first large-scale national evaluation of the effectiveness of mandatory random student drug testing using a randomized control trial study design.

## Description of the National Evaluation

All schools proposed by applicants funded under this priority will participate in the national evaluation.[1] These schools will be randomly assigned by the national evaluation contractor to one of two conditions: (1) Implement mandatory random student drug testing immediately after the baseline student survey to be conducted by the national evaluator in early 2007; or (2) not promote or implement mandatory random student drug testing at any time until the conclusion of the data collection for the national evaluation in spring 2008.

In all participating schools, for each round of data collection, up to 200 students will participate in confidential and anonymous surveys about substance use conducted by the national evaluator. These student surveys, which will support the national evaluation, will be conducted in spring 2007 (before drug testing begins in any school), in fall 2007, and in spring 2008. During this period, the national evaluator will also collect other evaluation information through staff interviews.

In addition, the national evaluator will administer student surveys in school years 2008–2009 and 2009–2010 in order to collect data to fulfill ED's requirement that grantees report annually on the Government Performance and Results Act (GPRA) performance measures established for this program. Grantees will have no responsibility for evaluating their program or for collecting data and reporting on GPRA. For that reason, and because the work of the national evaluator is subject to the IES confidentiality statutes (20 U.S.C. 9573), which provide for an exemption of Protection of Human Subjects regulations (34 CFR 97.101(b)(3)(ii)), ED does not believe grantees need to seek approval from an Institutional Review Board (IRB).

Approximately one month after the early 2007 student survey is completed, the evaluator will notify grantees of the random assignment status of each school to either the first or the second wave of implementation. Schools assigned to the first wave of implementation will begin conducting mandatory random student drug testing immediately (spring 2007). After completion of the spring 2008 student survey, schools assigned to the second wave of implementation may begin mandatory random student drug testing.

We will announce the final priority, requirements, and selection criteria in a notice in the **Federal Register**. We will determine the final priority, requirements, and selection criteria after considering responses to this notice and other information available to ED. This notice does not preclude us from proposing or using other priorities, requirements, and selection criteria subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use the priority, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

## Proposed Priority

Participation in Evaluation of Mandatory Random Student Drug-Testing Programs

Under this proposed priority, we will support local educational agencies (LEAs) that agree to participate in a

[1] ED's Institute of Education Sciences (IES) will award a contract to conduct a national evaluation to assess the impact of mandatory random student drug testing on two populations of interest: (1) Students who participate in athletics and/or competitive extra-curricular activities; and (2) students who do not participate in these activities.

national evaluation of the impact of mandatory random student drug testing on high school students' reported substance use. In order to meet this priority an applicant must:

(1) Agree to carry out its drug-testing program in a manner consistent with the randomized control trial evaluation design developed by ED and its national evaluator;

(2) Propose at least two schools with three or more grades 9 through 12 to participate in the national evaluation;

(3) Not have an existing drug-testing program in operation in any of the schools proposed by the applicant for participation in the national evaluation;

(4) Consent to the evaluator's random assignment of one-half of the schools proposed by the applicant for participation in the national evaluation to begin mandatory random student drug-testing implementation in year one of the grant (following the spring 2007 survey of students), and one-half to begin mandatory random student drug testing approximately one year later (after the spring 2008 survey of students has been completed);

(5) Agree that the schools proposed by the applicant for participation in the national evaluation will limit their mandatory random student drug-testing program to students in grades 9 through 12, and within that group of students to one or both of the following:

(a) All students who participate in the school's athletic program; and

(b) All students who are engaged in competitive, extra-curricular school-sponsored activities;

**Note:** Competitive, extra-curricular school-sponsored activities means any activity under the direct control of the school in which students compete against students in another school. If the State maintains a list of sanctioned competitive, extra-curricular school-sponsored activities, the applicant may consider those activities to be competitive, extra-curricular school-sponsored activities for the purposes of this program.

(6) Not promote or begin the implementation of its mandatory random student drug-testing program in any participating schools until it receives notification from the national evaluator about the random assignment of its schools to participate in the first or second wave of implementation, except that an applicant may conduct outreach and generate community support for its drug-testing policy;

(7) Delay the promotion, announcement, and start of the mandatory random student drug-testing program in schools assigned to the second wave of implementation until the spring 2008 student survey has been completed;

(8) Cooperate with evaluation data collection activities, including facilitating the national evaluator's efforts to obtain parental consent for student participation in the surveys, by providing contact information and scheduling and making available space for the administration of the surveys in the schools; and

(9) Implement its mandatory random student drug-testing program consistently across participating schools and according to uniform LEA policies and procedures during the evaluation period.

Once a participating school has begun implementing its mandatory random student drug-testing program in accordance with the requirements of this priority, and following the completion of the spring 2008 student survey, the LEA at its discretion, may announce, promote, implement and use grant funds for testing—

(a) In schools assigned to the second wave of implementation;

(b) Students in any grade 6 through 12 who, along with their parent or guardian, volunteer to be tested; and

(c) Students in grades 6 through 8 who participate in the school's athletic programs or competitive, extra-curricular school-sponsored activities.

*Proposed Eligibility and Application Requirements:* We propose the following eligibility requirements for applications submitted under this program:

(1) LEAs are the only eligible applicants; and

(2) An applicant may not have been the recipient of, or a participant in, a grant in 2005 under ED's School-Based Grants for Student Drug-Testing competition (84.184D).

We propose the following requirements for applications submitted under this program:

(1) An applicant may not submit more than one application for a grant under the competition.

(2) In its application, an applicant must:

(a) Clearly identify the student population that will be in the drug-testing pool including, to the extent feasible, the number of students in the pool by grade, and demonstrate a significant need for drug testing within the target population;

(b) Propose to test a minimum of 50 percent of the testing pool annually, and use at least a five-panel test (marijuana, amphetamine, cocaine, methamphetamine, and opiates);

(c) Explain how the proposed drug-testing program will be part of an existing, comprehensive drug prevention program in the schools to be served;

(d) Provide a comprehensive plan for referring students who are identified through the testing program as users of illegal drugs or legal medications taken without a prescription to a student assistance program, counseling, or drug treatment if necessary;

(e) Provide a plan to ensure the confidentiality of drug-testing results, including a provision that prohibits the party conducting drug tests from disclosing to school officials any information about a student's use of legal medications for which the student has a prescription;

(f) Provide written assurances of the following:

(i) That results of student drug tests will not be disclosed to law enforcement officials;

(ii) That results of student drug tests will be destroyed when the student graduates or otherwise leaves the LEA or private school involved;

(iii) That all positive drug tests will be reviewed by a certified medical review officer;

(iv) That legal counsel has reviewed the proposed drug-testing program and advised that the program activities do not appear to violate established constitutional principles or State and Federal requirements related to implementing a mandatory random student drug-testing program;

(v) That all proposed activities will be carried out in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA);

(vi) That the mandatory random student drug-testing program is ready to begin no later than 9 months after receipt of the grant award. We will consider a grantee's failure to achieve readiness to begin its program within 9 months of the grant award as a failure to make substantial progress consistent with the requirements of the Education Department General Administrative Regulations (EDGAR) in § 75.253(2)(i). This failure could result in loss of funding for year two of the project period or termination of the grant;

(vii) That mandatory random student drug testing will be conducted for the entire academic year in the schools selected to implement drug testing; and

(viii) That, to the extent feasible, schools randomly assigned to begin drug testing in year one of the grant will retain the same testing pool (for example, all students participating in athletics and/or all students participating in competitive,

extracurricular school-sponsored activities without regard to the timing of their activity) until the completion of the 2008 student survey.

(3) Funds awarded under this program may not be used for any of the following purposes:

(a) Student drug tests administered under suspicion of drug use;

(b) Incentives for students to participate in the drug-testing program;

(c) Drug treatment;

(d) Drug prevention curricula or other prevention programs;

(e) Drug tests for students in non-competitive extra-curricular activities who do not otherwise meet the eligibility criteria;

(f) Drug tests for students in co-curricular activities who do not otherwise meet the eligibility criteria; or

(g) Drug tests for student drivers who park on campus who do not otherwise meet the eligibility criteria.

**Proposed Selection Criteria**

The Secretary proposes to select from the following criteria those factors that will be used to evaluate applications under this competition.

(1) *Need for Project.* (a) The documented magnitude of student drug use in schools to be served by the mandatory random student drug-testing program, including the nature, type, and frequency, if known, of drug use by students in the target population; and,

(b) Other evidence, if any, of student drug use in schools to be served by the mandatory random student drug-testing program, which may include, but is not limited to, reports from parents, students, school staff, or law enforcement officials.

(2) *Significance.* (a) The extent to which the proposed project includes a thorough, high-quality review of Federal and State laws and relevant Supreme Court decisions related to the proposed student drug-testing program.

(b) The extent to which the applicant demonstrates school and community support for the student drug-testing program and has obtained the input of groups representing a diversity of perspectives, for example, private schools, parents, counselors, teachers, and school board members, in the development of the mandatory random student drug-testing program; and

(c) The importance or magnitude of the results or outcomes likely to be attained by the mandatory random student drug-testing program in the grantee's schools.

(3) *Quality of Project Design.* (a) The extent to which the project will be based on up-to-date knowledge from research and effective practice, including the methodology for the random selection of students to be tested and procedures outlining the collection, screening, confirmation, and review of student drug tests by a certified medical review officer.

(b) The quality of the applicant's plan to develop and implement a mandatory random student drug-testing program that includes—

(i) Evidence of the applicant's readiness to begin mandatory random student drug testing in the first year of the grant; and

(ii) Detailed procedures outlining how the school will respond to a student's positive drug test, including parental notification and referral to student assistance programs, drug education, or formal drug treatment, if necessary.

(4) *Management Plan.* (a) The extent to which the applicant describes appropriate chain-of-custody procedures for test samples and demonstrates a commitment to use labs certified by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration to process student drug tests.

(b) The quality of the applicant's plan to ensure confidentiality of drug test results, including limiting the number of school officials who will have access to student drug-testing records.

(5) *Adequacy of resources.* The adequacy of support from the applicant, including project staff, facilities, equipment, supplies, and other resources necessary to implement a high-quality mandatory random student drug-testing program.

**Executive Order 12886**

This notice of proposed priority, eligibility and application requirements, and selection criteria has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority, eligibility and application requirements, and selection criteria are those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, eligibility and application requirements, and selection criteria, we have determined that the benefits of the proposed priority, requirements, and selection criteria justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

**Summary of Potential Costs and Benefits**

The potential cost associated with the proposed priority, requirements, and selection criteria is minimal while the benefits are significant. Grantees may anticipate costs related to engaging the community in discussions about the utility of mandatory random student drug testing as a means of deterring youth drug use and in developing and gaining approval for a comprehensive policy supporting mandatory random student drug testing and establishing consistent policies and procedures. Other potential costs are those associated with completing the application process in terms of staff time, copying, and mailing or delivery.

The primary benefit of the proposed priority, requirements, and selection criteria is that grantees may reduce student drug use by supporting school-based mandatory random student drug-testing programs. In addition, participation in the national evaluation means grantees will not have to conduct an independent evaluation of their project nor will they have to report to the Department on their progress toward meeting the GPRA measures established for this program. All data collection and evaluation will be carried out by the national evaluator on behalf of the grantees and reported to the Department.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

**Electronic Access To This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at (888)

293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html.*

(Catalog of Federal Domestic Assistance Number 84.184D Office of Safe and Drug-Free Schools National Programs -Grants for School-Based Student Drug-Testing Programs)

**Program Authority:** 20 U.S.C. 7131.

Dated: May 17, 2006.

**Deborah A. Price,**

*Assistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. E6–7749 Filed 5–19–06; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–301–142]**

### ANR Pipeline Company; Notice of Negotiated Rate Filing Amendment

May 12, 2006.

Take notice that on May 8, 2006, ANR Pipeline Company (ANR) tendered for filing and approval an amendment to an existing negotiated rate service arrangement, which provided solely for the name change of the customer.

ANR requests that the Commission accept and approve the subject amendment filing to be effective May 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–7693 Filed 5–19–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–337–000]**

### Discovery Gas Transmission LLC; Notice of Revenue Credit Report

May 12, 2006.

Take notice that on April 28, 2006, Discovery Gas Transmission LLC, (Discovery) tendered for filing its revenue credit report pursuant to section 27, ''Revenue Crediting'' of the general terms and tonditions contained in its FERC Gas Tariff, which required companies to credit ninety percent of the revenues collected in excess of $4,489.891 for a calendar year from certain transportation services rendered on the Expansion Facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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*Comment Date:* 5 p.m. Eastern Time May 19, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–7702 Filed 5–19–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–355–000]**

### Gulf South Pipeline Company, LP; Notice of Proposed Changes in FERC Gas Tariff

May 12, 2006.

Take notice that on May 9, 2006, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff Sheets, to become effective June 9, 2006.

Second Revised Sheet No. 3700
First Revised Sheet No. 3701
Fourth Revised Sheet No. 3702
Second Revised Sheet No. 3703
Second Revised Sheet No. 3704
Third Revised Sheet No. 3705
Seventh Revised Sheet No. 3706
Third Revised Sheet No. 3707
Second Revised Sheet No. 3708
Second Revised Sheet No. 3709
Sheet Nos. 3710–3799

Gulf South is proposing changes to section 30 of its tariff in order to update,

streamline, and clarify Gulf South's right-of-first-refusal processes.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–7703 Filed 5–19–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–357–000]**

### Gulf States Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

May 12, 2006.

Take notice that on May 9, 2006, Gulf States Transmission Corporation (Gulf States) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Attachment A to the filing, to become effective June 1, 2006.

Gulf States copies of this filing are being served on all customers of Gulf States and applicable state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–7705 Filed 5–19–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–426–027]**

### Texas Gas Transmission, LLC; Notice of Negotiated Rate

May 12, 2006.

Take notice that on May 2, 2006, Texas Gas Transmission LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2006:

Second Revised Sheet No. 55
First Revised Sheet No. 55A
Seventh Revised sheet No. 56

Texas Gas states that the purpose of the filing is to submit to the Commission tariff sheets detailing a Revised Negotiated Rate Agreement between Texas Gas and Devon Gas Services, L.P. (Devon) dated March 24, 2006, to be effective May 24, 2006, supercedes the Negotiated Agreement dated November 18, 2005, between Texas Gas and Devon, as approved in Docket No. RP00–426–026, and adds an Overrun Rates provision effective May 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–7701 Filed 5–19–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–356–000]**

### Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 12, 2006.

Take notice that on May 9, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eighth Revised Sheet No. 30, Sixth Revised Sheet No. 437, and First Revised Sheet No. 438, to become effective June 9, 2006.

Transco states that the purpose of this filing is to revise Transco's Form of Service Agreement under Seller's Rate Schedule FT to insert alternative language in Article IV, Term of Agreement, to be used for firm transportation service under newly constructed expansion projects whose in-service date is unknown at the time of the service agreement's execution.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–7704 Filed 5–19–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings # 1

May 12, 2006.

Take notice that the Commission received the following electric rate filings.

*Docket Numbers:* ER06–857–001.
*Applicants:* Energy Resource Management Corp.
*Description:* Energy Resource Management Corp. submits an amended FERC Electric Tariff Rate Schedule 1.
*Filed Date:* May 3, 2006.
*Accession Number:* 20060508–0152.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, May 24, 2006.

*Docket Numbers:* ER06–868–001.
*Applicants:* Florida Power Corporation.
*Description:* Florida Power Corp. submits revised tariff sheets to its Rate Schedule No. 176.
*Filed Date:* May 5, 2006.
*Accession Number:* 20060509–0113.
*Comment Date:* 5 p.m. Eastern Time on Friday, May 26, 2006.

*Docket Numbers:* ER06–945–000.
*Applicants:* TXU Electric Company.
*Description:* TXU Electric Delivery Co. submits its Second Revised Sheet Nos. 37–38 to FERC Electric Tariff, Ninth Revised Volume No. 1, effective May 31, 2004.
*Filed Date:* May 5, 2006.
*Accession Number:* 20060509–0112.
*Comment Date:* 5 p.m. Eastern Time on Friday, May 26, 2006.

*Docket Numbers:* ER06–946–000.
*Applicants:* TXU Electric Delivery Company.
*Description:* TXU Electric Delivery Co. submits its Second Revised Sheet No. 34 to FERC Electric Tariff, Fourth Revised Volume
No. 2, effective May 31, 2004.
*Filed Date:* May 5, 2006.
*Accession Number:* 20060509–0111.
*Comment Date:* 5 p.m. Eastern Time on Friday, May 26, 2006.

*Docket Numbers:* ER06–947–000.
*Applicants:* Northeast Utilities Service Company.
*Description:* Northeast Utilities Service Co. on behalf of The Connecticut Light and Power Co. et al. submits a notice of Cancellation of Rate Schedule FERC Nos. 496 and 382.
*Filed Date:* May 5, 2006.
*Accession Number:* 20060509–0118.
*Comment Date:* 5 p.m. Eastern Time on Friday, May 26, 2006.

*Docket Numbers:* ER06–948–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Pacific Gas and Electric Co. submits executed Facilities Agreements with the City and County of San Francisco.
*Filed Date:* May 1, 2006.
*Accession Number:* 20060502–0074.
*Comment Date:* 5 p.m. Eastern Time on Monday, May 22, 2006.

*Docket Numbers:* ER06–949–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Pacific Gas and Electric Gas Co. submits a notice of cancellation of Rate Schedule FERC No. 209.
*Filed Date:* May 4, 2006.
*Accession Number:* 20060504–0174.
*Comment Date:* 5 p.m. Eastern Time on Thursday, May 25, 2006.

*Docket Numbers:* ER06–950–000.
*Applicants:* The Cincinnati Gas & Electric Company.
*Description:* The Cincinnati Gas & Electric Co. dba Duke Energy Ohio Inc. submits a notice of succession notifying the Commission effective April 10, 2006 that it has succeeded by merger to the tariff of Duke Fayette.

*Filed Date:* May 5, 2006.
*Accession Number:* 20060509–0117.
*Comment Date:* 5 p.m. Eastern Time on Friday, May 26, 2006.

*Docket Numbers:* ER06–951–000.
*Applicants:* The Cincinnati Gas & Electric Company.
*Description:* The Cincinnati Gas & Electric Co. dba Duke Energy Ohio Inc. submits a notice of succession notifying the Commission effective April 10, 2006 that it has succeeded by merger to the tariff of Duke Washington.
*Filed Date:* May 5, 2006.
*Accession Number:* 20060509–0116.
*Comment Date:* 5 p.m. Eastern Time on Friday, May 26, 2006.

*Docket Numbers:* ER06–952–000.
*Applicants:* The Cincinnati Gas & Electric Company.
*Description:* The Cincinnati Gas & Electric Co dba Duke Energy Ohio, Inc. submits a notice of succession notifying the Commission that effective April 10, 2006 it has succeeded by merger to the tariff of Duke Energy Hanging Rock, LLC.
*Filed Date:* May 5, 2006.
*Accession Number:* 20060509–0115.
*Comment Date:* 5 p.m. Eastern Time on Friday, May 26, 2006.

*Docket Numbers:* ER06–953–000.
*Applicants:* The Cincinnati Gas and Electric Company.
*Description:* The Cincinnati Gas and Electric Co dba Duke Energy Ohio submits a notice of cancellation of Duke Vermillion's Test Power Purchase Agreement designated as Rate Schedule FERC 1.
*Filed Date:* May 4, 2006.
*Accession Number:* 20060509–0114.
*Comment Date:* 5 p.m. Eastern Time on Thursday, May 25, 2006.

*Docket Numbers:* ER06–954–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* PJM Interconnection, LLC submits its report on allocation of cost responsibility for transmission upgrades and revised tariff sheets.
*Filed Date:* May 4, 2006.
*Accession Number:* 20060509–0107.
*Comment Date:* 5 p.m. Eastern Time on Monday, June 5, 2006.

*Docket Numbers:* ER06–955–000.
*Applicants:* American Transmission Company LLC.
*Description:* American Transmission Co, LLC submits an executed Distribution-Transmission Interconnection Agreement with Alger Delta Cooperative Association.
*Filed Date:* May 4, 2006.
*Accession Number:* 20060509–0055.
*Comment Date:* 5 p.m. Eastern Time on Thursday, May 25, 2006.

*Docket Numbers:* ER06–956–000.
*Applicants:* American Transmission Company LLC.
*Description:* American Transmission Co, LLC submits an executed Distribution -Transmission Interconnection Agreement with New Holstein Utilities.
*Filed Date:* May 4, 2006.
*Accession Number:* 20060509–0207.
*Comment Date:* 5 p.m. Eastern Time on Thursday, May 25, 2006.

*Docket Numbers:* ER06–957–000.
*Applicants:* American Transmission Company LLC.
*Description:* American Transmission Co LLC submits an executed Distribution-Transmission Interconnection Agreement with Two Rivers Water & Light.
*Filed Date:* May 4, 2006.
*Accession Number:* 20060509–0110.
*Comment Date:* 5 p.m. Eastern Time on Thursday, May 25, 2006.

Docket Numbers: ER99–1004 -006; ER00–2738–005; ER00–2740–005; ER01–1721–003; ER02–564–003; ER02–257–006.
*Applicants:* Entergy Nuclear Generation Company; Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Indian Point 3, LLC; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Vermont Yankee, LLC; Northern Iowa Windpower LLC.
*Description:* Entergy Services, Inc. submits modifications to its December 14, 2005 filing.
*Filed Date:* May 4, 2006.
*Accession Number:* 20060509–0039.
*Comment Date:* 5 p.m. Eastern Time on Monday, May 15, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E6–7691 Filed 5–19–06; 8:45 am]
BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. EL06–1–001, et al.]**

## Niagara Mohawk Power Corporation, et al.; Electric Rate and Corporate Filings

May 12, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Niagara Mohawk Power Corporation, A National Grid Company v. New York State Reliability Council and New York Independent System Operator, Inc.

[Docket No. EL06–1–001]

Take notice that on April 28, 2006, New York State Reliability Council (NYSRC) and New York Independent System Operator, Inc. (NYISO) filed a joint informational report, pursuant to the Commission's order issued February, 2, 2006, regarding actions taken by NYSRC and NYISO concerning the progress they made toward resolving issues raised by the Niagara Mohawk

Power Corporation in its complaint filing of September 30, 2005.

*Comment Date:* 5 p.m. Eastern Time on May 26, 2006.

**2. Midland Cogeneration Venture Limited Partnership**

[Docket No. ER06–733–001]

Take notice that May 10, 2006, Midland Cogeneration Venture Limited Partnership filed revised tariff sheets, Sub. Original Sheet Nos. 2 through 4 and Original Sheet No. 5, to its market-based tariff, Original Volume No 1, pursuant to the Commission's May 8, 2006 request.

*Comment Date:* 5 p.m. Eastern Time on May 22, 2006.

**3. Arcadia Power Partners, LLC; Cleco Power LLC**

[Docket Nos. ER06–964–000; ER06–965–000]

Take notice that on May 5, 2006, Arcadia Power Partners, LLC filed its proposed revised market-based rate tariff, Original Volume No. 1, Original Sheet No. 3, to permit it to make sales of energy indirectly through a non-affiliated marketer to its affiliate, Cleco Power LLC.

*Comment Date:* 5 p.m. Eastern Time on May 19, 2006.

**4. Colstrip Energy Limited Partnership**

[Docket No. QF84–377–011]

Take notice that on May 3, 2006, Colstrip Energy Limited Partnership filed an application for recertification as a qualifying small power production facility, pursuant to part 292, subpart B of the Commission's regulations, 18 CFR 292.207(b).

*Comment Date:* 5 p.m. Eastern Time on June 2, 2006.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–7755 Filed 5–19–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2192–022—WI]**

### Consolidated Water Power Company; Notice of Availability of Draft Environmental Assessment

May 12, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application for the conveyance and acquisition of project lands at the Biron Project (FERC No. 2192), and has prepared a draft environmental assessment (DEA) for the proposal. The proposed project land exchange would occur on the Biron reservoir in Wood County, Wisconsin.

In the application, Consolidated Water Power (licensee) requests Commission authorization to exchange approximately 3.14 acres of licensee-owned lands with 3,000 linear feet of shoreline along the Biron flowage, for three different parcels of land totaling approximately 205.213 total acres. The first parcel has 830 linear feet of river shoreline and consists of 47.546 acres. The second parcel has 126 linear feet of river shoreline and consists of 2.960 acres, abutting an existing licensee-owned boat launch. The third parcel consists of islands in the river, peninsulas, and a roadside access totaling 154.84 acres (48.82 acres above water). These island perimeters, peninsulas, and the roadside access total 33,749 linear feet of waterfront. All lands are currently within the project boundary, and the licensee intends to retain flowage rights over any conveyed lands, and to retain all lands within the project boundary. The DEA contains the Commission staff's analysis of the probable environmental impacts of the licensee's land-exchange proposal.

The DEA is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The DEA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–2192–022) excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Comments on the DEA should be filed within 30 days of the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference ''Biron Project, FERC Project No. 2192–022'' on all comments. Comments 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–7695 Filed 5–19–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepting for Filing and Soliciting Motions To Intervene, Protests and Comments

May 12, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12637–000.

c. *Date filed:* January 9, 2006.

d. *Applicant:* Elias A. Felluss.

e. *Name of Project:* Columbia Hydro Power Alpha Station.

f. *Location:* On Claverack Creek, in Stottville, Columbia County, New York.

The existing dam is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Elias A. Felluss, 71 Centershore Road, Centerport, NY 11721, (800) 335–5877.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12637–000) on any comments, protests, or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) An existing 10-foot-high, 180-foot-long dam; (2) a 180-foot-wide reservoir; (3) a 12-foot-wide, 70-foot-long penstock; (4) a proposed powerhouse containing a single generator with an installed capacity of approximately 1MW; (5) a tailrace; and (6) appurtenant facilities.

The project would have an estimated annual generation of approximately 2 MW. The applicant plans to sell the generated energy.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letter the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT'', or ''COMPETING APPLICATION'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–7694 Filed 5–19–06; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 925–010]**

### City of Ottumwa, IA; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

May 12, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 925–010.

c. *Date Filed:* April 26, 2006.

d. *Applicant:* City of Ottumwa, Iowa.

e. *Name of Project:* Ottumwa Hydroelectric Project.

f. *Location:* On the Des Moines River in the City of Ottumwa, Wapello

County, Iowa. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Richard Wilcox, Ottumwa Water and Hydro, 230 Turner Drive, Ottumwa, Iowa 52501, (641) 684–4606.

i. *FERC Contact:* Timothy Konnert, (202) 502–6359 or *timothy.konnert@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* June 26, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

m. This application is not ready for environmental analysis at this time.

n. The existing Ottumwa Project consists of: (1) An 18-foot-high dam with a 641-foot-long spillway section equipped with eight Taintor gates and one bascule gate; (2) a 125-acre reservoir with a normal water surface elevation of 638.5 feet msl; (3) a powerhouse integral to the dam containing three generating units, unit 1 and unit 3 each rated at 1,000 kW and unit 2 rated at 1,250 kW; and (4) appurtenant facilities. The applicant estimates that the average annual generation would be 10,261,920 kilowatt hours using the three generating units with a combined capacity of 3,250 kW.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Iowa 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.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intents to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

*Issue Acceptance or Deficiency Letter:* June 2006.

*Issue Scoping Document:* July 2006.

*Notice of application is ready for environmental analysis:* September 2006.

*Notice of the availability of the EA:* March 2007.

*Ready for Commission's decision on the application:* May 2007.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–7700 Filed 5–19–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2602–007—North Carolina]**

### Duke Power Company LLC; Dillsboro Hydroelectric Project; Notice of Proposed Restricted Service List for a Memorandum of Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

May 12, 2006.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the North Carolina State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470 f), to prepare and execute a memorandum of agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Dillsboro Hydroelectric Project No. 2602–007 (SHPO Reference Number ER03–0341).

The memorandum of agreement, when executed by the Commission and the SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the surrender of a license. The Commission's responsibilities pursuant to section 106 for the Dillsboro Project

[1] 18 CFR 385.2010.

would be fulfilled through the execution of a memorandum of agreement for the project (36 CFR 800.6[c]), which the Commission proposes to draft in consultation with certain parties listed below. The executed memorandum of agreement for the project would be incorporated into any Order approving the surrender of a license for the project. The memorandum of agreement would be effective until the conditions of the surrender are completed. Once the conditions of the surrender are complete, the stipulations of the memorandum of agreement would no longer be enforced.

Duke Power Company LLC, as licensee for Project No. 2602, and the Eastern Band of Cherokee Indians have expressed an interest in these proceedings and are invited to participate in consultations to develop the memorandum of agreement.

For purposes of commenting on the memorandum of agreement, we propose to restrict the service list for the aforementioned project as follows:

Don Klima or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Jennifer Huff or Representative, Duke Power, P.O. Box 1006, Mail Code EC12Y, Charlotte, NC 28201–1006.

Renee Gledhill-Earley, North Carolina Department of Cultural Resources, 4617 Mail Service Center, Raleigh, NC 27699–4617.

Eastern Band of Cherokee Indians, Attention: Tyler Howe, Qualla Boundary, P.O. Box 455, Cherokee, NC 28719.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

An original and 8 copies of any such motion must be filed with Magalie Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. Please put the project name ''Dillsboro Project'' and number ''P–2602–007'' on the front cover of any motion. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

**Magalie Salas,**

*Secretary.*

[FR Doc. E6–7696 Filed 5–19–06; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 2686–032 and 2601–007—North Carolina]**

### Duke Power Company LLC; West Fork and Bryson Hydroelectric Projects; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

May 12, 2006.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the North Carolina State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 470 f), to prepare and execute two programmatic agreements for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the West Fork Hydroelectric Project No. 2686–032 (SHPO Reference Number ER03–2382) and at the Bryson Hydroelectric Project No. 2601–007 (SHPO Reference Number ER03–0340).

The programmatic agreements, when executed by the Commission and the SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with each license until each license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the West Fork and Bryson Projects would be fulfilled through the execution of a programmatic agreement for each project, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement for each project would be incorporated into any Order issuing a license for the respective project.

Duke Power Company LLC, as licensee for Project Nos. 2686 and 2601, and the Eastern Band of Cherokee Indians have expressed an interest in these proceedings and are invited to participate in consultations to develop the programmatic agreements.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Don Klima or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Jennifer Huff or Representative, Duke Power, P.O. Box 1006, Mail Code EC12Y, Charlotte, NC 28201–1006.

Renee Gledhill-Earley, North Carolina Department of Cultural Resources, 4617 Mail Service Center, Raleigh, NC 27699–4617.

Eastern Band of Cherokee Indians, Attention: Tyler Howe, Qualla Boundary, P.O. Box 455, Cherokee, NC 28719.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON–PUBLIC Information.

An original and 8 copies of any such motion must be filed with Magalie Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. Please put the project names ''West Fork Project'' and ''Bryson Project'' and numbers ''P–2686–032'' and ''P–2601–007'' on the front cover of any motion. If no such motions are filed, the restricted service list will be effective at the end of the 15

[1] 18 CFR 385.2010.

day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

**Magalie Salas,**

*Secretary.*

[FR Doc. E6–7697 Filed 5–19–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2698–033—North Carolina]**

### Duke Power Company LLC; East Fork Hydroelectric Project; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

May 12, 2006.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the North Carolina State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the East Fork Hydroelectric Project No. 2698–033 (SHPO Reference Number ER03–2382).

The programmatic agreement, when executed by the Commission and the SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13(e)). The Commission's responsibilities pursuant to section 106 for the East Fork Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Duke Power Company LLC, as licensee for Project No. 2698, the United States Forest Service, and the Eastern Band of Cherokee Indians have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Don Klima or Representative, Advisory Council on Historic, Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Jennifer Huff or Representative, Duke Power, P.O. Box 1006, Mail Code EC12Y, Charlotte, NC 28201–1006.

Renee Gledhill-Earley, North Carolina Department of Cultural Resources, 4617 Mail Service Center, Raleigh, NC 27699–4617.

Eastern Band of Cherokee Indians, Attention: Tyler Howe, Qualla Boundary, P.O. Box 455, Cherokee, NC 28719.

Rodney Snedecker, United States Forest Service, P.O. Box 2750, Ashville, NC 28802.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON–PUBLIC Information.

An original and 8 copies of any such motion must be filed with Magalie Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. Please put the project name ''East Fork Project'' and number ''P–2698–033'' on the front cover of any motion. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

**Magalie Salas,**

*Secretary.*

[FR Doc. E6–7699 Filed 5–19–06; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8172–8]**

### Establishment of the Coastal Elevations and Sea Level Rise Advisory Committee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; establishment of advisory committee.

**SUMMARY:** As required by section 9(a)(2) of the Federal Advisory Committee Act, we are giving notice that EPA is establishing the Coastal Elevations and Sea Level Rise Advisory Committee (CESLAC). The purpose of this Committee is to provide advice on the conduct of a study titled *Coastal Elevations and Sensitivity to Sea Level Rise* to be conducted as part of the U.S. Climate Change Science Program (CCSP). It is part of a comprehensive assessment of issues identified by the CCSP's *Strategic Plan for the Climate Change Science Program*. CESLAC will advise on the specific issues which should be addressed in the assessment, appropriate technical approaches, the nature of information relevant to decision makers, the content of the assessment report, and other scientific and technical matters that may be found to be important to the successful completion of the study. EPA has determined that this advisory committee is in the public interest and will assist the Agency in performing its duties under the Clean Water Act, Clean Air Act and the Global Climate Protection Act. Balanced membership will be achieved by including individuals from the Federal Government, State and/or local governments, the scientific community, non-governmental organizations and the private sector with expertise, experience, knowledge and interests essential to, or affected by, the successful completion of the study titled Coastal Elevations and Sensitivity to Sea Level Rise. Copies of the Committee Charter will be filed with the appropriate congressional committees and the Library of Congress.

**FOR FURTHER INFORMATION CONTACT:** Jack Fitzgerald (6207J), Climate Change Division, Office of Atmospheric Programs, Environmental Protection

Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9336; e-mail address: *Fitzgerald.jack@epa.gov*.

Dated: March 20, 2006.

**William L. Wehrum,**

*Acting Assistant Administrator, Office of Air and Radiation.*

[FR Doc. E6–7757 Filed 5–19–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8172–9]**

## Draft Grant Guidelines for States and Draft Tribal Strategy; Solid Waste Disposal Act, Subtitle I, as Amended by Title XV, Subtitle B of the Energy Policy Act of 2005

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** By this notice, the Environmental Protection Agency (EPA), Office of Underground Storage Tanks (OUST) is advising the public of the future availability of draft grant guidelines EPA is developing to help states comply with requirements for receiving funding under Subtitle I of the Solid Waste Disposal Act as established in Title XV, Subtitle B of the Energy Policy Act of 2005. EPA is asking the public to comment on the guidelines as they become available. EPA also is advising the public of the future availability of a draft tribal strategy to implement section 1529 of the Energy Policy Act of 2005, and asking for public comment as it becomes available. EPA encourages interested stakeholders to regularly check EPA's Web site at: *http://www.epa.gov/oust/fedlaws/epact_05.htm#Drafts* where we will post the draft guidelines and draft tribal strategy as they become available over the next three months. You also may send an e-mail to *OUST_Energy_Policy_Act_Email_List@epa.gov* requesting that we notify you when the drafts are posted on EPA's Web site.

**DATES:** The draft guidelines and draft tribal strategy will become available between May 22, 2006 and August 1, 2006.

**ADDRESSES:** EPA will post the draft guidelines and draft tribal strategy on our web site at: *http://www.epa.gov/oust/fedlaws/epact_05.htm#Drafts* as they become available over the next three months. You also may send an e-mail to *OUST_Energy_Policy_Act_Email_List@epa.gov* requesting that we notify you when the drafts are posted on EPA's Web site. After the draft guidelines and tribal strategy are posted on EPA's Web site, paper copies will be available from the National Service Center for Environmental Publications (NSCEP), EPA's publications distribution warehouse upon request. You may request copies from NSCEP by calling 1–800–490–9198; writing to U.S. EPA/NSCEP, Box 42419, Cincinnati, OH 45242–0419; or faxing your request to NSCEP at 513–489–8695.

**FOR FURTHER INFORMATION CONTACT:** The EPA's Office of Underground Storage Tanks, (703) 603–9900.

**SUPPLEMENTARY INFORMATION:** On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act, entitled the Underground Storage Tank Compliance Act of 2005, contains amendments to Subtitle I of the Solid Waste Disposal Act, the original legislation that created the underground storage tank (UST) program. This is the first Federal legislative change for the UST program since its inception over 20 years ago. The UST provisions of the new law focus on preventing tank releases, will significantly affect federal and state underground storage tank programs, and will require major changes to the programs. Among other things, the UST provisions of the Energy Policy Act require that states receiving funding under Subtitle I comply with certain requirements contained in the law. OUST is working with its partners to develop grant guidelines which EPA regional tank programs will incorporate into states' grant agreements. The guidelines will provide states with specific requirements, based on the UST provisions of the Energy Policy Act, for their state underground storage tank programs.

To implement the new law, OUST, EPA regions, and states are working closely with tribes, other federal agencies, tank owners and operators, UST equipment industry, and other stakeholders to bring about the mandated changes affecting underground storage tank programs. Over the next few months, EPA will issue individual draft grant guidelines that contain information on requirements, as provided for in the UST provisions of the Energy Policy Act, such as: Fuel delivery prohibition; secondary containment; financial responsibility for tank installers and manufacturers; public record; and inspections. In addition, the UST provisions of the Energy Policy Act require that EPA, in coordination with Indian tribes, develop and implement a strategy for implementing the UST program in Indian country.

The UST provisions of the Energy Policy Act require EPA implement some of the provisions by August 2006; other provisions will need to be implemented in subsequent years. Once the guidelines are issued and become effective, EPA regions will incorporate the guidelines in grant agreements between EPA and states. States receiving funds from EPA for their underground storage tank programs must comply with the UST provisions of the Energy Policy Act and will be subject to action by EPA under 40 CFR 31.43 if they fail to comply with the guidelines.

The Agency is providing the public with an opportunity to comment on these draft grant guidelines and draft tribal strategy by following the process specified below. As provided in 5 U.S.C. 553(a)(2), the grant guidelines are exempt from the notice and comment rule-making procedures. Consequently, EPA will not establish a public docket for comments and may not issue separate responses to comments when it issues the final guidelines and tribal strategy.

EPA encourages interested stakeholders to regularly check EPA's Web site at: *http://www.epa.gov/oust/fedlaws/epact_05.htm#Drafts* where we will post the draft guidelines and draft tribal strategy as they become available over the next three months. You may also send an e-mail to *OUST_Energy_Policy_Act_Email_List@epa.gov* requesting that we notify you when the drafts are posted on EPA's Web site. As each draft guideline and tribal strategy is posted on EPA's Web site, we will accept comments on each for 30 days. EPA's Web site will provide information about document availability and specific public comment periods. You may submit comments by e-mail, facsimile, or mail as described on EPA's Web site. After the draft guidelines and strategy are posted on EPA's Web site, paper copies will be available from NSCEP, EPA's publications distribution warehouse upon request. You may request copies from NSCEP by calling 1–800–490–9198; writing to U.S. EPA/NSCEP, Box 42419, Cincinnati, OH 45242–0419; or faxing your request to NSCEP at 513–489–8695.

After considering public comments, EPA will issue final grant guidelines which EPA regions will incorporate into states' grant agreements. EPA will also solicit comments on a draft strategy about tanks in Indian country and, after considering public comments, will issue a final strategy about tanks in Indian country.

Dated: May 16, 2006.

**Susan Parker Bodine,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. E6–7758 Filed 5–19–06; 8:45 am]

BILLING CODE 6560–50–P

## EXPORT-IMPORT BANK

### Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

*Summary:* The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

*Time and Place:* Wednesday, June 7, 2006, from 9:30 a.m. to 12 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

*Agenda:* This meeting will focus on the Congressionally mandated Competitiveness Report which focuses on how Ex-Im Bank's programs compare with their major G–7 ECA counterparts during 2005, as well as identifying certain related emerging issues.

*Public Participation:* The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Teri Stumpf to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 1, 2006, Terri Stumpf, Room 1203, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

*Further Information:* For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

**Howard A. Schweitzer,**

*Acting General Counsel.*

[FR Doc. 06–4707 Filed 5–19–06; 8:45 am]

BILLING CODE 6690–01–M

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 16, 2006.

**A. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Oswego Community Bank Employee Stock Ownership Plan*, Oswego, Illinois; to acquire an additional 13.29 percent, for a total of 51 percent, of the voting shares of Oswego Bancshares, Inc., and thereby indirectly acquire additional voting shares of Oswego Community Bank, both of Oswego, Illinois.

Board of Governors of the Federal Reserve System, May 17, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6–7756 Filed 5–19–06; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–06–05BZ]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

Evaluation of the Effectiveness of the Smoke Alarm Installation and Fire Safety Education (SAIFE) Program—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Each year approximately 400,000 residential fires occur in the United States. Smoke alarms have been shown to reduce fire-related injury and fatality. This project will use data from in-person interviews, paper and pencil (PAPI) and telephone surveys to determine the degree to which the Smoke Alarm Installation and Fire Safety Education (SAIFE) program improves knowledge, attitudes, and practices about fire and burn safety and its efficacy in delivering fire safety information. The data will be collected from a convenience sample of adults 18 years of age or older who volunteer to participate in the SAIFE program. Program participants will be asked to complete a 15-minute survey twice while taking part in the SAIFE program, once immediately before the intervention and 6 months after equipment installation. Approximately 10% of the respondents surveyed will be randomly selected for an extensive 1 hour face to face interview 6 months following the installation period. The evaluation will measure changes across time, between groups, and within groups among communities involved in the program. CDC currently funds 16 states to provide installation of smoke alarms plus general fire safety education

in households at high risk for fire and fire-related injury and death. Programs of this type are thought to prevent fire-related injury and mortality, but have not been studied scientifically to assess their impact on fire-related injury outcomes. The proposed study represents the first formal effort to evaluate the effectiveness and cost implications of the SAIFE program as implemented in North Carolina. The data collected in this study will have the potential to impact other smoke alarm installation programs, as well as indicate future priorities in prevention and preparedness for residential fires. There are no costs to the respondents other than their time. The total estimated annualized burden hours are 251.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents | No. of respondents | No. of responses per respondent | Average burden per response (in hours). |
|---|---|---|---|
| Adult male and female (age 18+ years) screened | 425 | 1 | 5/60 |
| Adult male and female (age 18+ years) Pre/Post Evaluation survey | 360 | 2 | 15/60 |
| Adult male and female (age 18+ years) household visit | 36 | 1 | 1 |

Dated: May 8, 2006.

**Joan F. Karr,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E6–7732 Filed 5–19–06; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Decision To Evaluate a Petition To Designate a Class of Employees at Monsanto Chemical Company, Dayton, Ohio, To Be included in the Special Exposure Cohort

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at Monsanto Chemical Company, Dayton, Ohio, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

*Facility:* Monsanto Chemical Company.

*Location:* Dayton, Ohio.

*Job Titles and/or Job Duties:* Directors and subordinates, physicists, chemists, technicians, and workers.

*Period of Employment:* 1943–1949.

**FOR FURTHER INFORMATION CONTACT:** Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

**John Howard,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.*

[FR Doc. E6–7777 Filed 5–19–06; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### Privacy Act of 1974; Report of a New System of Records

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Notice of a New System of Records (SOR).

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new SOR titled, ''Organ Procurement Organizations System (OPOS), System No. 09–70–0575.'' The Organ Procurement Organization (OPO) Certification Act of 2000 (§ 701 of Pub. L. 106–505) directs the Secretary of HHS to establish regulations that provide the statutory qualifications and requirements that an OPO must meet in order for organ procurement costs to be reimbursed under the Medicare and Medicaid programs. As part of the efficient administration of this program, CMS is charged with the responsibility to conduct investigations, analysis, and reporting of adverse events that are described as an untoward, undesirable, and unanticipated event that causes death or serious injury. At this time, individually-identifiable data is only requested from OPOs under two circumstances: (1) Due to the suspicion that an infectious disease has been transmitted to a recipient; and (2) when there has been a complaint alleged against an OPO. CMS regional office survey and certification staff would request individually-identifiable data to complete the investigation. Due to certain investigatory activities related to this system, CMS proposes to exempt this system from the notification, access, correction and amendment provisions of the Privacy Act of 1974.

The purpose of this system is to collect and maintain individually identifiable information pertaining to complaint allegations filed by a complainant, beneficiary, or providers of services made against OPOs, information gathered during the complaint investigation, findings and results of the investigation, and correspondence relating to the outcome of the investigation. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency, or by a contractor, consultant or grantee; (2) assist another Federal or state agency in the enforcement of OPO regulations where sharing the information is necessary to complete the processing of a complaint, contribute to the accuracy of CMS's proper payment of Medicare benefits, and/or enable such agency to administer a Federal health benefits program; (3) support constituent requests made to a Congressional representative; and (4) support litigation involving the agency. We have provided background information about the modified system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

**DATES:** *Effective Date:* CMS filed a new SOR report with the Chair of the House

Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 15, 2006. To ensure that all parties have adequate time in which to comment, the new system will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

**ADDRESSES:** The public should address comment to the CMS Privacy Officer, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

**FOR FURTHER INFORMATION CONTACT:** Michele Walton, Division of Continuing Care Providers, Survey and Certification Group, Center for Medicaid and State Operations, CMS, 7500 Security Boulevard, Mail Stop S2–01–16, Baltimore, Maryland 21244–1849. She can be reached by telephone at (410) 786–3353, or via e-mail at *Michele.Walton@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** OPOs play a crucial role in ensuring that an immensely valuable, but scarce resource—transplantable human organs—become available to seriously ill patients who are on a waiting list for an organ transplant. OPOs are responsible for identifying potential organ donors and for obtaining as many organs as possible from those donors. They are also responsible for ensuring that the organs they obtain are properly preserved and quickly delivered to a suitable recipient awaiting transplantation. Therefore, OPO performance is a critical element of the organ transplant system in the United States. An OPO that is efficient in procuring organs and delivering them to recipients will, quite literally, save more lives than an ineffective OPO.

CMS believes that OPOs will continue to improve their performance. CMS has four Regional OPO Coordinators, who work directly with the OPOs to increase organ donation rates by assisting them in developing and implementing quality assessment and performance improvement programs. In addition, they also make periodic quality visits to identify areas in which an OPO needs to improve. The CMS Regional OPO Coordinators collaborate with the Health Resources and Services Administration, the OPOs, and the hospitals to ensure the continuous implementation of best practices identified through the Organ Donation Breakthrough Collaborative (the Collaborative). However, the Collaborative is a voluntary initiative and, as such, has no enforcement mechanism.

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA), individually-identifiable data is protected from disclosure to third parties, unless an individual has given his or her permission for the information to be disclosed, or the disclosure falls under an exception or permissible use. At this time, individually-identifiable data is only requested from OPOs under two circumstances. This data would be requested whenever there is an investigation due to the suspicion that an infectious disease has been transmitted to a recipient. The request for this data falls under the public health exception in HIPAA. The second is when there has been a complaint alleged against an OPO. CMS is required to investigate complaints made against OPOs. The regional office survey and certification staff would request individually-identifiable data to complete the investigation. The request for this data would be covered under the oversight exception in HIPAA.

## I. Description of the Proposed System of Records

### *A. Statutory and Regulatory Basis for SOR*

Authority for this system is given under the Organ Procurement Organization Certification Act of 2000 (§ 701 of Pub. L. 106–505) and § 219 of the Conference Report accompanying the Consolidated Appropriations Act, 2001 (Pub. L. 106–554) containing identical provisions that amended § 371(b) (1) of the Public Health Service (PHS) Act (42 U.S.C. 273(b) (1)). Authority is also given under §§ 1102 and 1138 of the Social Security Act (the Act) (42 U.S.C. 1302, and 42 U.S.C. 1320b–8), § 1138(b) of the Act also specifies that an OPO must operate under a grant made under § 371(a) of the PHS Act.

### *B. Collection and Maintenance of Data in the System*

OPOS will maintain a file of complaint allegations filed by a complainant, beneficiary, or providers of services made against OPOs, information gathered during the complaint investigation, findings and results of the investigation, and correspondence relating to the investigation. The collected information will contain name, address, telephone number, health insurance claim number, geographic location, as well as, background information relating to Medicare or Medicaid issues of the complainant.

## II. Agency Policies, Procedures, and Restrictions on the Routine Use

### *A. Agency Policies, Procedures, and Restrictions on the Routine Use*

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release OPOS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of OPOS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to collect and maintain individually identifiable information pertaining to complaint allegations filed by a complainant, beneficiary, or providers of services made against OPOs, information gathered during the complaint investigation, findings and results of the investigation, and correspondence relating to the outcome of the investigation.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

**III. Proposed Routine Use Disclosures of Data in the System**

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give contractors, consultants or grantees whatever information is necessary for the contractors, consultants or grantees to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractors, consultants or grantees from using or disclosing the information for any purpose other than that described in the contract and requires the contractors, consultants or grantees to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. Assist in the enforcement of Organ Procurement Organizations regulations for violations of Conditions for Coverage for Organ Procurement Organizations where sharing the information is necessary to complete the processing of a complaint,

b. Contribute to the accuracy of CMS's proper payment of Medicare benefits, and/or

c. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

Other Federal or state agencies in their administration of a Federal health program may require OPOS information in order to investigate complaint allegations, evaluate information gathered during the complaint investigation, review findings and results of the investigation relating to the enforcement of OPO regional office investigations.

3. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a member of Congress in resolving an issue relating to a matter before CMS. The member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

4. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

B. Additional Provisions Affecting Routine Use Disclosures. To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the individual).

**IV. Safeguards**

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

## V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's purpose. In addition, CMS will make disclosures from the system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: May 15, 2006.

**Charlene Frizzera,**

*Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.*

## SYSTEM NO. 09–70–0575

### SYSTEM NAME:

''Organ Procurement Organizations System (OPOS)'' HHS/CMS/OCSQ.

### SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

### SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS) Central Office and Regional Offices, and at various contractor locations.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OPOS will maintain a file of complaint allegations filed by a complainant, beneficiary, or providers of services made against OPOs, information gathered during the complaint investigation, findings and results of the investigation, and correspondence relating to the investigation.

### CATEGORIES OF RECORDS IN THE SYSTEM:

The collected information will contain name, address, telephone number, health insurance claim number (HICN), geographic location, as well as, background information relating to Medicare or Medicaid issues of the complainant.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system is given under the Organ Procurement Organization Certification Act of 2000 (§ 701 of Pub. L. 106–505) and § 219 of the Conference Report accompanying the Consolidated Appropriations Act, 2001 (Pub. L. 106–554) containing identical provisions that amended § 371(b)(1) of the Public Health Service (PHS) Act (42 U.S.C. 273(b)(1)). Authority is also given under §§ 1102 and 1138 of the Social Security Act (the Act) (42 U.S.C. 1302, and 42 U.S.C. 1320b–8), § 1138(b) of the Act also specifies that an OPO must operate under a grant made under § 371(a) of the PHS Act.

### PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain individually identifiable information pertaining to complaint allegations filed by a complainant, beneficiary, or providers of services made against OPOs, information gathered during the complaint investigation, findings and results of the investigation, and correspondence relating to the outcome of the investigation. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency, or by a contractor, consultant or grantee; (2) assist another Federal or state agency in the enforcement of OPO regulations where sharing the information is necessary to complete the processing of a complaint, contribute to the accuracy of CMS's proper payment of Medicare benefits, and/or enable such agency to administer a Federal health benefits program; (3) support constituent requests made to a Congressional representative; and (4) support litigation involving the agency.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

C. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Assist in the enforcement of Organ Procurement Organizations regulations for violations of Conditions for Coverage for Organ Procurement Organizations where sharing the information is necessary to complete the processing of a complaint,

b. Contribute to the accuracy of CMS's proper payment of Medicare benefits, and/or

c. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

3. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

4. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

D. Additional Provisions Affecting Routine Use Disclosures. To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified

through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the individual).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

All records are stored electronically and in hard copy.

**RETRIEVABILITY:**

The complaint data are retrieved by an individual identifier i.e., name of complainant.

**SAFEGUARDS:**

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

**RETENTION AND DISPOSAL:**

CMS will retain complaint information for a total period not to exceed 25 years.

**SYSTEM MANAGER AND ADDRESS:**

Director, Division of Continuing Care Providers, Survey and Certification Group, Center for Medicaid and State Operations, CMS, 7500 Security Boulevard, Mail Stop S2–01–16, Baltimore, Maryland 21244–1849.

**NOTIFICATION PROCEDURE:**

This system is exempt under the provisions of 5 U.S.C. 552a(k)(2) of the Privacy Act. However, portions of this system notice are non-exempt and consideration will be given to requests addressed to the system manager for those portions. For general inquiries, it would be helpful if the request included the system name, address, age, sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable) and complaint tracking identification number.

**RECORD ACCESS PROCEDURE:**

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

**CONTESTING RECORDS PROCEDURES:**

The subject individual should contact the system manager named above and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These Procedures are in accordance with Department regulation 45 CFR 5b.7).

**RECORDS SOURCE CATEGORIES:**

CMS investigative files maintained in OPOS are either received as electronic documents or paper records that are compiled for administrative, civil, and law enforcement purposes. In the course of investigations, CMS often has a need to obtain confidential information involving individuals other than the complainant.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

HHS claims exemption of certain records (case files on active fraud investigations) in the system from notification and access procedures under 5 U.S.C. 552a(k)(2) inasmuch as these records are investigatory materials compiled for program, administrative, and law enforcement in anticipation of a criminal or administrative proceedings. (See Department Regulation (45 CFR 5b.11)).

[FR Doc. E6–7690 Filed 5–19–06; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0097]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study of Qualified Health Claims: Consumer Inferences About Omega-3 Fatty Acids, Monounsaturated Fatty Acids From Olive Oil, and Green Tea

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

**DATES:** Fax written comments on the collection of information by June 21, 2006.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Experimental Study of Qualified Health Claims: Consumer Inferences About Omega-3 Fatty Acids, Monounsaturated Fatty Acids From Olive Oil, and Green Tea

FDA regulates health claims in the labeling of food products under the Nutrition Labeling and Education Act of 1990 (NLEA). NLEA regulations establish general requirements for health claims in food labeling. A manufacturer is required to provide a description of the scientific evidence supporting a proposed health claim to FDA for review before the claim may appear in labeling (§§ 101.14(c) and (d),

101.70 (21 CFR 101.14(c) and (d), 101.70)). If FDA determines that there is significant scientific agreement among experts that the proposed health claim is supported by the totality of publicly available evidence, FDA issues a regulation authorizing the claim. Health claims must be ''complete, truthful, and not misleading'' (§101.14(d)(2)(iii)) and must ''enable the public to comprehend the information provided and to understand the relative significance of such information in the context of a total daily diet'' (§ 101.14 (d)(2)(v)).

In 2003, an FDA Task Force on Consumer Health Information for Better Nutrition issued a report that provided guidance on an interim review process for health claims that do not meet the significant scientific agreement (SSA) standard for the issuance of a regulation authorizing the claim. These claims, referred to as ''qualified health claims,'' are evaluated according to an interim evidence-based ranking system for scientific data and include a disclaimer or other qualifying language to distinguish them from claims that meet the SSA standard. The report also identified the need for consumer research to examine ways to communicate the level of scientific support associated with qualified health claims.

In the fall of 2004, FDA issued letters of enforcement discretion for two qualified health claims about the relationship between risk of coronary heart disease and consumption of monounsaturated fatty acids from olive oil and omega-3 fatty acids, respectively. The qualified health claims appear below:

1. Limited and not conclusive scientific evidence suggests that eating about 2 tablespoons (23 grams) of olive oil daily may reduce the risk of coronary heart disease due to the monounsaturated fat in olive oil. To achieve this possible benefit, olive oil is to replace a similar amount of saturated fat and not increase the total number of calories you eat in a day. One serving of this product [Name of food] contains [x] grams of olive oil.

2. Supportive but not conclusive research shows that consumption of EPA and DHA omega-3 fatty acids may reduce the risk of coronary heart disease. One serving of [name of food] provides [x] grams of EPA and DHA omega-3 fatty acids. [See nutrition information for total fat, saturated fat and cholesterol content.]

In June 2005, FDA issued a letter of enforcement discretion for two qualified health claims about the relationship between risk of breast and prostate cancers and consumption of green tea. The qualified claims appear below:

1. Two studies do not show that drinking green tea reduces the risk of breast cancer in women, but one weaker, more limited study suggests that drinking green tea may reduce this risk. Based on these studies, FDA concludes that it is highly unlikely that green tea reduces the risk of breast cancer.

2. One weak and limited study does not show that drinking green tea reduces the risk of prostate cancer, but another weak and limited study suggests that drinking green tea may reduce this risk. Based on the studies, FDA concludes that it is highly unlikely that green tea reduces the risk of prostate cancer.

In November 2005, FDA released the results of a prior study of qualified health claims to assess the effectiveness of claim language and grading schemes for conveying the level of scientific evidence supporting the claim. The study showed that report card schemes helped consumers distinguish between various levels of scientific support. However, the report card scheme inadvertently conveyed other nutrient and product attributes to consumers. In particular, report card schemes resulted in ''halo effects'' and other misperceptions concerning the general healthfulness and quality of the product. In addition, the study showed that consumers attributed higher levels of scientific support to certain qualified health claims bearing a grade of ''B'' than to non-graded claims that meet FDA's standard of ''SSA''. Thus, the study proposed here will further explore the report card grading scheme by modifying it in two ways. First, the study will test the ability of grade disclaimers to correct for some of the misperceptions created by report card schemes observed in the earlier study. Second, the study will include SSA claims as ''A'' grade claims within the report card grade scheme.

The study proposed here is part of an ongoing effort by FDA to collect data concerning qualified health claims and their impact on consumer perceptions and behavior. Previous FDA studies have examined hypothetical qualified health claims to evaluate ways to communicate the strength of scientific evidence supporting a claim. This study will examine four qualified health claims and two SSA claims to evaluate whether consumers comprehend the information in the claim and whether consumers understand the relative significance of the information in the context of a total diet. In addition, the study will broaden FDA's understanding about how consumers interpret qualified health claims, particularly as they pertain to the level of scientific evidence conveyed by the message and to any differences there may be between qualified health claims on dietary supplements versus foods.

The experimental study data will be collected using participants of an Internet panel. Participation in the experimental study is voluntary.

In the **Federal Register** of March 30, 2005 (70 FR 16291), FDA published a 60-day notice requesting public comment on the information collection provisions. At that time, the experimental study was titled ''Experimental Study of Qualified Health Claims: Consumer Inferences about Omega-3 Fatty Acids and Monounsaturated Fatty Acids from Olive Oil.'' Previously, it did not include the two qualified health claims for green tea or the two SSA health claims, and the study also did not include further exploration of the report card grading scheme for health claims. The study is now renamed to indicate the inclusion of the green tea claims. Burden estimates have also been adjusted to account for the increase in respondents necessary to make these changes in the study.

FDA received four letters in response to the notice, each containing one or more comments. One of the letters and portions of another letter contained comments that were not responsive to the four PRA questions for which comments were requested. One of these comments was about the presence of monounsaturated fatty acids in oils other than olive oil, while the others raised legal issues outside the scope of the PRA. These comments will not be addressed in this document, which is intended to summarize and respond to comments about PRA issues. The comments that addressed the four PRA questions and our responses follow.

One comment expressed concern that the proposed collection of information is unnecessary for the proper performance of the agency's functions and that the information will have no practical utility. The comment asserted that the information to be collected will be inadequate for the agency to assess whether consumer confusion will arise from the claims.

FDA disagrees. The study is part of an ongoing effort by FDA to collect data concerning the communications effects of qualified health claims on consumer perceptions and judgments. The purpose of the study is to assess how some claim language compares to other claim language in conveying information to consumers. The study

uses an experimental design to assess consumer reactions to health claim language intended to convey both the potential health benefits and the level of scientific support for the health claim.

The comment also suggested that the information will not be useful if it is the agency's intent to alter or restrict the wording of qualified health claims because, according to the comment, consumers have the right to receive truthful information, regardless of whether they understand that information.

FDA disagrees. The agency has a responsibility to ensure that disclaimers and other qualifying language intended to prevent consumer deception are effective in serving that purpose. The study is designed to evaluate whether certain variants of the qualified health claims are more effective than others at conveying to consumers the potential health benefits and the level of scientific support for the health claim. FDA expects this study to be useful in determining language that effectively conveys this information to consumers.

The comment suggested that there might be ways to improve the quality or utility of the information collection, yet did not offer specific recommendations to modify the study and analysis. In particular, the comment expressed concern that an Internet survey cannot be used to measure consumer confusion.

FDA responds that the experimental study that is the basis of this information collection request is an Internet-based experiment, not an Internet survey. The experimental study is intended to assess the communication effects, in a large sample of study participants, of both existing health claim language that appears on dietary supplements and conventional food products and variants of such language. The study is not intended to measure consumer confusion per se.

One comment recommended that, to help maximize the quality, utility and accuracy of the data to be collected in the study, FDA should test the qualified claim language exactly as stated in the **Federal Register** notice published March 30, 2005.

FDA agrees. The experimental study will test the qualified claim language exactly as it appears in the notice, in addition to variants of the claim language.

A comment urged FDA to takes steps to ensure that using electronic data collection is reliable and verifiable for the study.

FDA is confident that the methodology is reliable and verifiable for this type of study. FDA will closely monitor the contractor that implements the experiment to ensure the validity and accuracy of the collected data.

Another comment supported FDA's efforts to understand consumer responses to food and dietary supplement labels, but expressed concern that FDA has not supplied sufficient information to evaluate whether the estimated burden of the proposed collection is accurate.

FDA believes that the estimate of burden is accurate because the estimate is based on past experience with Internet panel experiments similar in complexity and duration to the one proposed here. The study protocol will be available for public viewing when this 30-day notice is published. FDA has followed the procedures for public notice and comment about this information collection set out in the PRA (44 U.S.C. 3501–3520) and OMB regulations (5 CFR part 1320).

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|
| 30 (pre-test) | 1 | 30 | .16 | 5 |
| 7,440 (experiment) | 1 | 7,440 | .16 | 1,191 |
| TOTAL | | | | 1,196 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 12, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–7692 Filed 5–19–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0443]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Focus Groups as Used by the Food and Drug Administration

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Focus Groups as Used by the Food and Drug Administration'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 27, 2006 (71 FR 9828), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 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 it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0497. The approval expires on November 30, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: May 12, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–7698 Filed 5–19–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2006N–0183]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance on Reagents for Detection of Specific Novel Influenza A Viruses

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on guidance on reagents for detection of specific novel influenza A viruses.

**DATES:** Submit written or electronic comments on the collection of information by July 21, 2006.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

## Guidance on Reagents for Detection of Specific Novel Influenza A Viruses—21 CFR 866.3332—(OMB Control Number 0910–0584)—Extension

In accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c), FDA evaluated an application for an in vitro diagnostic device for detection of influenza subtype H5 (Asian lineage), commonly known as avian flu. FDA concluded that this device is properly classified into class II in accordance with 21 U.S.C. 360c(a)(1)(B), because it is a device for which the general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, but there is sufficient information to establish special controls to provide such assurance. The statute permits FDA to establish as special controls many different things, including post market surveillance, development and dissemination of guidance, recommendations, and ''other appropriate actions as the Secretary deems necessary'' (21 U.S.C. 360c(a)(1)(B)). This information collection is a measure that FDA determined to be necessary to provide reasonable assurance of safety and effectiveness of reagents for detection of specific novel influenza A viruses.

FDA issued an order classifying the H5 (Asian lineage) diagnostic device into class II on February 3, 2006, establishing the special controls necessary to provide reasonable assurance of the safety and effectiveness of that device and similar future devices. The new classification will be codified in 21 CFR 866.3332, a regulation that will describe the new classification for reagents for detection of specific novel influenza A viruses and set forth the special controls that help to provide a reasonable assurance of the safety and effectiveness of devices classified under that regulation. The regulation will refer to the special control guidance document, ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses,'' which provides recommendations for measures to help provide a reasonable assurance of safety and effectiveness for these reagents.

The guidance document recommends that sponsors obtain and analyze postmarket data to ensure the continued reliability of their device in detecting the specific novel influenza A virus that it is intended to detect, particularly given the propensity for influenza viruses to mutate and the potential for changes in disease prevalence over time. As updated sequences for novel influenza A viruses become available (from the World Health Organization, National Institutes of Health, and other public health entities), sponsors of reagents for detection of specific novel influenza A viruses will collect this information, compare them with the primer/probe sequences in their devices, and incorporate the result of these analyses into their quality management system, as required by 21 CFR 820.100(a)(1). These analyses will be evaluated against the device design validation and risk analysis required by 21 CFR 820.30(g), to determine if any design changes may be necessary.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours | Total Operating and Maintenance Costs |
|---|---|---|---|---|---|
| 10 | 2 | 20 | 10 | 200 | $3,500 |

[1]There are no capital costs associated with this collection of information.

FDA estimates that 10 respondents will be affected annually. Each respondent will collect this information twice per year, estimated to take 10 hours. This results in a total data collection burden of 200 hours (10 x 20

= 200). FDA estimates that cost of developing standard operating procedures for each data collection is $350 (10 hours of work at $35/hour). This results in a total cost to industry of $3,500 ($350 x 10 respondents).

Dated: May 12, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–7708 Filed 5–19–06; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005D–0021]**

### International Conference on Harmonisation; Guidance on Q8 Pharmaceutical Development; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q8 Pharmaceutical Development.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance describes the suggested contents for the pharmaceutical development section of a regulatory submission in the ICH M4 Common Technical Document (CTD) format. The guidance also indicates areas where the provision of greater understanding of pharmaceutical and manufacturing sciences can create a basis for flexible regulatory approaches.

**DATES:** Submit written or electronic comments on agency guidance at any time.

**ADDRESSES:** Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the guidance*: Moheb Nasr, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, Bldg. 21, rm. 2630, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1900; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–435–5681.

*Regarding the ICH*: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research; FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of February 9, 2005 (70 FR 6888), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''Q8: Pharmaceutical Development.'' The notice gave interested persons an opportunity to submit comments by April 11, 2005. To provide additional time for public comment consistent with the time for comment provided by other ICH regulatory agencies, FDA reopened the comment period until June 11, 2005 (70 FR 24819, May 11, 2005).

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in November 2005.

The guidance describes the suggested contents for the pharmaceutical development section (section 3.2.P.2) of a regulatory submission in the CTD format for drug products as defined in the scope of module 3 of the CTD. The information and knowledge gained from pharmaceutical development studies provide scientific understanding to support the establishment of specifications and manufacturing controls. The guidance also indicates areas where the provision of greater understanding of pharmaceutical and manufacturing sciences can create a basis for flexible regulatory approaches.

This guidance applies to pharmaceutical studies as defined in section 3.2.P.2 of module 3 of the CTD. The guidance does not apply to submissions for drug products during the clinical research stages. However, the principles described in the guidance are important to consider during product development.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative

approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

**II. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

**III. Electronic Access**

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*,*http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: May 15, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–7727 Filed 5–19–06; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

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 of other forms of information technology.

**Proposed Project: Loan Information System Records for the DHHS and DHUD Hospital Mortgage Insurance, Guarantee, and Direct Loan Programs (OMB No. 0915–0174)—Extension**

The Division of Facilities and Loans within the Health Resources and Services Administration monitors outstanding direct and guaranteed loans made under section 621 of Title VI and section 1601 of Title XVI of the Public Health Service Act, as well as loans insured under the Section 242 Hospital Mortgage Insurance Program of the National Housing Act. These programs were designed to aid construction and modernization of health care facilities by increasing the access of facilities to capital through the assumption of the mortgage credit risk by the Federal Government.

Operating statistics and financial information are collected annually from hospitals with mortgages that are insured under these programs. The information is used to monitor the financial stability of the hospitals to protect the Federal investment in these facilities. The form used for the data collection is the Hospital Facility Data Abstract. No changes in the form are proposed.

The estimated response burden is as follows:

| Form | Number of respondents | Responses per respondent | Hours per response | Total hour burden |
|---|---|---|---|---|
| Hospital Facility Data Abstract | 80 | 1 | 1 | 80 |

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received with 60 days of this notice.

Dated: May 16, 2006.

**Tina M. Cheatham,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E6–7726 Filed 5–19–06; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Bureau Of Customs And Border Protection

### Notice of Cancellation of Customs Broker License Due to Death of the License Holder

**AGENCY:** Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

| Name; | License # | *Port Name* |
|---|---|---|
| Peter Gawi | 10645 | New York. |
| Kirk K. Lakis | 6361 | Dallas. |
| George J. Young | 02612 | Los Angeles. |
| Daniel J. Hayes, Sr. | 3758 | Los Angeles. |
| James J. Rea | 5498 | New York. |
| Eugenio D. Santana | 6864 | New York. |
| Dennis Nowakowski | 20659 | Buffalo. |

| Name; | License # | *Port Name* |
|---|---|---|
| Terry M. Hatada | 3679 | San Francisco. |

Dated: May 15, 2006.

**Jayson P. Ahern,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. E6–7725 Filed 5–19–06; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### Notice of Cancellation of Customs Broker License

**AGENCY:** Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are cancelled without prejudice.

| Name | License # | Issuing port |
|---|---|---|
| Roopa Mirchandani | 9890 | New York. |
| Lynne A. Palmitier | 13772 | Detroit. |
| Elsie M. Clark | 10280 | Los Angeles. |
| Allstates Customs Brokerage, Inc | 20638 | Atlanta. |
| Arzoon Global Commerce, Inc | 21283 | San Francisco. |
| Panta Enterprises, Inc | 14584 | Miami. |
| Associated Customhouse Brokers, Inc | 9706 | Miami. |
| James P. Cesped | 4581 | San Francisco. |
| Steve A. Ashline | 7054 | Champlain. |
| All-Ways Customs Broker, Inc | 20131 | Miami. |
| Marialuisa Yoshikawa | 10998 | San Francisco. |
| 2nd Edison, Inc | 22315 | San Francisco. |
| Harry S. Sanders | 9716 | New York. |
| Barbara A. Elibay | 6095 | Savannah. |

Dated: May 15, 2006.

**Jayson P. Ahern,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. E6–7724 Filed 5–19–06; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1636–DR]**

### Arkansas; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1636–DR), dated April 12, 2006, and related determinations.

**DATES:** *Effective Date:* April 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the Public Assistance Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 12, 2006: Cross, Greene, and Randolph Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Acting Director, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E6–7742 Filed 5–19–06; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–3266–EM]**

### Connecticut; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Connecticut (FEMA–3266–EM), dated May 2, 2006, and related determinations.

**DATES:** *Effective Date:* May 2, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 2, 2006, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Connecticut resulting from the record snowfall during the period of February 11–12, 2006, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Connecticut.

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 emergency protective measures under the Public Assistance program to save lives and protect public health, safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. This emergency assistance will be provided for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provide under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs in the designated areas. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, Department of Homeland Security, under Executive Order 12148, as amended, Kevin Merli, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared emergency: The counties of Fairfield, Hartford, New Haven, Tolland, and Windham for emergency protective measures (Category B) under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

**R. David Paulison,**

*Acting Director, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E6–7738 Filed 5–19–06; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1631–DR]**

### Missouri; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1631–DR), dated March 16, 2006, and related determinations.

**DATES:** *Effective Date:* April 25, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Missouri 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 March 16, 2006: Lawrence and Vernon Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Acting Director, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E6–7743 Filed 5–19–06; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1631–DR]**

### Missouri: Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Missouri (FEMA–1631–DR), dated March 16, 2006, and related determinations.

**DATES:** *Effective Date:* April 25, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period is now March 8, 2006, through and including March 13, 2006.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Acting Director, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E6–7745 Filed 5–19–06; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1611–DR]**

### Northern Mariana Islands; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the

Commonwealth of the Northern Mariana Islands (FEMA–1611–DR), dated November 8, 2005, and related determinations.

**DATES:** *Effective Date:* May 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that special cost sharing arrangements are warranted regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with 48 U.S.C. 1469a(d), pertaining to insular areas, and the President's declaration letter dated November 8, 2005, Federal funds for the Hazard Mitigation Grant Program are authorized at 100 percent of total eligible costs for the Commonwealth of the Northern Mariana Islands. This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Acting Director, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E6–7748 Filed 5–19–06; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1632–DR]**

### Oregon; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Oregon (FEMA–1632–DR), dated March 20, 2006, and related determinations.

**DATES:** *Effective Date:* April 20, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Oregon is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 20, 2006: Yamhill County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Acting Director, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E6–7744 Filed 5–19–06; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1634–DR]**

### Tennessee; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1634–DR), dated April 5, 2006, and related determinations.

**DATES:** *Effective Date:* April 24, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, Department of Homeland Security, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Michael Karl as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Acting Director, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E6–7739 Filed 5–19–06; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1634–DR]**

### Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1634–DR), dated April 5, 2006, and related determinations.

**DATES:** *Effective Date:* April 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 5, 2006: Benton, Cannon, Cheatham, Cumberland, Davidson, Dickson, Sumner, and Warren Counties for Public Assistance

(already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Acting Director, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E6–7741 Filed 5–19–06; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1624–DR]**

### Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Texas (FEMA–1624–DR), dated January 11, 2006, and related determinations.

**DATES:** *Effective Date:* April 25, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this declared disaster is now November 27, 2005, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Acting Director, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E6–7746 Filed 5–19–06; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1624–DR]**

### Texas; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1624–DR), dated January 11, 2006, and related determinations.

**DATES:** *Effective Date:* May 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 11, 2006: Kerr County for Individual Assistance (already designated for Public Assistance Category B (emergency protective measures), subject to subsequent designation by FEMA for reimbursement.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Acting Director, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E6–7747 Filed 5–19–06; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications.

**SUMMARY:** The following applicants have applied for permits to conduct certain activities with endangered species.

**DATES:** Written data or comments must be received on or before June 21, 2006.

**ADDRESSES:** Send written data or comments to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Fasbender, (612) 713–5343.

**SUPPLEMENTARY INFORMATION:** The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 et seq.). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

**Permit Number TE125544**

*Applicant:* Smithsonian Institution, Washington, DC

The applicant requests a permit to take the Kirtland's warbler (*Dendroica kirtlandii*) throughout Michigan. The scientific research is aimed at enhancement of survival of the species in the wild.

**Permit Number TE125549**

*Applicant:* Maartan Vonhof, Kalamazoo, Michigan

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*) throughout Michigan. The scientific research is aimed at enhancement of survival of the species in the wild.

**Permit Number TE125552**

*Applicant:* Michael Burt, Kirksville, Missouri

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*) throughout Missouri. The scientific research is aimed at enhancement of survival of the species in the wild.

**Permit Number TE120231**

*Applicant:* John Timpone, Ballwin, Missouri

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*) throughout Maryland, Missouri, Ohio, Pennsylvania, and West Virginia. The scientific research is aimed at enhancement of survival of the species in the wild.

**Authority:** 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.*).

Dated: April 28, 2006.

**Wendi Weber,**

*Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. E6–7728 Filed 5–19–06; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Proposed Programmatic Statewide Red-Cockaded Woodpecker Safe Harbor Agreement, North Carolina

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that the North Carolina Wildlife Resources Commission (NCWRC, or Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit (ESP) under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The ESP application includes a proposed Safe Harbor Agreement (SHA) for the endangered Red-cockaded Woodpecker (*Picoides borealis*) (RCW) for a period of 99 years, along with a supporting Environmental Assessment (EA). We announce the opening of a 30-day comment period and request comments from the public on the proposed SHA and the supporting EA.

**DATES:** Written comments should be sent to the Service's Regional Office (see **ADDRESSES**) and must be received on or before June 21, 2006.

**ADDRESSES:** To obtain copies of the proposed SHA and the supporting EA for review, write to the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits). Send your comments to this address as well. For commenting guidelines, see ''Public Comments'' under **SUPPLEMENTARY INFORMATION.**

Documents will also be available for public inspection by appointment during normal business hours at the Regional Office in Atlanta, or at the Field Office at 551–F Pylon Drive, Raleigh, North Carolina, 27636. Do not write to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Gooch, Regional Safe Harbor Coordinator, at the Atlanta address above, 404–679–7124 (phone), or 404–679–7081 (facsimile), or John Hammond, Fish and Wildlife Biologist, at the Raleigh address above or 919–856–4556 (phone).

**SUPPLEMENTARY INFORMATION:** The Applicant has applied to the Service for an ESP under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.). The application includes a proposed SHA for the endangered RCW for a period of 99 years, along with a supporting EA. We announce the opening of a 30-day comment period and request comments from the public on the proposed SHA and the supporting EA. If approved, the SHA would allow the Applicant to issue certificates of inclusion throughout certain areas of North Carolina to eligible non-Federal landowners that complete an approved Safe Harbor Management Agreement (SHMA).

**Background**

The EA identifies and describes several alternatives. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public, subject to the requirements of the Privacy Act and Freedom of Information Act. For further information and instructions on reviewing and commenting on this application, see **ADDRESSES** and, in this section, ''Public Comments.''

Under a SHA, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act. SHAs encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through SHAs are found in 50 CFR 17.22 and 17.32.

NCWRC's proposed Statewide SHA is designed to encourage voluntary RCW habitat restoration or enhancement activities by relieving a landowner who enters into a landowner-specific agreement (*i.e.,* the SHMA) from any additional responsibility under the Act beyond that which exists at the time he or she enters into the program. The SHMA will identify any existing RCWs and any associated habitat (the baseline) and will describe the actions that the landowner commits to take (*e.g.,* hardwood midstory removal, cavity provisioning) or allows to be taken to improve RCW habitat on the property, and the time period within which those actions are to be taken and maintained. A participating landowner must maintain the baseline on his/her property (*i.e.,* any existing RCW groups and/or associated habitat), but may be allowed the opportunity to incidentally take RCWs at some point in the future if above-baseline numbers of RCWs are attracted to that site by the proactive management measures undertaken by the landowner. It is important to note that the SHA does not envision, nor will it authorize, incidental take of existing RCW groups, with one exception. This exception is incidental take related to a baseline shift; in this circumstance, the baseline will be maintained but redrawn or shifted on that landowner's property. Among the minimization measures proposed by the Applicant are no incidental taking of RCWs during the breeding season, consolidation of small, isolated RCW populations at sites capable of supporting a viable RCW population, and measures to improve current and potential habitat for the species. Further details on the topics described above are found in the aforementioned documents available for review under this notice.

The geographic scope of the Applicant's SHA is the State of North Carolina, with the exception of six counties (Cumberland, Harnett, Hoke, Moore, Richmond, and Scotland) located in the Sandhills Region that are already covered in an existing SHA (U.S. Fish and Wildlife Service Permit Number TE798839–12)). Lands potentially eligible for inclusion include all privately owned lands, State lands, and public lands owned by cities, counties, and municipalities with potentially suitable RCW habitat.

We have evaluated several alternatives to the proposed action, and these are described at length in the accompanying EA. The alternative of our paying landowners for desired

management practices is not being pursued because we are presently unable to fund such a program. An alternative by which interested private or non-Federal property owners would prepare an individual permit application/Agreement with us also was evaluated. Under that alternative, we would process each permit application/Agreement individually. This would increase the effort, cost, and amount of time it would take to provide safe harbor assurances to participating landowners and also cause such benefits to be applied on a piecemeal, individual basis. We have determined the previously identified alternatives, which would result in delays and lack of a coordinated effort, would likely result in a continued decline of the RCWs on private lands due to habitat fragmentation, lack of beneficial habitat management, and the effects of demographic isolation.

A no-action alternative was also explored, but this alternative is not likely to increase the number of RCW groups or RCW habitat, nor would it alleviate landowner conflicts. Instead, the action proposed here, although it authorizes future incidental take, is expected to attract sufficient interest among North Carolina landowners to generate substantial net conservation benefits to the RCW on a landscape level. The proposed SHA was developed in an adaptive management framework to allow changes in the program based on new scientific information, including but not limited to biological needs and management actions proven to benefit the species or its habitat.

### Public Comments

Written data or comments should be submitted to the Regional Office at the address listed under **ADDRESSES** and must be submitted in writing to be adequately considered our in the Service's decision-making process. Please reference the ''Proposed Programmatic North Carolina Statewide Red-cockaded Woodpecker Safe Harbor Agreement'' in your comments, or in requests for the documents discussed in this notice.

### Decision

We will not make our final determination until after the end of the 30-day comment period, and we will fully consider all comments received during the comment period. If the final analysis shows the SHA to be consistent with the Service's policies and applicable regulations, the Service will sign the SHA and issue the ESP.

### Authority

We are providing this notice under section 10(c) of the Endangered Species Act and implementing regulations for the National Environmental Policy Act (40 CFR part 1506).

Dated: May 16, 2006.

**Jackie Parrish,**

*Acting Regional Director, Southeast Region.*

[FR Doc. E6–7731 Filed 5–19–06; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Notice of Availability of the Draft Environmental Impact Statement for the Cowlitz Indian Tribe's Proposed 151.87 Acre Fee-To Trust Transfer, Reservation Proclamation and Casino-Resort Project, Clark County, WA; Correction

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** This notice advises the public of three corrections to the Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Cowlitz Indian Tribe's Proposed Fee-to Trust Transfer, Reservation Proclamation and Casino-Resort Project, Clark County, Washington, published in the **Federal Register** on April 12, 2006, 71 FR 18767 (FR Doc. E6–5383). The U.S. Environmental Protection Agency (EPA) was erroneously included among the cooperating agencies. EPA is not a cooperating agency for this DEIS. This notice also corrects the name, address and telephone number of the contact person for the DEIS.

**FOR FURTHER INFORMATION CONTACT:** Gerald Henrickson, (503) 231–6927.

### Correction

On page 18767, in the third column under the SUMMARY heading, in the first sentence, remove the words ''U.S. Environmental Protection Agency (EPA).''

On page 18768, in the first column under the **ADDRESSES** heading, correct the last paragraph to read: To obtain a copy of the DEIS, please write to Gerald Henrickson, Northwest Regional Office, Bureau of Indian Affairs, 911 N.E. 11th Avenue, Portland, Oregon 97232, or call him at the number provided below.

On page 18768, in the first column under the **FOR FURTHER INFORMATION CONTACT** heading, correct the name and telephone number to read: Gerald Henrickson, (503) 231–6927.

Dated: May 16, 2006.

**Michael D. Olsen,**

*Acting Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. E6–7773 Filed 5–19–06; 8:45 am]

BILLING CODE 4310–W7–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Boundary Revision, Big Thicket National Preserve

**SUMMARY:** This notice announces the revision to the boundary of Big Thicket National Preserve to include the parcel of land known as Tract 223–09. The United States will acquire this tract from The Conservation Fund upon the revision of the boundary. The National Park Service has determined that this boundary revision is necessary and that the acquisition of this tract would make a significant contribution to the purposes for which the preserve was created.

**DATES:** The effective date of this boundary revision is the date on which this notice is published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Big Thicket National Preserve, 6044 Farm Road 420, Kountze, Texas 77625 or by telephone 409–951–6700.

**SUPPLEMENTARY INFORMATION:** The Act establishing Big Thicket National Preserve, as amended in 1993, 16 U.S.C. 698(b), provides that, after notifying the House Committee on Resources and the Senate Committee on Energy and Resources, the Secretary of the Interior is authorized to make this boundary revision. This action will add one parcel composed of 200 acres of land to Big Thicket National Preserve. The National Park Service proposes to purchase this parcel from The Conservation Fund. This parcel is bounded on the north, south, and east by the preserve. The acquisition of this parcel is required to maintain the ecology and the present rural character for which the preserve was created.

The above parcel is depicted as tract number 223–09 on land acquisition segment map 223, having drawing number 175–80,010 dated November, 2004. This map is on file at the National Park Service Land Resources Program Center, Intermountain Region, Santa Fe, New Mexico, and at the Office of the

Superintendent at Big Thicket National Preserve, Kountze, Texas.

**Michael D. Snyder,**

*Director, Intermountain Region.*

[FR Doc. 06–4709 Filed 5–19–06; 8:45 am]

BILLING CODE 4312–CB–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Proposed National Natural Landmark Designation for the Irvine Ranch Land Reserve, California

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The National Park Service published a document in the **Federal Register** of March 31, 2006, concerning the proposed National Natural Landmark Designation for the Irvine Ranch Land Reserve, CA which will be considered for recommendation at the June National Park System Advisory Board Meeting. The document contained an incorrect date and location.

**FOR FURTHER INFORMATION CONTACT:** Steve Gibbons at 360–856–5700, extension 306.

**Correction**

In the **Federal Register** of March 31, 2006, in FR Doc. 06–3161, on page 16341, in the second column, correct the ''**SUMMARY**'' caption to read:

**SUMMARY:** The National Park Service has evaluated and determined that the Irvine Ranch Land Reserve, located forty-five miles south of downtown Los Angeles, in Orange County, California appears to meet the criteria for national significance and proposes to recommend the site for designation as a National Natural Landmark. The public is invited to comment on this recommendation. The proposal will be considered by the National Park System Advisory Board at a meeting to be held on June 9, 2006 at Zion Lodge (Auditorium), Zion National Park, Springdale, Utah 84767.

Dated: April 26, 2006.

**Steve Martin,**

*Deputy Director, National Park Service.*

[FR Doc. E6–7722 Filed 5–19–06; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Availability of the Revised National Park Service Director's Order #21, Donations and Fundraising

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The National Park Service (NPS) has revised existing policies and procedures that guide its acceptance of donations and its relationships to those who desire to raise private sector support to benefit parks and programs. The policies and procedures apply to all units of the national park system, and supersede and replace the policies and procedures originally issued in 1998 that were subsequently extended pending the completion of the revision.

**DATES:** The document may be accessed on the Internet at *http://www.nps.gov/policy/DOrders/DO21.html* beginning May 22, 2006.

**ADDRESSES:** The revised Director's Order #21 and it accompanying reference guide is available on the Internet at *http://www.nps.gov/policy/DOrders/DO21.html.*

**FOR FURTHER INFORMATION CONTACT:** John Piltzecker at (202) 354–2150 or *partnerships@nps.gov.*

**SUPPLEMENTARY INFORMATION:** The NPS policies and procedures governing the role of the NPS in accepting donations and authorizing non-profit park support groups to raise funds on behalf of or for the benefit of the National Park System have previously been published in the form of Director's Order #21. The guidelines are superseded by the new Director's Order #21 (and a reference guide that has been issued concurrently). The topics included in the Director's Order include: Acceptance of donations, recognition provided to donors, authorization of fundraising (including for construction projects), cause-related corporate campaigns, and marketing exclusivity granted to Proud Partners of the National Park Foundation.

Dated: April 26, 2006.

**Steve Martin,**

*Deputy Director, National Park Service.*

[FR Doc. E6–7723 Filed 5–19–06; 8:45 am]

BILLING CODE 4310–70–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–683 (Second Review)]**

### Fresh Garlic From China

**AGENCY:** International Trade Commission.

**ACTION:** Scheduling of an expedited five-year review concerning the antidumping duty order on fresh garlic from China.

**SUMMARY:** The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** Effective Date: May 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dana Lofgren (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On May 8, 2006, the Commission determined that the domestic interested party group responses to its notice of institution (71 FR 5374, February 1, 2006) of the subject five-year review were adequate and that the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[2]

*Staff report.*—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 29, 2006, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter,

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Commissioner Daniel R. Pearson concluded that the domestic group response was adequate and the respondent group response was inadequate, but that circumstances warranted a full review.

pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to this review and that have provided individually adequate responses to the notice of institution, and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before July 7, 2006 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by July 7, 2006. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Determination.*—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 15, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6–7689 Filed 5–19–06; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1933—American Society of Mechanical Engineers

Notice is hereby given that, on May 2, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1933, 15 U.S.C. 4301 *et seq.* (''the Act''), American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since November 18, 2005, ASME has published several new standards and initiated a new standards activity within the general nature and scope of ASME's standards development activities, as specified in its original notification and transferred other activities to other standards developers. More detail regarding these changes can be found at *www.asme.org*.

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on November 25, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 15, 2005 (70 FR 74333).

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 06–4724 Filed 5–19–06; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Global Climate and Energy Project

Notice is hereby given that, on April 24, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Global Climate and Energy Project (''GCEP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the members of GCEP have, as of September 1, 2003, September 1, 2004, and September 1, 2005, amended the agreement between them to extend the termination of the project, which currently will terminate August 31, 2008, unless further extended. The amendments also provided for funding of GCEP and for additional specified projects, each of which is within the scope of the purpose of GCEP as originally established and notified.

No other changes have been made in either the membership or planned activity of the group research project, and GCEP intends to file additional written notification disclosing all changes in membership.

On March 12, 2003, GCEP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 4, 2003 (68 FR 16552).

The last notification was filed with the Department on April 16, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 21, 2003 (68 FR 27865).

**Dorothy B. Fountain,**

*Deputy Director Operations, Antitrust Division.*

[FR Doc. 06–4723 Filed 5–19–06; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on April 24, 2006, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. (''the Act''), Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 9 new standards have been initiated and 4 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/03-30-06.html.*

On September 17, 2004, IEEE filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on April 19, 2006. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 10, 2006 (71 FR 27279).

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 06–4725 Filed 5–19–06; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—United Technologies Research Center

Notice is hereby given that, on March 21, 2006, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), United Technologies Research Center (''UTRC''), has filed written notifications simultaneously with the Attorney General and Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: United Technologies Corporation, East Hartford, CT; and Rotary Power LLC, Fort Salonga, NY. The general area of UTRC's planned activity is to engage in cooperative research and development in the area of compound gas turbine/rotary shaft power producing engines.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 06–4726 Filed 5–19–06; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Application; Correction

By Notice dated April 17, 2006, and published in the **Federal Register** on April 21, 2006, (71 FR 20729), the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, provided notice of an application by Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, to be registered as an Importer of basic classes of controlled substances listed in Schedule II. The Notice of Application should be corrected by adding the following information: ''The company plans to import the listed controlled substances to manufacture bulk active pharmaceutical ingredients.''

Dated: May 15, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6–7736 Filed 5–19–06; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

*Applicant/Location:* Franklin Group, Inc., Russellville, Alabama.

*Principal Product:* The loan, guarantee, or grant applicant plans to expand an existing manufactured home manufacturing facility. The NAICS industry code for this enterprise is 321991 (Manufactured Home (Mobile Home) Manufacturing.

**DATES:** All interested parties may submit comments in writing no later than June 5, 2006. Copies of adverse comments received will be forwarded to the applicant noted above.

**ADDRESSES:** Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4514, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov*; or transmit via fax 202–693–3015 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: at Washington, DC this 11th day of May, 2006.

**Emily Stover DeRocco,**

*Assistant Secretary for Employment and Training.*

[FR Doc. E6–7750 Filed 5–19–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR 1218–0209 (2006)]**

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; OSHA Data Initiative (1218–0209)

**ACTION:** Request for public comment.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA–95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the Information Collection Request (ICR) for the OSHA Data Initiative. A copy of the proposed ICR can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 21, 2006. The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

**ADDRESSES:** Comments are to be submitted to the Docket Office, Docket No. ICR 1218–0209 (2006), U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–2350. Written comments limited to 10 pages or fewer may be transmitted by facsimile to (202) 693–1648.

**FOR FURTHER INFORMATION CONTACT:** Dave Schmidt, Office of Statistical Analysis, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3644, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–1886. Copies of the referenced Information Collection Request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 693–1886 or Todd Owen at (202) 693–3222. For electronic copies of the OSHA Data Initiative Information Collection Request, go to OSHA's Web page at *http://www.osha.gov/OCIS/Info_coll.html.*

**SUPPLEMENTARY INFORMATION:**

I. *Background:* To meet many of OSHA's program needs, OSHA is proposing to continue its collection of occupational injury and illness data and information on the number of workers employed and the number of hours worked from establishments in portions of the private sector and from some state and local government agencies. OSHA will collect the data on an annual basis from up to 100,000 employers already required to create and maintain records pursuant to 29 CFR Part 1904. These data will allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing serious safety and health problems. Successful implementation of this data collection is critical to OSHA's outreach and enforcement efforts and the data requirements tied to the Government Performance and Results Act (GPRA).

II. *Current Actions:* This notice requests public comment on an extension of the current OMB approval of the paperwork requirements for the OSHA Data Inititative system.

*Type of Review:* Extensions of currently approved information collection requirements.

*Agency:* Occupational Safety and Health Administration.

*Title:* OSHA Data Initiative.

*OMB Number:* 1218–0209.

*Agency Number:* ICR 1218–0209 (2006).

*Affected Public:* Business or other for-profits, Farms, and State, Local and Tribal Government.

*Cite/Reference/Form/etc.:* OSHA Form 196A and OSHA Form 196B.

*Number of Respondents:* 100,000.

*Frequency:* Annually.

*Average Time Per Response:* 10 minutes.

*Estimated Total Burden Hours:* 16,000 hours.

*Estimated Cost:* $368,341.

III. *Public Participation—Submission Of Comments On This Notice and Internet Access To Comments And Submissions.* You may submit comments and supporting materials in response to this notice by (1) Hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov*. Contact the Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the Information Collection Request; they will also become a matter of public record. Therefore, private information should not be submitted.

IV. *Authority and Signature:* Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on May 16, 2006.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor.*

[FR Doc. 06–4704 Filed 5–19–06; 8:45 am]

BILLING CODE 4510–26–M

## NATIONAL CREDIT UNION ADMINISTRATION

### Notice of Meeting; Sunshine Act

**TIME AND DATE:** 10 a.m., Thursday, May 25, 2006.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3248.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Final Rule: Interpretive Ruling and Policy Statement (IRPS) 06–1, Section 701.1 of NCUA's Rules and Regulations, Amendments to NCUA's Chartering and Field of Membership Policies.

**RECESS:** 11 a.m.

**TIME AND DATE:** 11:15 a.m., Thursday, May 25, 2006.

**PLACE:** Board Room, 7th Floor, Room 70478, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Two (2) Insurance Appeals. Closed pursuant to Exemption (6).

**FOR FURTHER INFORMATION CONTACT:** Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 06–4793 Filed 5–18–06; 3:05 pm]

BILLING CODE 7535–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Cyberinfrastructure—(25150).

*Date and Time:* June 15, 2006; 8 a.m.–5 p.m., June 16, 2006, 8 a.m.—2 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact Person:* Judy Hayden, Office of the Director, Office of Cyberinfrastructure (CI), National Science Foundation, 4201 Wilson Blvd., Suite 1145, Arlington, VA 22230. Telephone: (703) 292–8970.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* Retreat of the Board to brainstorm strategy direction. To advise NSF on the impact of its policies, programs and activities on the CI community. To provide advice to the Director/NSF on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

*Agenda:* Report from the Director. Discussion of research initiatives, education, diversity workforce issues in CI and long-range funding outlook.

Dated: May 16, 2006.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 06–4702 Filed 5–19–06; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Oversight Council for the International Arctic Research Center; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Oversight Council for the International Arctic Research Center (9535).

*Date/Time:* June 5, 2006, 2 p.m. to 3 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room: 740, Arlington, VA 22230, with participation by teleconference.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Neil Swanberg, Program Director, Arctic System Science Program, Room 740 S, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 292–8029.

*Purpose of Meeting:* To provide advice and recommendations concerning a cooperative agreement between the National Science Foundation and the International Arctic Research Center.

*Agenda:* To evaluate and provide advice on an annual research plan submitted to the Arctic Science Section as part of a continuing cooperative agreement for the support of the center.

*Reason for Closing:* The annual operating plan being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b)(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 16, 2006.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 06–4700 Filed 5–19–06; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson, Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries;; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov*. This information may also be requested by telephoning. 703/292–8182.

Dated: May 16, 2006.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 06–4701 Filed 5–19–06; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection

request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities.

2. *Current OMB approval number:* 3150–0163.

3. *How often the collection is required:* On occasion, when a State wishes to observe NRC inspections or perform inspections for NRC.

4. *Who is required or asked to report:* Those States interested in observing or performing inspections.

5. *The number of annual respondents:* 66 (50 nuclear facility + 16 materials security licensees).

6. *The number of hours needed annually to complete the requirement or request:* 1,540 hours (23.33 hours per respondent).

7. *Abstract:* States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities or conduct materials security inspections against NRC Orders are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program as specified by the Commission's Policy of Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities and section 274i of the Atomic Energy Act, as amended.

Submit, by July 21, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 12th day of May 2006.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. E6–7789 Filed 5–19–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–29288]**

## Notice of Consideration of Amendment Request for Decommissioning of the Pennsylvania Department of Environmental Protection, Quehanna Site, Karthaus, Pennsylvania and Opportunity To Request a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of amendment request and opportunity to request a hearing.

**DATE:** A request for a hearing must be filed by July 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** James Kottan, Project Manager, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, King of Prussia, PA 19406. Telephone: (610) 337–5214; fax number: (610) 337–5269; or e-mail: *jjk@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to By-Product Material License No. 37–17860–02 issued to the Pennsylvania Department of Environmental Protection (the licensee), to authorize decommissioning of its Quehanna Facility in Karthaus, Pennsylvania under revision four of the licensee's Decommissioning Plan (DP).

The licensee had been decommissioning the Quehanna Site in accordance with the conditions described in License No. 37–17860–02, and in February 2005, after decommissioning activities had been completed, the licensee submitted the Final Status Survey Report for the site. In May of 2005, the NRC conducted an independent confirmatory survey of the Quehanna Site and determined that the facility was contaminated in excess of the limits specified in the NRC approved DP. Since that time the licensee has determined that the facility contained concrete with volumetric radioactive contamination that migrated to the surface of the concrete resulting in the failure of the site to meet the limits for unrestricted release as described in the NRC approved DP. Because the NRC approved DP release limits were based on surface contamination, and volumetric contamination is present at the site, the NRC approved DP cannot be used to release the site for unrestricted release. Therefore, the licensee has submitted to the NRC a revised DP (revision 4) incorporating the dose based criteria of 10 CFR 20, Subpart E, Radiological Criteria for License Termination for release of the site for unrestricted use. An NRC administrative review, documented in a letter to the Pennsylvania Department of Environmental Protection dated April 21, 2006, found revision 4 of the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. 37–17860–02. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment and/or an Environmental Impact Statement. The license will be terminated if this amendment is approved following completion of decommissioning activities and verification by the NRC that the radiological criteria for license termination have been met.

### II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding decommissioning of the Quehanna Site located in Karthaus, Pennsylvania. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC., 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC., Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302 (b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, PA, 17105–2063, Attention: David J. Allard, CHP, Director; and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by email to *ogcmailcenter@nrc.gov.*

The formal requirements for documents contained in 10 CFR 2.304 (b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304 (f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309 (b), a request for a hearing must be filed by July 21, 2006.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309 (b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309 (f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309 (f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the

authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309 (g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

**III. Further Information**

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Revision 4 of the DP: ML060790152

Inspection Report 030–29288/2005–001: ML051610344, ML051610355, ML051610362

Confirmatory Survey Report: ML051610610

Public Meeting Notice: ML060060065

Public Meeting Summary: ML060450407

Public Meeting Attendance List: ML060450390

Public Meeting Summary Attachments: ML060450457

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 12th day of May 2006.

For the Nuclear Regulatory Commission.

**Marie Miller,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety Region I.*

[FR Doc. E6–7788 Filed 5–19–06; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos: STN 50–456; STN 50–457; STN 50–454; STN 50–455; 50–461; 50–10; 50–237; 50–249; 50–373; 50–374; 50–352; 50–353; 50–219; 50–171; 50–277; 50–278; 50–254; 50–265; 50–289; 50–295; 50–304]**

## Exelon Generation Company, LLC; Amergen Energy Company, LLC; Braidwood Station, Units 1 and 2; Byron Station, Units 1 and 2; Clinton Power Station, Unit 1; Dresden Nuclear Power Station, Units 1, 2, and 3; Lasalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 And 2; Oyster Creek Nuclear Generating Station; Peach Bottom Atomic Power Station, Units 1, 2 and 3; Quad Cities Nuclear Power Station, Units 1 and 2; Three Mile Island Nuclear Station, Unit 1; and Zion Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a schedular exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, § 50.54(a)(3), for the following facility operating licenses issued to Exelon Generation Company, LLC, and AmerGen Energy Company, LLC (the licensees) for operation of Facility Operating License Nos. NPF–72 and NPF–77 for the Braidwood Station, Units 1 and 2, located in Will County, Illinois; NPF–37 and NPF–66 for the Byron Station, Units 1 and 2, located in Ogle County, Illinois; NPF–62 for the Clinton Power Station, Unit 1, located in DeWitt County, Illinois; DPR–2, DPR–19, and DPR–25 for the Dresden Nuclear Power Station, Units 1, 2, and 3, located in Grundy County, Illinois; NPF–11 and NPF–18 for the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois; NPF–39 and NPF–85 for Limerick Generating Station, Units 1 and 2, located in Montgomery County, Pennsylvania; DPR–16 for Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey; DPR–12, DPR–44, and DPR–56 for Peach Bottom Atomic Power Station, Units 1, 2, and 3, located in York and Lancaster Counties, Pennsylvania; DPR–29 and DPR–30 for the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois; DPR–50 for the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County, Pennsylvania; and DPR–39 and DPR–48 for the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would exempt the licensees from the requirements of 10 CFR 50.54(a)(3), pertaining to submitting periodic quality assurance topical report (QATR) changes that do not reduce commitments. The schedule for submitting QATR changes is described in 10 CFR 50.71(e)(4), which requires that changes must be filed annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months. The licensees are proposing that changes to the common QATR that do not reduce commitments be submitted on a 24-month calendar schedule, not to exceed 24 months from the previous submittal. The proposed schedule for submitting changes to the common QATR will not be coincident with any plant's refueling outage schedule or Updated Final Safety Analysis Report periodic updates.

The proposed action is in accordance with the licensee's application dated December 14, 2005.

*The Need for the Proposed Action*

The proposed action is requested in order to eliminate a significant administrative and regulatory burden that would not serve the underlying purpose of the rule. The action relates to the periodic submittal of changes to the licensees' common QATR that do not reduce commitments, are strictly administrative changes, and which have no effect on the operation of the licensees' nuclear power facilities.

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that the proposed exemption is administrative and would not affect any plant equipment, operation, or procedures.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect

any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are the same.

*Alternative Use of Resources*

The proposed action does not involve the use of any different resources than those previously considered in the Final Environmental Statements related to the ownership or operation of Braidwood Station, Units 1 and 2, NUREG–1026, dated June 1984; Byron Station, Units 1 and 2, NUREG–0848, dated April 1982; Clinton Power Station, Unit 1, NUREG–0854, dated May 1982; Dresden Nuclear Power Station, Units 1, 2, and 3, dated November 1973, and for Dresden Nuclear Power Station, Units 2 and 3, NUREG–1437, Supplement 17, dated June 2004; LaSalle County Station, Units 1 and 2, NUREG–0486, dated November 1978; Limerick Generating Station, Units 1 and 2, dated November 1973; Oyster Creek Nuclear Generating Station, dated December 1974; Peach Bottom Atomic Power Station, Units 1, 2, and 3, dated April 1973, and for Peach Bottom Atomic Power Station, Units 2 and 3, NUREG–1437, Supplement 10, dated January 2003; Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972, and NUREG–1437, Supplement 16, dated June 2004; Three Mile Island, Unit 1, dated December 1972; and Zion Nuclear Power Station, Units 1 and 2, dated December 1972.

*Agencies and Persons Consulted*

Regarding the environmental impact of the proposed action, the NRC staff consulted with the following officials: Illinois State official for the facilities in Illinois, Mr. Frank Niziolek, Bureau of Nuclear Facility Safety, Illinois Emergency Management Agency, on March 28, 2006; Commonwealth of Pennsylvania officials for Limerick, Peach Bottom, and Three Mile Island Stations, Mr. David Ney, Mr. Dennis Dyckman, and Mr. Michael Murphy, Bureau of Radiation Protection, Pennsylvania Department of Environmental Protection, on March 31, April 3 and 17, 2006, respectively; and New Jersey State official for Oyster Creek Station, Mr. Richard Pinney, Bureau of Nuclear Engineering, New Jersey Department of Environmental Protection, on April 3, 2006. The State officials had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 14, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of May 2006.

For the Nuclear Regulatory Commission.

**Kahtan N. Jabbour,**

*Senior Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–7786 Filed 5–19–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–01182]**

## Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 52–01986–01, for Termination of the License and Unrestricted Release of the University of Puerto Rico's Facility in Rio Piedras, Puerto Rico

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

**FOR FURTHER INFORMATION CONTACT:** Marjorie McLaughlin, Project Manager, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Telephone: (610) 337–5240; fax number: (610) 337–5269; or by e-mail: *mmm3@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 52–01986–01. This license is held by the University of Puerto Rico (the Licensee), for its Agricultural Experiment Station (the Facility) located at 1193 Guayacan St., Botanical Gardens, Rio Piedras, San Juan, Puerto Rico. Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated September 28, 2004. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

### II. Environmental Assessment

*Identification of Proposed Action*

The proposed action would approve the Licensee's September 28, 2004, license amendment request resulting in release of the Facility for unresticted use and the termination of its NRC materials

license. License No. 52–01986–01 was issued on February 13, 1957, pursuant to 10 CFR part 30, and has been amended periodically since that time. The license authorized the Licensee to use unsealed byproduct material for conducting research and development activities on laboratory bench tops and in hoods. The license also authorized the use of sealed byproduct material for sources for gas chromatograph (GC) detectors and moisture/density gauges.

The Facility is situated on just under 200 acres, and consists of a botanical garden, conservatories, office space, and laboratories. The Facility is located on a university campus within a largely residential area. Within the Facility, use of licensed materials was confined to the Central Analytical Laboratory (21 feet by 13 feet (21′ x 13′)), a sample processing room (10′ x 20′), and a soil laboratory (20′ x 40′). The sealed source gauges were stored in the Old Phytotron Building (12′ x 24′) and in a storage room within the soils laboratory (10′ x 10′).

In 1998, the Licensee ceased licensed activities and initiated transfer of all radioactive materials and a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR part 20 for unrestricted release and for license termination.

*Need for the Proposed Action*

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

*Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Sealed tritium and nickel-63 sources for GC detectors and sealed americium-241 and cesium-137 in moisture/density gauges. The only long-lived unsealed radionuclide authorized by this license was carbon-14, which was used infrequently and in small amounts. Licensed materials were not used in outdoor areas, although the NRC staff identified one occurrence in 1964 in which plants and soil containing a small amount of carbon-14 may have been inadvertently discarded or buried at the site. The NRC staff evaluated the potential impact of this event by performing a dose assessment (described below). Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey that covered the Central Analytical Laboratory, sample processing room, soil laboratory, the storage room within the soils laboratory, and the Old Phytotron Building. The final status survey report was attached to the Licensee's amendment request dated September 28, 2004. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs) developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in subpart E of 10 CFR part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC concludes that the Licensee 's final status survey results are thus acceptable.

Based on its review, the staff has determined that, with one exception, the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385).

The one impact not bounded by the generic evaluation is the potential discarding or burial of carbon-14 that occurred in 1964. NRC staff reviewed licensee records and conducted interviews with past and present AES staff, and determined that a small amount (0.5 microcuries) of carbon-14 incorporated in soil and plants may have been discarded inadvertently at the site. The NRC staff performed a dose assessment to evaluate the potential health and safety impact of this event. The staff determined that the highest potential dose from the material is less than 1 millirem/year (mrem/yr), and is well below the 25 mrem/yr value in 10 CFR 20.1402. No other incidents were recorded involving spills or releases of radioactive material at the Facility. Accordingly, there were no significant environmental impacts from the use of radioactive materials at the Facility.

The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has found no other radiological or non-radiological activities in the area that could result in cumulative impacts. The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

*Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, this denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

*Agencies and Persons Consulted*

NRC provided drafts of its Environmental Assessment and Dose Assessment to the Department of Health of Puerto Rico for review on February 21, 2006. On March 29, 2006, the Department of Health of Puerto Rico responded by letter. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under section 106 of the National Historic Preservation Act.

**III. Finding of No Significant Impact**

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

**IV. Further Information**

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below with their ADAMS accession numbers:

1. Final Status Survey Results for the Rio Piedras Research Center of the University of Puerto Rico Agricultural Experiment Station, dated September 28, 2004 [ADAMS Accession No. ML042780499];
2. Telephone Logs Containing Additional Site History Information, dated January 28, 2005 [ADAMS Accession No. ML050330622], February 10, 2005 [ADAMS Accession No. ML050430017], April 11, 2005 [ADAMS Accession No. ML051050036], August 31, 2005 [ADAMS Accession No. ML052450026], and February 9, 2006 [ADAMS Accession No. ML060400169];
3. Dose Assessment Evaluating Potential Burial of Carbon-14 at University of Puerto Rico Agricultural Experiment Station [ADAMS Accession No. ML061090546];
4. **Federal Register** Notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, ''Use of Screening Values to Demonstrate Compliance With The Federal Rule on Radiological Criteria for License Termination'';
5. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination'';
6. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions'';
7. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities''.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 12th day of May, 2006.

For the Nuclear Regulatory Commission.

**Marie Miller,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E6–7791 Filed 5–19–06; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–34325]**

## Notice of Availability of Environmental Assessment and Finding of No Significant Impact for An Amendment to a Materials Permit in Accordance With Byproduct Materials License No. 03–23853–01VA, for Unrestricted Release of a Department of Veterans Affairs's Facility In West Haven, CT

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

**FOR FURTHER INFORMATION CONTACT:** William Snell, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; telephone: (630) 829–9871; fax number: (630) 515–1259; or by e-mail at *wgs@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC) is considering allowing an amendment to a materials permit in accordance with NRC Byproduct Materials License No. 03–23853–01VA issued to the Department of Veterans Affairs (DVA) (the licensee), to authorize release of its Connecticut Health Care System Building 27 in West Haven, Connecticut for unrestricted use. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The approval for the amendment to the materials permit will be issued to the DVA following the publication of this Notice.

**II. Environmental Assessment**

*Identification of Proposed Action*

The proposed action would approve DVA's request to issue an amendment to a materials permit in accordance with NRC Byproduct Materials License No. 03–23853–01VA for the unrestricted release of Building 27 of the DVA's Connecticut Health Care System at 950 Campbell Avenue, West Haven, Connecticut. The proposed action is in accordance with the DVA's request to the U.S. Nuclear Regulatory Commission (NRC) on February 21, 2006 (ADAMS Accession No. ML060540225), to approve the release of the facility for unrestricted use, and is consistent with the current NRC policy to review all DVA permittee requests for the release of buildings for unrestricted use where radioactive materials with a half-life greater than 120 days were used. The DVA identified two isotopes of concern with half-lives greater than 120 days that it used in Research Building 27 of the West Haven, Connecticut facility: hydrogen-3 and carbon-14. The DVA was authorized by the NRC to use byproduct material for medical research at the West Haven Building 27 facility since it was renovated in 1973. Licensed materials were not used in outdoor areas.

The building is 2334 square feet of space comprised of medical research

laboratories, office space, break room and bathroom, located in a hospital compound area. The walls were painted cinder block and the floors were concrete covered with vinyl flooring.

On January 5, 2006, the DVA ceased licensed activities and initiated facility surveys and decontamination. Based on the licensee's historical knowledge of the site and the conditions of the facility, the DVA determined that only routine decontamination activities, in accordance with their radiation safety procedures, were required. The DVA was not required to submit a decommissioning plan to the NRC. On February 21, 2006, the DVA requested that NRC approve the release of the facility for unrestricted use. The DVA conducted facility surveys and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

*Need for the Proposed Action*

The licensee is requesting approval of the amendment to allow for the release of Building 27 for unrestricted use. The licensee needs this permit change because it no longer plans to conduct licensed activities in this building. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a timely decision on a proposed permit amendment for release of a facility for unrestricted use that ensures protection of public health and safety and the environment.

*Environmental Impacts of the Proposed Action*

The NRC staff has reviewed the information provided and surveys performed by the DVA to demonstrate compliance with the 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use'' license termination criteria. Based on its review, the staff has determined that the affected environment and environmental impacts associated with the release for unrestricted use of the DVA facilities are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the DVA facilities is in compliance with 10 CFR 20.1402. The NRC has found no other activities in the area that could result in cumulative impacts. Based on its review, the staff considered the impact of the residual radioactivity at the facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

*Environmental Impacts of the Alternatives to the Proposed Action*

Since the facility at the DVA site has already been surveyed and found acceptable for release for unrestricted use, the only alternative to the proposed action of approving the permit amendment and release of the West Haven facility for unrestricted use is denial of the proposed action (i.e. no action). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar, and the no-action alternative is accordingly not further considered.

*Agencies and Persons Consulted*

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff have determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

NRC provided a draft of its Environmental Assessment to the Connecticut Department of Environmental Protection, Division of Radiation, for review on April 18, 2006. The State had no comments regarding the EA.

*Conclusion*

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

## III. Finding of No Significant Impact

The staff has prepared the EA in support of the proposed amendment to the materials permit for the unrestricted release of the facility. The staff has found that the radiological environmental impacts from the proposed action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action, and has determined not to prepare an environmental impact statement.

### List of Preparers

William Snell, Senior Health Physicist, Division of Nuclear Materials Safety, Region III

### Sources Used


1. NRC Byproduct Materials License Nos. 03–23853–01VA, 06–00092–05, and 06–11222–01, inspection and licensing records.
2. Historical Site Assessment and Final Status Survey Results for Building 27 of the DVA Connecticut Health Care System, provided under cover letter dated February 21, 2006.
3. **Federal Register** Notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, ''Use of Screening Values to Demonstrate Compliance With The Federal Rule on Radiological Criteria for License Termination.''
4. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination.''
5. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''
6. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities.''


## IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

The ADAMS accession numbers for the documents related to this Notice are:

1. E. Lynn McGuire, Department of Veterans Affairs, letter to U.S. Nuclear Regulatory Commission, February 21, 2006 (ADAMS Accession No. ML060540225).

Dated at Lisle, Illinois, this 10th day of May 2006.

For the Nuclear Regulatory Commission.

**Jamnes L. Cameron,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.*

[FR Doc. E6–7774 Filed 5–19–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Request To Amend a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70(C) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following request to amend an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Home page.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning this amendment request follows.

NRC IMPORT LICENSE AMENDMENT APPLICATION

| Name of applicant date of application | Description of material | | | |
|---|---|---|---|---|
| Date received application number docket number | Material type | Total qty | End use | Country of origin |
| Perma-Fix/DSSI, Inc. February 23, 2006 ..... | Class A radioactive mixed waste in various forms including solids, semi-solids, and liquids. | 378,000 kg mixed waste containing 1,200 curies tritium, carbon-14, mixed fission product radionuclides and other contaminants. | Amend to: (1) Increase the quantity (total activity level) of radioactive contaminants authorized for import by 800 curies or from 1,200 to 2,000 curies; and (2) extend expiration date to 3/31/2008. | Canada |
| February 28, 2006 ..... IW012/02 ..... 11005322 ..... | ..... | ..... | ..... | |

Dated this 10th day of May 2006 at Rockville, Maryland.

For The Nuclear Regulatory Commission.

**Margaret M. Doane,**

*Deputy Director, Office of International Programs.*

[FR Doc. E6–7787 Filed 5–19–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on June 13 and 14, 2006, 11555 Rockville Pike, Rockville, Maryland, Room O–1G16.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Tuesday, June 13, 2006—8:30 a.m. until the conclusion of business.*

*Wednesday, June 14, 2006—8:30 a.m. until the conclusion of business.*

The Subcommittee will discuss and review reports concerning industry responses related to the resolution of Generic Safety Issue 191 (GSI–191), PWR Sump Performance, and concerning various research activities supporting the resolution of GSI–191, including chemical effects testing. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, their contractors and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: May 16, 2006.

**Michael R. Snodderly,**

*Acting Branch Chief, ACRS/ACNW.*

[FR Doc. E6–7793 Filed 5–19–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos: (Redacted), License Nos: (Redacted), EA–05–090]**

### In the Matter of All Licensees Authorized To Possess Radioactive Material Quantities of Concern, Order Imposing Increased Controls (Effective Immediately).

The Licensees identified in Attachment A [1] to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 by the U.S. Nuclear Regulatory Commission (NRC or Commission) and authorizing them to possess certain quantities of radioactive material of concern. Commission

[1] Attachment A contains sensitive information and will not be released to the public.

regulations at 10 CFR 20.1801 require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Prior to the terrorist attacks of September 11, 2001 (9/11), several national and international efforts were underway to address the potentially significant health and safety hazards posed by uncontrolled sources. These efforts recognized the need for increased control of high-risk radioactive materials to prevent inadvertent and intentional unauthorized access, primarily due to the potential health and safety hazards posed by the uncontrolled material. Following 9/11, it was recognized that these efforts should also include a heightened awareness and focus on the need to prevent intentional unauthorized access due to potential malicious acts. These efforts, such as the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct) concerning Category 1 and 2 sources, seek to increase the control over sources to prevent unintended radiation exposure and to prevent malicious acts.

A licensee's loss of control of high-risk radioactive sources, whether it be inadvertent or through a deliberate act, has a potential to result in significant adverse health impacts and could reasonably constitute a threat to the public health and safety. In this regard, the Commission has determined that certain additional controls are required to be implemented by Licensees to supplement existing regulatory requirements in 10 CFR 20.1801 and 10 CFR 20.1802, in order to ensure adequate protection of, and minimize danger to, the public health and safety. Therefore, the Commission is imposing the requirements set forth in Attachment B on radioactive materials licensees who possess, or have near term plans to possess, radionuclides of concern at or above threshold limits, identified in Table 1. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety continues to be adequately protected. These requirements will remain in effect until the Commission modifies its regulations to reflect increased controls.

To effect nationwide implementation, these measures have been determined by the Commission to be an immediate mandatory Category ''B'' matter of compatibility for Agreement States. In parallel with the Commission's issuance of this Order, each Agreement State is required to issue legally binding requirements to put essentially identical measures in place for licensees under their regulatory jurisdiction.

The Commission recognizes that Licensees may have already initiated many controls set forth in Attachment B to this Order in response to previously issued advisories or on their own. It is also recognized that some controls may not be possible or necessary at some sites, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen adverse effect on the safe use and storage of the sealed sources.

Although the additional controls implemented by the Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that additional controls must be imposed by an Order, consistent with the established regulatory framework.

To provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of control, all Licensees who hold licenses issued by the NRC authorizing possession of radioactive material quantities of concern and as listed in Table 1, ''Radionuclides of Concern,'' (Attachment B, Table 1), shall implement the requirements identified in Attachment B to this Order. In addition, pursuant to 10 CFR 2.202, because of the potentially significant adverse health impacts associated with failure to control high risk radioactive sources, I find that the public health, safety, and interest require that this Order be effective immediately.

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 30, and 10 CFR part 33, *it is hereby ordered, effective immediately,* that all licensees identified in Attachment A to this Order shall comply with the requirements of this Order as Follows:

A. The Licensee shall comply with the requirements described in Attachment B to this Order. The Licensee shall complete implementation by June 2, 2006, or the first day that radionuclides of concern at or above threshold limits, identified in Table 1, are possessed, whichever occurs later.

B. 1. The Licensee shall in writing, within twenty five (25) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment B, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

B. 2. If the Licensee considers that implementation of any of the requirements described in Attachment B to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, in writing, within twenty five (25) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment B requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. The Licensee shall, within twenty five (25) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachment B.

C. 2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment B.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission modifies its regulations to reflect increased controls.

Licensee responses to Conditions B.1, B.2, C.1, and C.2 above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee's responses shall be marked as ''Withhold From Public disclosure Under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the

above conditions upon demonstration by the Licensee of good cause.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty five (25) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty five (25) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Although this Order is not subject to the requirements of the Paperwork Reduction Act, there is nonetheless a clearance from the Office of Management and Budget, OMB approval number 3150–0002, that covers the information collections contained in the Order.

Dated this 9th day of May 2006.
For the Nuclear Regulatory Commission.

**Jack R. Strosnider,**

*Director, Office of Nuclear Material Safety and Safeguards.*

## Attachment A—Redacted

## Attachment B—Increased Controls for Licensees That Possess Sources Containing Radioactive Material Quantities of Concern

The purpose of the increased controls (IC) for radioactive sources is to enhance control of radioactive material in quantities greater than or equal to values described in Table 1, to reduce the risk of unauthorized use of radioactive materials, through access controls to aid prevention, and prompt detection, assessment, and response to mitigate potentially high consequences that would be detrimental to public health and safety. These increased controls for radioactive sources are established to delineate licensee responsibility to maintain control of licensed material and secure it from unauthorized removal or access. The following increased controls apply to licensees which, at any given time, possess radioactive sources greater than or equal to the quantities of concern of radioactive material defined in Table 1.

IC 1. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee shall control access at all times to radioactive material quantities of concern and devices containing such radioactive material (devices), and limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

a. The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices. The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

b. For individuals employed by the licensee for 3 years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (*i.e.*, seeking references not supplied by the individual). For individuals employed by the licensee for longer than 3 years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee.

c. Service providers shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation as an employee of a manufacturing and distribution (M&D) licensee. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the manufacturing and distribution licensee providing the service.

d. The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

IC 2. In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee shall have a documented

program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the Table 1 values.

a. The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).

b. The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Pre-arranged LLEA coordination is not required for temporary job sites.

c. The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.

d. After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify NRC Operations Center at (301) 816–5100.

e. The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

IC 3. a. In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed those in Table 1 but are less than 100 times Table 1 quantities, per consignment, the licensee shall:

1. Use carriers which:

A. Use package tracking systems,

B. Implement methods to assure trustworthiness and reliability of drivers,

C. Maintain constant control and/or surveillance during transit, and

D. Have the capability for immediate communication to summon appropriate response or assistance.

The licensee shall verify and document that the carrier employs the measures listed above.

2. Contact the recipient to coordinate the expected arrival time of the shipment;

3. Confirm receipt of the shipment; and

4. Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, the licensee shall immediately notify the NRC Operations Center at (301) 816–5100. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the NRC Operations Center at (301) 816–5100.

b. For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in Table 1 per consignment, the licensee shall:

1. Notify the NRC[1], in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by NRC.

2. Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements of 3.b.1 shall not apply to future shipments of licensed radioactive material that exceeds 100 times the Table 1 quantities. The licensee shall implement the ASMs for the transportation of RAM QC.

c. If a licensee employs an M&D licensee to take possession at the licensee's location of the licensed radioactive material and ship it under its M&D license, the requirements of 3.a. and 3.b above shall not apply.

d. If the licensee is to receive radioactive material greater than or equal to the Table 1 quantities, per consignment, the licensee shall coordinate with the originator to:

1. Establish an expected time of delivery; and

2. Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originator and assist in any investigation.

IC 4. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee that possesses mobile or portable devices containing radioactive material in quantities greater than or equal to Table 1 values, shall:

a. For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

b. For mobile devices:

1. that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

2. that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

c. For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee

IC 5.The licensee shall retain documentation required by these increased controls for 3 years after they are no longer effective:

a. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for 3 years after the individual's employment ends.

b. Each time the licensee revises the list of approved persons required by 1.d., or the documented program required by 2, the licensee shall retain the previous documentation for 3 years after the revision.

c. The licensee shall retain documentation on each radioactive material carrier for 3 years after the licensee discontinues use of that particular carrier.

d. The licensee shall retain documentation on shipment coordination, notifications, and investigations for 3 years after the shipment or investigation is completed.

e. After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for 3 years.

IC 6.Detailed information generated by the licensee that describes the physical protection of radioactive

[1] Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

material quantities of concern, is sensitive information and shall be protected from unauthorized disclosure.

a. The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.

b. The licensee shall develop, maintain and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:

1. General performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure,

2. Protection of sensitive information during use, storage, and transit,

3. Preparation, identification or marking, and transmission,

4. Access controls,

5. Destruction of documents,

6. Use of automatic data processing systems, and

7. Removal from the licensee's sensitive information category.

TABLE 1.—RADIONUCLIDES OF CONCERN

| Radionuclide | Quantity of concern [1] (TBq) | Quantity of concern [2] (Ci ) |
|---|---|---|
| Am-241 | 0.6 | 16 |
| Am-241/Be | 0.6 | 16 |
| Cf-252 | 0.2 | 5.4 |
| Cm-244 | 0.5 | 14 |
| Co-60 | 0.3 | 8.1 |
| Cs-137 | 1 | 27 |
| Gd-153 | 10 | 270 |
| Ir-192 | 0.8 | 22 |
| Pm-147 | 400 | 11,000 |
| Pu-238 | 0.6 | 16 |
| Pu-239/Be | 0.6 | 16 |
| Se-75 | 2 | 54 |
| Sr-90 (Y–90) | 10 | 270 |
| Tm-170 | 200 | 5,400 |
| Yb-169 | 3 | 81 |
| Combinations of radioactive materials listed above [3]. | See Footnote Below [4]. | |

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[4] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, I of radionuclide, n, $A_{(i,n)}$, to the quantity of concern for radionuclide n, $Q_{(n)}$, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) (quantity of concern for radionuclide B)] + etc..... >1.

Use the following method to determine which sources of radioactive material require increased controls (ICs):

- Include any single source equal to or greater than the quantity of concern in Table 1
- Include multiple collocated sources of the *same radionuclide* when the combined quantity equals or exceeds the quantity of concern
- For combinations of radionuclides, include multiple collocated sources of *different radionuclides* when the aggregate quantities satisfy the following unity rule: [(amount of radionuclide A)÷ (quantity of concern of radionuclide A)] + [(amount of radionuclide B)÷ (quantity of concern of radionuclide B)] + etc..... ≥1.

**Guidance for Aggregation of Sources**

NRC supports the use of the IAEA's source categorization methodology as defined in TECDOC–1344, ''Categorization of Radioactive Sources,'' (July 2003) (see *http://www-pub.iaea.org/MTCD/publications/PDF/te_1344_web.pdf*) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004 (see *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf* ). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in Table 1.) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1.). Increased controls apply to sources that are equal to or greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that are equal to or greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess individual sources in total quantities that equal or exceed the Table 1 quantities are required to implement increased controls. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, licensees are to implement increased controls.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes: When are sources considered collocated for purposes of aggregation? For purposes of the additional controls, sources are considered collocated if breaching a single barrier (e.g., a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (e.g., a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf-252, 0.12 TBq (3.2 Ci); Co-60, 0.18 TBq (4.9 Ci), and Pu-238, 0.3 TBq (8.1 Ci). Application of the unity rule yields: (0.12 ÷ 0.2) + (0.18 ÷ 0.3) + (0.3 0.6) = 0.6 + 0.6 + 0.5 = 1.7. Therefore, the sources would require increased controls.

Shielded safe #1 has a 1.9 TBq (51 Ci) Cs-137 source and a 0.8 TBq (22 Ci) Am-241 source. In this case, the sources would require increased controls, regardless of location, because they each exceed the quantities in Table 1.

Shielded safe #2 has two Ir-192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require increased controls while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (*e.g.*, a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage—''operations'' (active source usage) and ''shutdown'' (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require increased controls for each location.

[FR Doc. 06–4750 Filed 5–19–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Notice of Availability of Draft Interim Staff Guidance Document HLWRS–ISG–01 Review Methodology for Seismically Initiated Event Sequences

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**FOR FURTHER INFORMATION, CONTACT:** Jon Chen, Project Manager, Project Management Section, Division of High-Level Waste Repository Safety (HLWRS), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–5526; fax number: (301) 415–5399; e-mail: *jcc2@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Yucca Mountain Review Plan (July 2003, NUREG–1804, Revision 2) provides guidance for U.S. Nuclear Regulatory Commission (NRC) staff to evaluate a U.S. Department of Energy (DOE) license application for a geologic repository. NRC prepares Interim Staff Guidance (ISG) to provide clarifications or refinements to the guidance provided in the Yucca Mountain Review Plan. NRC is soliciting public comments on Draft HLWRS–ISG–01, ''Review Methodology for Seismically Initiated Event Sequences.'' Comments received will be considered, as appropriate, in the final version or subsequent revisions to HLWRS–ISG–01.

**II. Summary**

The purpose of this notice is to provide the public an opportunity to review and comment on draft HLWRS–ISG–01, concerning the review methodology for seismically initiated event sequences. HLWRS–ISG–01 provides guidance to NRC staff for review of seismically initiated event sequences in the preclosure safety analysis.

**III. Further Information**

The documents related to this action are available electronically at NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table. 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 at *pdr@nrc.gov.*

| ISG | ADAMS accession number |
|---|---|
| Draft HLWRS–ISG–01, ''Review Methodology for Seismically Initiated Event Sequences'' | ML061170532 |

These documents may also be viewed electronically on the public computers located at NRC's PDR, O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions on draft HLWRS–ISG–01 should be directed to the NRC contact listed below by July 6, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

*Contact:* Mahendra Shah, Senior Structural Engineer, Engineering Section, Technical Review Directorate, Division of High-Level Repository Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Comments can also be submitted by telephone, fax, or e-mail, which are as follows: telephone: (301) 415–8537; fax number: (301) 415–5399; or by (e-mail) at *mjs3@nrc.gov.*

Dated at Rockville, Maryland this 16th day of May 2006.

For the Nuclear Regulatory Commission.

**N. King Stablein,**

*Chief, Project Management Section B, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6–7782 Filed 5–19–06; 8:45 am]

BILLING CODE 7590–01–P

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Federal Register Submission for OMB Review

**AGENCY:** Overseas Private Investment Corporation (OPIC).

**ACTION:** Request for comments.

**SUMMARY:** Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public, that the Agency is preparing an information collection request for OMB review, approval, and request public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and ways to minimize the reporting burden, including automated collection techniques by using other forms of technology. The proposed form under review is summarized below.

**DATES:** Comments must be received within 30 calendar days of publication of this Notice.

**ADDRESSES:** Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

**FOR FURTHER INFORMATION CONTACT:** OPIC Agency Submitting Officer: Essie S. Bryant, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202–336–8563.

*OMB Contract:* Office of Information and Regulatory Affairs, U.S. Office of Information and Regulator Affairs, Office of Management and Budget, Attention: Mr. David Rostker, 725 17th Street, Room 10102, NW, Washington, DC 20503; (202) 395–3897

**Summary Form Under Review:**

*Type of Request:* Reinstatement, with changes, of a previously approved collection for which approval is expiring.

*Title:* Sponsor Disclosure Report.

*Form Number:* OPIC–129.

*Frequency of Use:* Once per major sponsor, per project.

*Type of Respondents:* Business or other institutions.

*Standard Industrial Classification Codes:* All.

*Description of Affected Public:* U.S. Companies sponsoring projects overseas.

*Reporting Hours:* 5 hours per project.

*Number of Responses:* 300 per year.

*Federal Cost:* $66,000 per year.

*Authority for Information Collection:* Sections 231, 234(b), and (c) of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and Uses):* The OPIC 129 form is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: May 16, 2006.

**Eli Landy,**

*Senior Counsel for Administrative Law, Department of Legal Affairs.*

[FR Doc. 06–4708 Filed 5–19–06; 8:45 am]

**BILLING CODE 3210–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53809; File No. SR–BSE–2006–13]**

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Correction of Erroneous Cross References in the Rules of the Boston Options Exchange Facility

May 16, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the BSE. The BSE has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 20 (Obvious Errors) of Chapter V, Section 10 (Limitations on Dealings) and Section 11 (Short Sales in Nasdaq National Market Securities) of Chapter VI, and Section 2 (Penalty for Rule Violations) of Chapter X of the Rules of the Boston Options Exchange (''BOX'') to correct erroneous cross references. The text of the proposed rule change is available on the Exchange's Internet Web site (*http://bostonstock.com*), at the principal office of the BSE, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The BSE is proposing several changes in Section 20 (Obvious Errors) of Chapter V, Section 10 (Limitations on Dealings) and Section 11 (Short Sales in Nasdaq National Market Securities) of Chapter VI, and Section 2 (Penalty for Rule Violations) of Chapter X of the BOX Rules. These rule sections contain erroneous cross references to both BSE and BOX Rules. The Exchange proposes to correct these cross references to reflect the correct corresponding rule(s) of the BOX or BSE Rules so that the Exchange's rules are accurate, comprehendible, and transparent to the marketplace.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[5] in general, and section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include SR–BSE–2006–13 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2006–13. This file

[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)(1)

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 19b–4(f)(1).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2006–13 and should be submitted on or before June 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E6–7719 Filed 5–19–06; 8:45 am]

**BILLING CODE 8010–01–P**

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53808; File No. SR–CBOE–2006–33]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Accommodation Liquidations (Cabinet Trades)

May 16, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2006, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. CBOE has designated this proposal as non-controversial under section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the provisions of CBOE Rule 6.54 that pertain to accommodation liquidations (also referred to as ''cabinet trades'')[5] to authorize PAR Officials and Floor Brokers to represent cabinet orders on the Exchange. The Exchange is also proposing various other non-substantive changes to reorganize and update the existing text in CBOE Rule 6.54 and to update references in the heading of Chapter VII of the CBOE rulebook and CBOE Rule 7.4. The text of the proposed rule change is set forth below. Additions are in *italics* and deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Chapter VI

Doing Business on the Exchange Floor (Rules 6.1–6.85)

* * * * *

Section C: Trading Practices and Procedures

* * * * *

Rule 6.54. Accommodation Liquidations (Cabinet Trades)

*Cabinet t*[T]rading under the following terms and conditions shall be available in each series of option contracts open for trading on the Exchange.

(a) For classes not trading on the CBOE Hybrid System:

(i) Trading shall be conducted in accordance with other CBOE Rules except as otherwise provided herein.

(ii) Limit orders labeled at a price of $1 per option contract must be placed with the Order Book Official *or with a Floor Broker.*

*(iii) Orders may be placed for customer, firm, and Market-Maker accounts and, to the extent such orders are placed with the Order Book Official, priority in the cabinet book will be based upon the sequence in which such orders are placed with the Order Book Official.*

[(iii)]*(iv)* Bids or offers for opening transactions at a price of $1 per option contract may be placed with the Order Book Official only to the extent that the [public order book] *cabinet book* contains unexecuted contra closing orders with which the opening orders immediately may be matched. *Bids and offers at a price of $1 per option contract may also be provided in response to a request for quote by an Order Book Official or a Floor Broker, but must yield priority to all orders in the cabinet book.*

[(iv) Orders may be placed for customer, firm, and Market-Maker accounts, with priority based upon the sequence in which such orders are placed with the Order Book Official.]

(v) Market-Makers shall not be subject to the requirements of Rule 8.7 for orders placed pursuant to this Rule.

(vi) The Order Book Official appointed to each class of option contracts shall be responsible for $1 orders *that are placed with him* for that class. All bids and offers *that are submitted to the Order Book Official* must be submitted to the Order Book Official in writing and displayed as such in accordance with Rule 7.7, and the Order Book Official shall effect [all such] transactions during the day by matching such orders placed with him *or by executing such orders placed with him with a Floor Broker representing a contra order.*

(vii) All *cabinet* transactions at a price of $1 per option contract shall be reported to the Exchange following the close of each business day.

(b) For classes trading on the CBOE Hybrid System:

(i) Trading shall be conducted in accordance with other CBOE Rules except as otherwise provided herein.

(ii) Limit orders labeled at a price of $1 per option contract must be traded on the Exchange in a form and manner prescribed by the Exchange. Currently, accommodation liquidations are only eligible for Exchange trading via open outcry and hence are not eligible for placement into the Electronic Book.

. . . Interpretations and Policies

.01 *Order Book Official:* An Order Book Official who receives a closing buy *(sell)* order for $1 per option contract shall attempt to execute the order against any $1 closing sell *(buy)* orders in his possession. If any part of the buy *(sell)* order cannot be immediately

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Accommodation liquidations are transactions to close out positions in worthless or nearly worthless out-of-the-money option contracts.

executed, the Order Book Official shall display the $1 bid *(offer)*.

[Upon receiving a closing sell order for $1 per option contract, the Order Book Official shall attempt to execute the order against any $1 closing buy orders in his possession. If any part of the sell order cannot be immediately executed, the Order Book Official shall display the $1 offer.] The Order Book Official may accept bids or offers for opening transactions at a price of $1 per contract only to the extent that the [public order book] *cabinet book* already contains closing orders for the contra side.

Upon execution of any $1 per contract orders, the Order Book Official shall promptly supply reports of the transaction back to the member firms involved. In accordance with *(a)*(vii) above, he will not report the transactions to the Exchange until after the close of each business day.

.02 *PAR Officials: For purposes of this Rule, a PAR Official may also perform the functions of an Order Book Official.*

* * * * *

Chapter VII

Order Book Officials [and Board Brokers] (Rules 7.1—7.50)

* * * * *

Rule 7.4. Obligations for Orders

(a)–(c) No change.

(d)(1)–(2) No change.

(3) The provisions of paragraph (d) of this Rule shall not apply to matching [1¢] buy and sell orders under Rule 6.54.

(4) No change.

(e)–(f) No change.

. . . Interpretations and Policies

No change.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with CBOE rules; CBOE Rule 6.54, Accommodation Liquidations, sets forth specific procedures for engaging in cabinet trades. CBOE Rule 6.54 currently provides for cabinet trades to occur via open outcry whether or not the security class trades on the Exchange's Hybrid Trading System.

The purpose of the rule change is to amend CBOE Rule 6.54 to clarify through proposed Interpretation and Policy .02 that PAR Officials [6] may perform the functions that Order Book Officials perform with respect to cabinet trading. Clarifying that PAR Officials are authorized to represent cabinet orders and effect cabinet trades is consistent with recent amendments to the CBOE rules that established the PAR Official position on the Exchange.[7]

The Exchange is also proposing to amend CBOE Rule 6.54 to authorize Floor Brokers to represent cabinet orders and effect cabinet trades. As a result, in addition to the existing procedures which permit cabinet orders to be placed with an Order Book Official (which, as this rule change clarifies, would include a PAR Official fulfilling the duties of an Order Book Official) for representation and execution, a Floor Broker may now represent and execute a cabinet order in the trading crowd, thereby saving the additional time and steps involved in first placing a cabinet order with an Order Book Official who would then in turn represent and execute the order. Thus, permitting Floor Brokers to handle cabinet orders and trades in accordance with the procedures described in Rule 6.54 will provide members with additional flexibility and assist in the fair, orderly and efficient handling of cabinet transactions on the Exchange.

The revised cabinet trading procedures set forth in the proposed rule change will be substantially similar to the procedures that currently exist. Under the revised procedures, limit orders labeled at a price of $1 per option contract may be still be placed with the Order Book Official or, as this rule change proposes, with a Floor Broker or a PAR Official. As is the case under the current procedures, cabinet orders may be placed for the accounts of customers, firms, and Market-Makers. To the extent such orders are placed with an Order Book Official, priority will continue to be based on the sequence in which such orders are placed with the Order Book Official. Also as under the current procedures, bids and offers for opening transactions at a price of $1 per option contract may be placed with the Order Book Official only to the extent that the cabinet contains unexecuted contra closing orders with which those opening orders immediately may be matched. Under the proposed revisions, bids and offers (whether opening or closing a position) at a price of $1 per option contract may also be provided in response to a request for quotes by an Order Book Official or a Floor Broker, but must yield priority to all orders in the Order Book Official's cabinet book. All cabinet transactions will continue to be reported to the Exchange following the close of each business day and the procedures for maintaining quotation, order and transaction information for cabinet transactions will remain unchanged.[8]

The responsibilities of the Order Book Official under the revised cabinet trading procedures will be substantially similar to his current responsibilities. The Order Book Official will continue to be responsible for $1 orders that are placed with him. Further, all bids and offers that are submitted to the Order Book Official must continue to be submitted in writing and displayed as such in accordance with CBOE Rule 7.7. The Order Book Official will continue to effect cabinet transactions during the day by matching such orders placed with him or, under the revised procedures, by executing orders placed with him with a Floor Broker representing a contra order. The Order Book Official will also continue to

[6] A PAR Official is an Exchange employee or independent contractor whom the Exchange may designate as being responsible for (i) operating the PAR workstation in a DPM trading crowd with respect to the classes of options assigned to him/her; (ii) when applicable, maintaining the book with respect to the classes of options assigned to him/her; and (iii) effecting proper executions of orders placed with him/her. *See* CBOE Rule 7.12.

[7] *See* Securities Exchange Act Release No. 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005) (File No. SR–CBOE–2005–46) (order approving amendments relating to the removal of agency responsibilities from DPMs and establishing Exchange PAR Officials).

[8] Accommodation liquidations as described in CBOE Rule 6.54 are exempt from the requirements of CBOE Rule 6.24, Required Order Information, pertaining to the Consolidated Options Audit Trail. However, the Exchange maintains quotation, order and transaction information for accommodation liquidations in the same format as the COATS data is maintained, and will make such information available to the Commission upon request. *See* Interpretation and Policy .04 to CBOE Rule 6.24.

supply reports of cabinet transactions he executes back to member firms. In addition, the Order Book Official will continue to report cabinet transactions to the Exchange after the close of each business day.

Finally, the rule change makes various non-substantive changes to reorganize and update the existing text in CBOE Rule 6.54 and update references in the heading of Chapter VII of the CBOE rulebook and CBOE Rule 7.4.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [9] in general and furthers the objectives of section 6(b)(5) of the Act [10] in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder because it (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[13]

The Exchange has requested that the Commission waive the 30-day operative delay of Rule 19b–4(f)(6)(iii) so that the proposed rule change may become effective immediately. The Commission believes that waiving the pre-filing requirement and the operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal does not substantially change the existing cabinet trading procedures, but does provide market participants on the Exchange with additional flexibility for handling cabinet trades, which should promote the fair, orderly and efficient handling of these transactions. Therefore, the Commission has determined to waive the 30-day operative delay and allow the proposed rule change to become operative immediately.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2006–33 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–33 and should be submitted on or before June 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E6–7718 Filed 5–19–06; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its attempt to file the proposed rule change at least five days prior to the filing date.

[14] For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53807; File No. SR–NYSEArca–2006–14]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Until June 5, 2007, a Pilot Program for Listing Options on Selected Stocks Trading Below $20 at One-Point Intervals

May 15, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NYSE Arca proposes to amend Commentary .04 to NYSE Arca Rule 6.4, ''Series of Options Open for Trading,'' to extend until June 5, 2007, its pilot program for listing options series on selected stocks trading below $20 at one-point intervals (''Pilot Program''). The text of the proposed rule change is available on NYSE Arca's Web site (*http://www.nysearca.com*), at NYSE Arca's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposal is to extend for one year the Exchange's Pilot Program. The current Pilot Program expires on June 5, 2006. NYSE Arca notes that OTP Firms have expressed a continued interest in listing additional strike prices on low-priced stocks so that they can provide their customers with greater flexibility in their investment choices. For this reason, the Exchange proposes to extend the Pilot Program. The Exchange notes that all of the issues eligible to be included in the Pilot Program, the procedures for adding $1 strike prices, the procedures for phasing out $2.50 strike prices, the prohibition against listing long-term options (also known as ''LEAPS'') in equity option classes at $1 strike intervals, the procedures for adding expiration months, and the procedures for deleting $1 strike prices will remain the same. In support of the Exchange's proposal to extend the Pilot Program until June 5, 2007, the Exchange is submitting to the Commission a report (the ''Pilot Program Report''), attached as Exhibit 3 to the proposal, that offers detailed data from, and analysis of, the Pilot Program.

2. Statutory Basis

The Exchange believes that the continuation of $1 strike prices will stimulate customer interest in options overlying lower-priced stocks by creating greater trading opportunities and flexibility. The Exchange further believes that continuation of $1 strike prices will provide customers with the ability to more closely tailor investment strategies to the precise movement of the underlying security. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act[6] that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

NYSE Arca has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE Arca has asked the Commission to waive the five-day pre-filing notice requirement[9] and the 30-day operative delay to allow the Exchange to continue to list the same options series listed on other options exchanges and to provide the public with the benefits of price competition and added liquidity in these series.

The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Pilot Program to continue without interruption through June 5, 2007.[10] For this reason, the Commission designates that the proposal become operative on June 5, 2006.[11]

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] Telephone conversation between Glenn H. Gsell, Director, NYSE Arca Regulation, and Theodore S. Venuti, Attorney, Division of Market Regulation, Commission, on May 10, 2006.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] As set forth in the Commission's initial approval of the Pilot Program and in its order extending the operation of the Pilot Program through June 5, 2005, if NYSE Arca proposes to: (1) Extend the Pilot Program; (2) expand the number

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2006–14 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2006–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2006–14 and should be submitted on or before June 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E6–7720 Filed 5–18–06; 8:45 am]

BILLING CODE 8010–01–P

of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, it must submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. NYSE Arca must file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report must cover the entire time the Pilot Program was in effect and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options NYSE Arca selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of NYSE Arca's, the Options Price Reporting Authority's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how NYSE Arca addressed them; (6) any complaints that NYSE Arca received during the operation of the Pilot Program and how NYSE Arca addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. *See* Securities Exchange Act Release Nos. 48945 (June 17, 2003), 68 FR 37594 (June 24, 2003) (File No. SR–PCX–2003–28) (order approving the Pilot Program through June 5, 2004); and 50152 (August 5, 2004), 69 FR 49931 (August 12, 2004) (File No. SR–PCX–2004–61) (order approving the extension of the Pilot Program through June 5, 2005).

[12] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[License No. 09/79–0454]**

### Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to Krugle, Inc., 200 Middlefield Road, Suite 201, Menlo Park, CA 94025. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., all Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of Krugle, Inc., and therefore Krugle, Inc. is considered an Associate of Emergence Capital Partners SBIC, L.P. as detailed in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

April 10, 2006.

**Jaime Guzmán-Fournier,**

*Associate Administrator for Investment.*

[FR Doc. E6–7721 Filed 5–19–06; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 5412]**

### Culturally Significant Objects Imported for Exhibition Determinations: The Clark Brothers Collect: Impressionist and Early Modern Paintings

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Clark Brothers Collect: Impressionist and Early Modern Paintings,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Sterling and Francine Clark Art Institute, from on or about June 4, 2006, until on or about September 4, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of

the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8049). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 12, 2006.

**C. Miller Crouch**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E6–7766 Filed 5–19–06; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 5413]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Jean-Etienne Liotard (1702–1789): Swiss Master''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Jean-Etienne Liotard (1702–1789): Swiss Master,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, NY, from on or about June 13, 2006, until on or about September 17, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 15, 2006.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E6–7759 Filed 5–19–06; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 5414]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Monet in Normandy''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Monet in Normandy,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, Legion of Honor, San Francisco, California, from on or about June 17, 2006, until on or about September 17, 2006, at the North Carolina Museum of Art, Raleigh, Raleigh, North Carolina, from on or about October 15, 2006, until on or about January 14, 2007, at the Cleveland Museum of Art, Cleveland, Ohio, from on or about February 18, 2007, until on or before May 20, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 16, 2006.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E6–7761 Filed 5–19–06; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 5416]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Picasso and American Art''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that an object to be included in the exhibition ''Picasso and American Art,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Whitney Museum of American Art, New York, New York, from on or about September 28, 2006, until on or about January 28, 2007, the San Francisco Museum of Modern Art, San Francisco, California, from on or about February 25, 2007, until on or about May 28, 2007, the Walker Art Center, Minneapolis, Minnesota, from on or about June 17, 2007, until on or about September 9, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit object, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8049). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 16, 2006.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E6–7772 Filed 5–19–06; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 5415]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Sheila Hicks: Weaving as Metaphor''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that an object to be included in the exhibition ''Sheila Hicks: Weaving as Metaphor,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Brad Graduate Center for Studies in the Decorative Arts Design, and Culture, New York, New York, from on or about July 12, 2006, until on or about October 15, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit object, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8049). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 16, 2006.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E6–7760 Filed 5–19–06; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Proposed Advisory Circular 120–YY, Widespread Fatigue Damage on Metallic Structure

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of Availability of Proposed Advisory Circular (AC) 120–YY, and request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides guidance to design approval holders for certain transport category airplanes and on repairs and alterations to those airplanes for developing means to preclude widespread fatigue. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

**DATES:** We must receive your comments by July 17, 2006.

**ADDRESSES:** You must mail two copies of your comments on the proposed AC to: Federal Aviation Administration, Attention: Walter Sippel, Airframe and Cabin Safety Branch, ANM–115, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056. You can inspect comments at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jan Thor, Transport Standards Staff, at the address above, telephone (425) 227–2127.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

We invite interested people to comment on the proposed AC by sending written data, views, or arguments. You should identify AC 120–YY and send two copies of your comments to the address specified above. We will consider all communications received by the closing date for comments. We will consider comments received late if it is possible to do so without incurring expense or delay. The proposed AC can be found and downloaded from the Internet at *http://www.faa.gov/aircraft/draft_docs.* A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT.**

#### Discussion

This proposed AC provides guidance to design approval holders on establishing operational limits (initial and extended) to preclude widespread fatigue damage for certain transport category airplanes. It also provides guidance for evaluating repairs and alterations to those airplanes for developing a means to preclude widespread fatigue damage. This AC also provides guidance to operators of those airplanes for use in incorporating Airworthiness Limitations sections with corresponding initial operational limits and airworthiness limitations items into their maintenance program. This guidance material applies to transport category airplanes operated under 14 CFR part 121 or part 129, that were certificated under the fail-safe and fatigue requirements of Civil Air Regulations (CAR) 4b or 14 Code of Federal Regulations (CFR) part 25; and

1. Have a maximum gross takeoff weight greater than 75,000 pounds, or

2. Were certificated with maximum takeoff gross weight of 75,000 pounds or less, and later increased to greater than 75,000 pounds by an amended type certificate or supplemental type certificate.

It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 06–04 entitled ''Widespread Fatigue Damage,'' which was published in the **Federal Register** on April 18, 2006 (71 FR 19928). Issuance of AC 120–YY is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on May 12, 2006.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

**Ricardo Domingo,**

*Acting Manager, Aircraft Maintenance Division, Flight Standards Service.*

[FR Doc. E6–7794 Filed 5–19–06; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Public Notice for Waiver of Aeronautical Land-Use Assurance; Mount Comfort Airport; Indianapolis, IN

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of intent of waiver with respect to land.

**SUMMARY:** The Federal Aviation Administration (FAA) is considering a

proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The 3.27-acre parcel is on Airport Boulevard near the western border of the airport. It is contained within Parcels 18–1 and 18–2 on the current Exhibit A. The current Airport Layout Plan identifies this land as part of an area reserved for future aviation related development. The land was acquired under FAA Project No(s). ADAP 5–18–0037–01 and ADAP 5–18–0037–02. The release of the land is considered beneficial to the safety of the airport because the Buck Creek Township Fire Department proposes to construct a new fire station at this location. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

**DATES:** Comments must be received on or before June 19, 2006.

**FOR FURTHER INFORMATION CONTACT:** Sandra A. Lyman, Airports Engineer, 2300 East Devon, Des Plaines, Illinois. Telephone Number (847) 294–7525 FAX Number (847) 294–7046. Documents reflecting this FAA action may be reviewed at this same location or at Mount Comfort Airport, Indianapolis, Indiana.

**SUPPLEMENTARY INFORMATION:** Following is a legal description of the property located in Greenfield, Hancock County, Indiana, and described as follows:

A part of the Southwest Quarter of Section 7, Township 16 North, Range 6 East, Hancock County, Indiana, more particularly described as follows: Commencing at the southwest corner of the Southwest Quarter of said Section 7; thence North 0 degrees 28 minutes 42 seconds West (assumed bearing) 551.75 feet along the west line of said Southwest Quarter to the centerline of Airport Boulevard; thence North 70 degrees 09 minutes 26 seconds East along the centerline of said Airport Boulevard 817.59 feet; thence South 19 degrees 50 minutes 34 seconds East 100.00 feet to the point of beginning of this description, said point being marked by a ⅝ inch rebar with yellow cap marked ''Daniel Kovert 29300002'' (hereinafter referred to as a capped rebar) thence North 70 degrees 09 minutes 26 seconds East 375.00 feet to a caped rebar; thence South 19 degrees 50 minutes 34 seconds East 380.00 feet to a capped rebar; thence South 70 degrees 09 minutes 26 seconds West 375.00 feet to a capped rebar; thence North 19 degrees 50 minutes 34 seconds West 380.00 feet to the point of beginning, containing 3.27 acres, more or less and subject to all highways, rights-of-way, easements, agreements, and other restrictions.

Dated: Issued in Des Plaines, Illinois, on May 4, 2006.

**Larry Ladendorf,**

*Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.*

[FR Doc. 06–4735 Filed 5–19–06; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Compatibility Program Notice; Collin County Regional Airport; McKinney, Texas

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of McKinney under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On November 1, 2005 the FAA determined that the noise exposure maps submitted by the city of McKinney under Part 150 were in compliance with applicable requirements. On April 28, 2006, the FAA approved the Collin County Regional Airport noise compatibility program. Most of the recommendations of the program were approved.

**DATES:** *Effective Date:* The effective date of the FAA's approval of the Collin County Regional Airport noise compatibility program is April 28, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Blackford, Environmental Specialist, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650. Telephone (817) 222–5607. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Collin County Regional Airport, effective April 28, 2006.

Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or

approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA regional office in Fort Worth, Texas.

The city of McKinney submitted to FAA on October 3, 2005, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from April 2003 through October 2005. The Collin County Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 1, 2005. Notice of this determination was published in the **Federal Register** on November 14, 2005.

The Collin County Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 47504 of the Act. The FAA began its review of the program on November 1, 2005, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such program.

The submitted program contained twenty-one (21) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective April 28, 2006.

Outright approval was granted for thirteen (13) of the specific program elements. Three (3) elements were disapproved, four (4) elements were disapproved pending submittal of additional information, and one (1) element required no action. Disapproved elements include a recommendation to remove runway end signs (element 1b), a recommendation to include selected alternatives for study in National Environmental Policy Act (NEPA) documents (element 1c), and a recommendation addressing jet aircraft visual arrivals to runway 35 (elements 3). The elements did not meet Part 150 approval criteria of reducing non-compatible land uses exposed to 65 DNL. Element 3 was additionally disapproved because of its potential to create unsafe aircraft operating conditions. Elements disapproved pending submittal of additional information include establishment of departure procedures for aircraft departing runway 35 (element 2), establishment of noise abatement procedures for jet departures to the south (element 4), designation of engine run-up locations (element 8a), and restrictions to hours in which aircraft engine maintenance run-ups may be performed (element 8b). Supporting information, for each of the four elements, is required to quantify affects on non-compatible land uses and demonstrate potential benefits. Approved measures include recommendations for helicopter operations near the airport (two elements, approved as voluntary); continuance of flight training predominantly east of the airport (approved as voluntary); and fixed-wing training aircraft maintain current patterns east of the airport (approved as voluntary). Additionally nine (9) measure contained in the Future Noise Abatement/Land Use Control Recommendations were approved. These determinations are set forth-in detail in a Record of Approval signed by the Acting Associate Administrator for Airports, ARP–1, on April 28, 2006. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Collin County Regional Airport. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Fort Worth, Texas, May 11, 2006.

**Kelvin L. Solco,**

*Manager, Airports Division.*

[FR Doc. 06–4732 Filed 5–19–06; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Supplemental Notice of Availability of the Final Environmental Impact Statement Containing a DOT Section 4(f)/303(c) Evaluation for a Proposed Replacement Airport for the City of St. George, UT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental Notice of Availability.

**SUMMARY:** The Federal Aviation Administration (FAA) is issuing a supplemental Supplement Notice of Availability of the Final Environmental Impact Statement containing a DOT Section 4(f)(/303(c) evaluation for a Proposed Replacement Airport for the City of St. George, Utah, published on May 12, 2006 (Volume 71 FR 277770). This supplemental notice is to advise the public that additional copies of the Final Environmental Impact Statement (FEIS) for the proposed replacement airport for the City of St. George, Utah, have been made available for public review at six additional locations. Other than the addition of the six locations for public review, all other information in the original notice remains the same, including the public review period, which begins May 19, 2006. The FAA will accept comments on new and/or revised/updated information and analyses disclosed in Appendices T through Y and in Chapter 6, section 6.4, Air Quality, until 5 p.m. Pacific Daylight Time, Monday, July 3, 2006, at the address listed in the section entitled **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Mr. T.J. Stetz, Regional Environmental Protection Specialist, Federal Aviation Administration, Northwest Mountain Region, Airports Division, 1601 Lind Avenue, SW., Suite 315, Renton, Washington 98055–4056; telephone: (425) 227–2611; fax: (425) 227–1600; and e-mail: *TJ.Stetz@faa.gov.*

*Public Availability:* The additional six FEIS copies may be viewed during regular business hours at the following locations:

1. Salt Lake City—Main Library, 210 E 400 S., Salt Lake City, UT 84111.
2. Kanab City Library—374 N. Main Street, Kanab, Utah 84741.
3. Zion National Park Headquarters—Springdale, UT 84767–1099.
4. Las Vegas—Main Branch, 2300 Civic Center Drive, North Las Vegas, NV 89030.
5. Los Angeles County Library—Main Branch, 12700 Grevillea Avenue, Hawthorne, CA 90250.

6. Flagstaff Coconino County—Main Library, 300 W. Aspen Avenue, Flagstaff, AZ 86001.

An electronic copy of the FEIS also will be available as of May 19, 2006, on the project Web site. It can be accessed at: *http://www.airportsites.net/squ-eis.*

Issued in Renton, Washington, on May 16, 2006.

**Lowell H. Johnson,**

*Manager, Airports Division, Northwest Mountain Region.*

[FR Doc. 06–4751 Filed 5–18–06; 10:54 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Intent to Prepare an Environmental Impact Statement for Major Transit Improvements in the University Corridor of Metropolitan Houston, TX

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Federal Transit Administration (FTA) and the Metropolitan Transit Authority of Harris County (METRO) intend to prepare an Environmental Impact Statement (EIS), in accordance with the National Environmental Policy Act (NEPA), to evaluate proposed public transportation improvements in the Houston metropolitan area. The area being studied, known as the University Corridor, extends approximately ten miles from the vicinity of the University of Houston—Central Campus to the Uptown/Galleria area in southwest Houston. METRO is proposing to construct an electric-powered light rail transit line on one of several possible alignments in the corridor. The EIS will examine and evaluate a number of transit alternatives including a Transportation Systems Management Alternative and various Build Alternatives, consisting of light rail vehicles powered from overhead wires, by an internal diesel-electric system, or by an alternative fuel hybrid-electric system and alignment options within the corridor; and any additional alternatives generated by the scoping process. The location and design of needed ancillary facilities, such as maintenance facilities, will also be considered. Scoping of the EIS will be accomplished through a series of public meetings and stakeholder meetings, through correspondence with interested persons, organizations, and Federal, State, and local agencies, and through posting a scoping information packet on the internet and distributing the packet in hardcopy upon request.

**DATES:** *Comment Due Date:* Written comments on the scope of the EIS, including the purpose and need for transit improvements in the corridor, the alternatives to be studied, and the environmental and community impacts to be considered should be sent to the Metropolitan Transit Authority of Harris County at the address under **ADDRESSES** below no later than July 14, 2006.

*Scoping Meeting Dates:* Public scoping meetings to discuss the scope of the EIS will be held on June 27, 2006 and June 29, 2006. See **ADDRESSES** below for meeting times and locations. Formal presentations of the proposed scope of the study will be made at the meetings, and will be followed by an opportunity for the public to comment on the purpose and need, alternatives to be evaluated, and environmental and community impact issues to be assessed. METRO staff will be available for informal questions and comments throughout the meeting. Scoping information material will be available at the meetings and may also be obtained in advance of the meeting by contacting METRO at the address or e-mail identified in **ADDRESSES** below. The scoping information will also be available on the project Web site at *http://www.metrosolutions.org/go/doc/1068/112145/.* Oral or written comments may be given at the scoping meetings. A court reporter will be present at the meetings to record oral comments. Any person who requires language interpretation or communication accommodations is encouraged to contact Karen Marshall at METRO at (713) 739–4980 or by 2-mail at *METROSolutions-University@ridemetro.org* at least 72 hours prior to the scoping meetings. Every reasonable effort will be made to meet special needs. The location for the meetings will be accessible to persons with disabilities. A scoping meeting for the public agencies invited to serve as participating agencies in the EIS study will be organized later through direct mailouts or telephone invitations.

**ADDRESSES:** Written comments on the scope of the EIS should be sent to the following address by July 14, 2006: Rhonda Boyer, 1900 Main St., P.O. Box 61429, Houston, Texas 77208–1429, *METROSolutions-University@ridemetro.org.*

The public scoping meetings will be held at the following locations and times:

1. Third Ward Multi-Service Center, Tuesday, June 27, 2006, 4 p.m. to 7 p.m. at 3611 Ennis, Houston, Texas 77004.

2. San Jacinto Girl Scout Headquarters, Thursday June 29, 2006, 4 p.m. to 7 p.m. at 3110 S.W. Freeway, Houston, Texas 77098.

**FOR FURTHER INFORMATION CONTACT:** John Sweek, Community Planner, FTA, Region VI, 819 Taylor Street, Ft. Worth, Texas 76102, Telephone (817) 978-0550.

**SUPPLEMENTARY INFORMATION:**

#### I. Scoping

METRO and FTA invite all interested individuals and organizations, and Federal, State, regional, and local agencies to participate in defining the purpose and need for transit action in the University Corridor, in developing alternatives to be evaluated to meet that purpose and need, and in identifying any social, economic and environmental issues related to the alternatives. During the scoping process, comments should focus on refining the purpose and need statement, developing alternatives to meet the purpose and need that have comparable or lower cost and less adverse impact, and identifying specific social, economic, or environmental impacts to be evaluated.

#### II. Purpose and Need

The University Corridor study area is defined as beginning at the University of Houston—Central Campus and extending westward to the inner southwest part of Houston, generally bounded by Calhoun Street on the east, Chimney Rock on the west, Westheimer on the north and Bissonnet on the south. The University Corridor extends approximately 10 miles east to west and includes the Greenway Plaza, the Uptown/Galleria, the University of Houston—Central Campus, the Texas Southern University, and the St. Thomas University areas. Portions of the alignment are densely developed. New development and redevelopment is occurring along the corridor and is expected to generate increases in travel demand.

A key component of the University Corridor is the regional connectivity the transit line will offer. A number of travel destinations are located along the corridor. The alignment will provide a transfer opportunity at the Wheeler Station providing a direct connection to the existing Main Street LRT line, which provides service to Downtown, Midtown, the Museum District and the Texas Medical Center. A transfer opportunity to the proposed Southeast Corridor BRT project will also be provided at Scott Street.

From Calhoun Street to Chimney Rock, the corridor is characterized by fairly dense residential and commercial development. Two major employment centers, Uptown/Galleria and Greenway Plaza, will be directly serviced by the University line, and Downtown and the Texas Medical Center may be reached by a light rail connection at the Wheeler station. The corridor will also provide direct service to four major universities: University of Houston—Central Campus, Texas Southern University, Houston Community College—Central Campus, and St. Thomas University. Current local bus routes that operate in the University Corridor study area tend to be heavily utilized, and represent a significant share of the daily local bus ridership.

Transit connection of major population, employment, and entertainment centers, including Downtown Houston, Uptown/Galleria, and Greenway Plaza, is a key purpose of this proposal. FTA and METRO seek public and agency comment on the purpose and need for transit action in the University Corridor.

## III. Alternatives

The alternatives presently proposed for consideration in the EIS are:

- Future No Build Alternative—Outside the study area, this alternative consists of the transportation network in the metropolitan transportation plan adopted by the Houston-Galveston Area Council (H–GAC). Inside the study area, this alternative assumes that transit service will be continued and expanded to meet future population and employment growth in accordance with existing service policies.
- TSM Alternative: Bus service improvements beyond those of the Future No Build Alternative, which represent the best that can be done to meet the project's purpose and need without constructing a new transit guideway.
- LRT on Westpark and US 59: Rail vehicles and tracks on Westpark and US 59 with one of three alignments for transitioning west of Spur 527 in the vicinity of Edloe, Weslayan, or the Bellaire Juncture Railroad right-of-way and with one of three alignments for transitioning east of Spur 527 on Elgin, Alabama, or Wheeler. The impacts and costs alternative traction-power technologies for the light rail vehicles, including electric power from overhead wires, an on-vehicle diesel-electric system, and an alternative fuel hybrid-electric system, will be studied. A hybrid-powered LRT system has not yet been used elsewhere in the United States.
- LRT on Richmond: Rail vehicles and tracks on Richmond with one of three alignments for transitioning west of Spur 527 in the vicinity of Edloe, Weslayan, or the Bellaire Juncture Railroad right-of-way and with one of three alignments for transitioning east of Spur 527 on Elgin, Alabama, or Wheeler. As with the Westpark/US 59 LRT alignment, alternative traction-power LRT technologies will be studied.

Additional reasonable alternatives suggested during the scoping process, including those involving other modes or alignments, will also be considered. Alternative locations and designs for ancillary facilities, such as the transit vehicle storage and maintenance facility, traction power substations for electrically-powered vehicles, and stormwater management facilities, will be developed and presented in the EIS.

## IV. Probable Effects and Potential Impacts for Analysis

The purpose of the EIS is to evaluate the environmental consequences of alternative means of accomplishing the purpose and need for transit in the University Corridor study area in advance of a decision to commit substantial financial or other resources toward the project implementation. The EIS will examine the extent to which the study alternatives result in adverse environmental and community impacts and corresponding actions to reduce, mitigate, or eliminate such impacts.

METRO and the FTA will evaluate all social, economic, and environmental impacts of the alternatives analyzed in the EIS. Primary issues known to the study team at present include:

- Land acquisition, displacement and relocation of existing residences and businesses;
- Historic, archaeological, and cultural resources;
- Parklands and recreation areas;
- Adverse impacts on neighborhoods and communities;
- Transit vehicle noise;
- Vibration of buildings due to rail vehicles; and
- Traffic impacts.

Mitigation options for all adverse impacts will be developed and presented in the EIS. To ensure that all significant issues related to this proposed project are identified and addressed, comments and suggestions are encouraged from all interested parties during scoping. Comments or questions concerning the impacts of the various alternatives should be directed to METRO at the address given under **ADDRESSES** above.

## V. FTA Procedures

FTA and METRO will combine the draft EIS with the planning Alternatives Analysis required for New Starts projects (projects proposed for funding assistance through 49 U.S.C. 5309(d)). Following the public hearing and comment period for the draft EIS, METRO and H–GAC will select a locally preferred alternative (LPA), and METRO will apply to FTA for entry into the Preliminary Engineering (PE) phase of project development. It is conceivable that the LPA may be combination of one or more alternative options studied. Wherever the LPA has adverse impacts, METRO and FTA will develop additional alignment and design alternatives during PE to avoid those adverse effects. If avoidance is determined not to be feasible and prudent, then minimization and mitigation options will be developed and evaluated. The final EIS will present the alternatives developed and evaluated during PE and commit to specific mitigation of adverse impacts.

In accordance with FTA policy, all Federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the project-level conformity provisions of the Clean Air Act, Section 404 of the Clean Water Act, Executive Orders 11990 regarding wetlands, 11988 regarding floodplains, and 12898 regarding environmental justice, Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, and Section 4(f) of the Department of Transportation Act (49 U.S.C. 303), will be addressed to the maximum extent practicable during the NEPA process.

Issued on: May 17, 2006.

**Robert C. Patrick,**

*Regional Administrator, Federal Transit Administration, Fort Worth, Texas.*

[FR Doc. 06–4730 Filed 5–19–06; 8:45 am]

BILLING CODE 4910–57–M

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[Docket Number: FTA–2006–23636]**

## Notice of Availability of Final Guidance on New Starts Policies and Procedures, Updated Reporting Instructions and New Starts Rating and Evaluation Process

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of the Federal Transit Administration's (FTA) Final Guidance on New Starts Policies and Procedures which was initially issued for comment on January 19, 2006. This final Policy Guidance updates procedures for project planning and development to receive New Starts funding, in accordance with the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, August 10, 2005]. The guidance explains changes to the New Starts program that will become effective on May 22, 2006. This notice also announces the availability of updated Reporting Instructions for the Section 5309 New Starts Criteria, which should be followed when reporting New Starts information for evaluation during the fiscal year (FY) 2008 project rating cycle, as well as any requests to enter into preliminary engineering, final design or a full funding grant agreement, and a detailed description of the FY 2008 Evaluation and Rating Process, which is an appendix to the Reporting Instructions. Finally, this notice provides the schedule for reporting of information for FTA's FY 2008 evaluations. FTA finds that there is good cause to make this guidance effective upon publication of this notice because sponsors of projects seeking New Starts funding must have adequate time to prepare information that FTA will use to evaluate projects for inclusion in the President's FY 2008 budget request to Congress.

**DATES:** *Effective Date:* These policies and procedures will take effect on May 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ron Fisher, Office of Planning and Environment, telephone (202) 366–4033, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 or *Ronald.Fisher@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### 1. Availability of the Final Guidance and Comments

A copy of the proposed and Final Policy Guidance and comments and material received from the public, as well as the updated Reporting Instructions and Evaluation and Rating Process for the Section 5309 New Starts Criteria, are part of docket FTA–2006–23636 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may retrieve the guidance and comments online through the Document Management System (DMS) at: *http://dms.dot.gov.* Enter docket number 23636 in the search field. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov/fr/index.html.*

### 2. Background

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). Section 3011 of SAFETEA–LU made a number of changes to 49 U.S.C. 5309, which authorizes the Federal Transit Administration's (FTA's) fixed guideway capital investment program known as ''New Starts.'' On January 19, 2006, FTA published a Notice of Availability of Guidance on New Starts Policies and Procedures and Request for Comments in the **Federal Register** (71 FR 3149). The guidance explained proposed changes to the New Starts program that were proposed to become effective April 30, 2006, as well as longer-term changes to the New Starts program that FTA plans to be the subject of rulemaking in the future. FTA requested—and received—comments on both aspects of the guidance in the January notice. The immediate changes discussed in more detail below apply to all New Starts submittals received after May 22, 2006. FTA finds that there is good cause to make this guidance effective upon publication of this notice because sponsors of projects seeking New Starts funding must have adequate time to prepare information that FTA will use to evaluate projects for inclusion in the President's FY 2008 budget request to Congress. As proposed in the January 19, 2006 Notice, the longer term changes will be covered in a subsequent rulemaking and comments on those issues will be summarized as part of the forthcoming Notice of Proposed Rulemaking. Accordingly, this notice announces the availability of FTA's Final Guidance on New Starts Policies and Procedures. This notice also announces the availability of Reporting Instructions for the Section 5309 New Starts Criteria for the submittal of New Starts information to be evaluated and reported in the FY 2008 Annual Report on New Starts, as well as for all requests to enter preliminary engineering and final design throughout the remainder of calendar year 2006 and 2007 or until FTA releases a revised set of instructions. The Reporting Instructions include as an appendix a detailed description of the New Starts Evaluation and Rating Process. These documents are available in the docket, which can be accessed by going to *http://dms.dot.gov,* or on FTA's Web site for New Starts Planning and Project Development at *http://www.fta.dot.gov/15052_ENG_HTML.htm.*

### 3. Response to Comments and New Starts Program Changes To Be Effective May 22, 2006

The purpose of this notice is to announce the availability of the Final Policy Guidance on New Starts Policies and Procedures and the FY 2008 Reporting Instructions and Evaluation and Rating Process for the Section 5309 New Starts program, reflecting the changes implemented as a result of comments received on the January 19, 2006 Notice of Availability. FTA will issue a Notice of Proposed Rulemaking (NPRM) later this calendar year to address the remainder of the issues discussed in the draft Policy Guidance made available by that Notice.

*Reporting Instructions and Rating and Evaluation Process for the FY 2008 Section 5309 New Starts Submission*

FTA adopts as final the proposal made in the Notice that, for the FY 2008 New Starts submissions, there be no change from the approach used for the FY 2007 New Starts submissions in the framework and methodology for evaluating and rating New Starts projects, and the decision rules that support it.

*Comments:* FTA received no comments on the proposal to continue the same approach used for the FY 2007 New Starts submissions for evaluating and rating New Starts projects for the FY 2008 New Starts submissions.

*FTA Response:* Accordingly, FTA will not change the current framework and methodology for evaluating and rating New Starts projects, and the decision rules that support it. All of the measures and their weights for developing New Starts ratings remain consistent with the process spelled out in the Major Capital Investment Projects Final Rule issued in December 2000, as modified in 2005 to incorporate SAFETEA–LU changes which could be accommodated prior to rulemaking. FTA further encourages New Starts project sponsors to submit information on anticipated economic development of their proposed investments as an ''other factor.'' The FY 2008 Reporting Instructions for the Section 5309 New Starts Criteria include, as an appendix, a description of the New Starts evaluation and rating process.

As in past years, modest changes are incorporated into the Reporting Instructions, including: (1) Updated breakpoints for the rating of project cost effectiveness, using the Gross Domestic Product Deflator, as was described in FTA's April 29, 2005 Dear Colleague Letter; (2) clarifying guidance, including ''guiding principles'' for the development of the ''Baseline'' alternative against which the incremental benefits of proposed New Starts are measured; and (3) a revised Certification of Technical Methods and Planning Assumptions. In addition, the Standard Cost Categories for reporting capital costs have been updated and the templates for reporting the New Starts criteria have been linked to reduce data entry requirements.

FTA notes that the deadline for formally reporting information on the New Starts project justification and local financial commitment criteria—i.e., the New Starts ''templates'' and supporting land use and financial information—for evaluation in the *FY 2008 Annual Report on New Starts* is August 18, 2006. In addition, FTA requests, for projects already in the New Starts ''pipeline'' (projects in preliminary engineering and final design), that information related to travel forecasts, operating and maintenance cost methodologies, capital costs (constant dollar and annualized, as reported in the Standardized Cost Category worksheets), and service annualization factors be submitted by July 14, 2006 if this information is different from what was submitted last year. This advanced submission of information helps FTA staff to understand the information underlying the New Starts project justification criteria, and helps to ensure that the information reported in the formal New Starts templates is sufficient for FTA's evaluation and rating of candidate projects. Both the ''advanced'' and formal submission of information should be sent to the FTA Office of Planning and Environment (TPE), Room 9413, 400 Seventh Street, SW., Washington, DC 20590. In addition, FTA's consultants for financial and land use reviews will be contacting sponsors of projects in the pipeline in mid-August 2006 to provide additional direction on transmitting specific information to them for these reviews.

For sponsors who hope to have their project approved into preliminary engineering in time for inclusion in the *FY 2008 Annual Report,* a complete request (with previously FTA-accepted travel forecasts, baseline alternative, build and baseline capital costs, and achievement of other project readiness requirements) must be submitted to FTA no later than August 18, 2006. FTA encourages sponsors of such projects to contact FTA as soon as possible to assess their readiness for preliminary engineering and to prepare their request for advancement. Projects supported by incomplete or premature requests will not be considered for inclusion in the *FY 2008 Annual Report.*

FTA encourages sponsors of candidate New Starts projects to follow the *Reporting Instructions* closely, and to submit complete information according to the deadlines established above. FTA's period for completing its FY 2008 budget evaluations is very short. FTA staff is committed to working closely with project sponsors to resolve any questions or issues with their submittals, but cannot guarantee the acceptance and inclusion of any revised or updated information after September 30, 2006 in time for the FY 2008 evaluation. Project sponsors should contact the FTA Office of Planning and Environment, or their FTA Regional Office, if they have any questions regarding the submission of information for evaluation, or the process for developing such information.

Significant changes made to accommodate policy changes incorporated in the final Policy Guidance are described below.

*National Environmental Policy Act (NEPA) Scoping Prior to Entry Into Preliminary Engineering*

FTA adopts a requirement that NEPA Scoping be completed prior to FTA approval of entry into preliminary engineering (PE). This requirement is in effect for any request to enter PE that is submitted after the effective date of this Notice.

Conduct of NEPA Scoping prior to PE approval already occurs in situations where an alternatives analysis (AA) study is undertaken as part of a draft environmental impact statement (DEIS). For AA studies performed prior to initiation of the NEPA process—with the expectation that subsequent environmental work be limited to the preferred alternative emerging from the AA study—FTA would simply require that normal NEPA Scoping be performed at the outset of the NEPA process, prior to consideration of advancement of the project into PE. By proposing this requirement FTA expected to produce more efficient and mutually-supported NEPA and New Starts reviews, which share the similar objective of informed decision-making. This requirement was intended to foster earlier interaction and, ideally, general consensus among the scoping participants about the alternatives to be considered during NEPA review. Scoping prior to PE allows for resolution of these issues during the planning process instead of discovering them in PE and having to do additional planning analyses to address them. To the extent that planning issues are resolved prior to PE, FTA expected this change would shorten the time that a project remains in PE.

*Comments:* Comments were evenly distributed between those who supported and opposed this proposal, and those who desired more guidance or clarification of the issue. Specific comments included concerns that this requirement would prolong the project development schedule, resulting in increased costs for consultant services and construction, and that it is difficult to achieve buy-in and understanding of the planning process by local elected officials and the public.

*FTA Response:* Rather than lengthening the project development schedule, it is FTA's belief that confirmation of a locally preferred alternative through NEPA Scoping strengthens the local planning decision and mitigates against situations where another alternative emerges during PE, potentially causing project development delays. Further, FTA believes that obtaining local consensus is a key component to streamlining the project development process. Accordingly, FTA will require that project sponsors submit the results of the NEPA Scoping process as part of the information submitted to FTA for requests to enter into PE. FTA

recognizes that the scoping process can take 3 to 4 months to complete. Project sponsors should build this step into the schedule, recognizing that scoping can occur while FTA is reviewing the ridership, cost, and financial information that support the request to enter into PE. Sponsors who are contemplating a request to enter into PE in the next few months should contact FTA immediately about beginning the scoping process.

*Include New Starts Evaluation Information in NEPA Documents*

FTA adopts a requirement that all environmental documents for a New Starts project include key information related to ratings under the New Starts criteria, standard language that describes the New Starts process, and the latest available New Starts rating for the project. However, FTA will not require a project sponsor to submit additional information for rating purposes at the time the environmental document is ready to be issued. The most recent rating and, if necessary, an explanation of any information that may change the rating, will suffice.

The Council on Environmental Quality's (CEQ) NEPA regulations (40 CFR 1502.23) state that ''an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.'' FTA proposed this requirement because it considered the New Starts rating information and evaluation process information to be ''relevant and important to a decision'' because it indicates the likelihood of funding from the New Starts program.

*Comments:* The majority of comments were opposed to this proposal as described in the January 19, 2006 Notice. Some thought that the inclusion of the New Starts rating information would compromise the NEPA process and expose FTA to litigation risks based on the information, causing unnecessary delay. Some thought that the information would confuse the audience for NEPA documents as the information is unknown to them. Others thought that the proposal should be part of a formal rulemaking process and/or that additional time for consideration should be provided prior to adoption by FTA.

*FTA Response:* In the 1980's and early 1990's, New Starts rating information was routinely included in environmental documents, similar to other types of technical information found in these documents. This information was produced for all of the alternatives. Descriptions of the relevance of the information related to project merit along with a brief description of how it is used for FTA's ratings minimizes any misunderstanding of its significance. FTA legal counsel believes that by including this information in environmental documents, FTA would not be subject to any additional risk than we currently are under the Administrative Procedure Act, which enables a plaintiff to contest any government decision that they believe is arbitrary and capricious. FTA also does not believe that this provision, which follows good planning practice and CEQ requirements, needs to be cited in a regulation. Furthermore, FTA is convinced that by providing full disclosure as part of the NEPA document, downstream challenges to the project will be reduced.

For environmental documents prepared prior to entry into PE, FTA will require that information relating to the New Starts criteria be presented along with a brief description of how the information is used for FTA's ratings. For projects which have received an FTA rating, the actual rating would also be presented. This policy applies specifically to the locally preferred alternative (i.e. the proposed New Starts project); however, in cases where the DEIS is prepared during the alternatives analysis phase of project development, FTA strongly encourages (but will not require) that information in support of the New Starts rating process be developed and reported for all studied alternatives, as a means of enhancing local stakeholders' understanding of the potential competitiveness of the alternatives for New Starts funding. In response to the comments received, which indicated concerns about which documents would be covered by this requirement, and the difficulty in crafting appropriate language for inclusion in the environmental documents, FTA wishes to make clear that the proposal applies to all NEPA documents, both environmental assessments (EAs) and environmental impact statements (EISs), and that standard language, which is available from FTA, would accompany the New Starts rating to provide context for the New Starts rating and process. Further, FTA notes that by making clear that the requirement is reporting of only the most recent New Starts rating rather than a new rating by FTA (which some comments felt was implied by the draft Guidance), there should be no delay in the development of the environmental documents in order to await development of an updated rating by FTA.

*Require a New Starts Project To Achieve an Acceptable New Starts Rating Before the FEIS, ROD, or FONSI Is Signed*

FTA does not adopt a requirement that a proposed New Starts project must receive a rating of ''medium'' or better before it will sign a final EIS (FEIS), record of decision (ROD), or finding of no significant impact (FONSI). However, when it is clear that FTA will need to issue a supplemental environmental document in order to accommodate scope changes needed to justify a ''medium'' or better rating, FTA will not issue a FEIS or ROD until this supplemental document is completed. For projects not perceived as requiring a supplemental document, FTA will include a statement in the FEIS, ROD or FONSI as to how a New Starts rating of less than ''medium'' may affect the ability of the project to advance to implementation.

This policy was designed to minimize the need for additional environmental reviews due to subsequent changes in a project's scope needed to improve the New Starts ratings. The policy would not have eliminated all supplemental NEPA reviews, but it would have minimized the need for duplicative reviews in cases where it is known that the project must be changed to make it acceptable for New Starts funding. This policy was also designed to ensure that the FEIS provided the affected public with an accurate description of a project that is acceptable for New Starts funding.

*Comments:* There was significant opposition to the original proposal to require a project to receive a ''medium'' or better rating before the environmental document would be signed. Some respondents were concerned that preventing the issuance of a NEPA determination could interfere with project funding support from other sources. Others thought that if other Federal funding sources are being used for a project, the withholding of a NEPA determination solely due to the New Starts rating would prevent further project development with non-New Starts funding. Some thought that this requirement could prejudice the NEPA process by encouraging project sponsors to minimize costs by removing environmental or community benefits whose affects cannot be measured quantitatively to achieve a New Starts cost effectiveness figure that results in a ''medium'' or better New Starts rating. A few commenters noted that delaying a NEPA determination due to the New Starts rating would prevent a project

sponsor from acquiring right-of-way, and could result in property cost escalation if the NEPA determination milestone is delayed. One suggestion was that if a project's New Starts rating is less than a ''medium,'' then measures to improve the rating should be included in the NEPA determination. Others thought that this requirement should be part of a formal rulemaking process and/or that additional time for consideration should be provided prior to adoption by FTA due to the extent of the proposed changes.

*FTA Response:* While FTA continues to believe that the requirement for achieving an acceptable New Starts rating prior to a NEPA determination is justifiable, many of the comments raised equally reasonable issues that suggested that additional and more detailed parameters for case by case flexibility were needed to determine when and how the New Starts rating would delay the issuance of a NEPA determination. Furthermore, one comment proposed a solution that addressed FTA's concerns as well as the concerns of the commenters. Therefore, except where it is absolutely clear that FTA will need to issue a supplemental FONSI, FEIS, or ROD in order to accommodate scope changes needed to justify a ''medium'' or better rating, FTA will issue such a document but include in it a statement as to how the New Starts process may affect the ability of the project to advance to implementation. This allows the environmental process to be completed. It allows the project sponsor to begin necessary land acquisition with its own funds. At the same time it puts the public as well as local decision-makers on notice of the possibility that the project may not ultimately receive New Starts funding. Standard language that will be included in the FEIS, FONSI, or ROD is available from FTA. For a multimodal project (highway and transit) in which the transit component does not advance without a supplemental document, but the environmental process for the highway component may be finalized, the highway component could be included in a stand-alone environmental document.

*Preservation of Information for Before and After Study*

To ensure that required information is identified and preserved during project planning and development, FTA adopts a requirement that project sponsors provide initial documentation of the information produced during alternatives analysis when they apply to begin PE, and to provide updated information and an analysis of any changes from the previous phase of project development, when applying to enter FD and before receiving an FFGA.

In its December 2000 Final Rule on Major Capital Investment Projects, FTA required that project sponsors seeking full funding grant agreements (FFGAs) submit to FTA, before approval of an FFGA, a complete plan for the collection and analysis of information to identify the impacts of their projects and the accuracy of the forecasts prepared during project planning and development. SAFETEA–LU amended section 5309(g)(2)(c) to codify this regulatory requirement and now requires that project sponsors, as a condition of receiving a FFGA, assemble information on five key project characteristics generated during project planning and development: (1) Project scope; (2) transit service levels; (3) capital costs; (4) operating and maintenance costs; and (5) ridership patterns and revenues. SAFETEA–LU now requires FTA to use this information in preparing an annual report to Congress on the results of any before and after studies completed during that year.

*Comments:* Comments were generally supportive of this proposal. Some requested that more guidance and training on conducting a before and after study and data collection methods be provided before this requirement is set forth, and that the cost of conducting the study be an eligible New Starts expense. Some agencies supported the inclusion of land use and economic development measures in the before and after study. Other commenters believed that this proposal should be the subject of rulemaking.

*FTA Response:* Preliminary guidance on before and after studies and a model before and after study plan are currently available from the FTA Office of Planning and Environment. The guidance makes clear that the costs of the study are an eligible FFGA expense. The guidance further reflects the proposed data and analysis submission requirements. The five factors proposed for inclusion in the before and after study are those specified in SAFETEA–LU. FTA agrees that land use and economic development analyses could provide useful information about the forecast and actual performance of projects, and encourages their inclusion in the studies, but will not require them at this time.

This proposal is a refinement of FTA's existing regulation based on the SAFETEA–LU requirement that FTA report on this information at each stage in the process. It does not result in any additional effort—only the timing of the effort. FTA does not believe it is necessary that it be implemented through the rulemaking process.

*Certification of Technical Methods, Planning Assumptions, and Project Development Procedures*

FTA does not adopt a requirement that all individuals responsible for developing information critical for evaluation of New Starts certify that the information has been developed in accordance with FTA guidance and best professional practice. Rather FTA has enhanced the sponsoring agency's Chief Executive Officer's (CEO's) certification to include key assumptions that must be followed in developing the New Starts information. The revised certification can be found in the Reporting Instructions for the FY 2008 New Starts Criteria.

Currently, FTA requires that the General Manager or CEO of a project sponsor agency certify that the data and assumptions used to develop information for evaluating projects seeking New Starts funding have been developed according to a number of rules described in the certification statement. Despite this certification, which has been in effect for several years, FTA has found that information has been produced that is inconsistent with FTA guidelines. FTA's oversight has also revealed that best professional practices that have been routinely followed for decades are not always applied during project development. By assigning responsibility to an individual for his/her technical work, FTA hoped that accountability would be better recognized, thus ensuring more accurate information for decision-makers, both locally and at the Federal level. In addition, the certifications were intended to help FTA in identifying who was responsible for preparing cost and ridership estimates, information that is needed in order for FTA to prepare an accurate and fair Contractor Performance Assessment Report as required by SAFETEA–LU.

*Comments:* There was significant opposition to this proposal. Some stated that since information is often developed by multiple agencies and consultants, no individual can be identified as responsible for the work. Some expressed concerns about professional liability and Federal prosecution. Others stated that there are no industry-accepted standards or conventions to certify to and that FTA should only hold individuals responsible for adhering to definable standards described in FTA guidance. Others commented that FTA reviews

obviate the need for additional certifications.

*FTA Response:* FTA acknowledges that information is developed by various agencies and the resulting difficulty of a single individual certification. In response to the question of liability, the comments raise a legitimate concern which would require an in-depth legal analysis to adequately address. While states and some agencies have documented standards, there is no clear uniform definition of best professional practice across the country. Nonetheless, FTA does have established standards that are quite detailed. While FTA does review information from grantees, it is impossible to ensure that every aspect of a forecast has been performed correctly. Placing the responsibility for reliable forecasts on project sponsors better accomplishes the goal of credible project costs and benefits.

FTA believes that the requirement for accountability in the development of information is legitimate. While FTA could limit the certification to explicit pre-established standards, drawing on our existing guidance, the requirement may still be viewed as a reflection of a lack of trust by FTA rather than a true measure of accountability. Therefore, rather than requiring a certification by each of the individuals responsible for preparing the information, FTA is continuing the past requirement for a CEO's certification in the FY 2008 Reporting Instructions, but has expanded the scope of technical procedures and assumptions that is covered by the certification. The CEO can then decide how to assure him/herself that the underlying information is valid. The Certification of Technical Methods, Planning Assumptions, and Project Development Procedures is included in the FY 2008 Reporting Instructions.

*Identification of Uncertainties in the Development of Costs and Ridership Forecasts*

FTA does not adopt a requirement that project sponsors include a statement of uncertainties in its submittal at this time. FTA will issue guidance at a later point in time with respect to the information needed to satisfy several provisions of SAFETEA–LU requiring identification of uncertainty but it will be subject to a separate Notice and Comment process. Nonetheless, while not a requirement, FTA does encourage all project sponsors to describe the nature of uncertainties in costs and ridership forecasts. Current FTA guidance (*Procedures and Technical Methods for Transit Project Planning*) on cost and ridership uncertainties provides general direction for this until more specific guidance is issued.

Currently, forecasts of project costs and ridership are developed as discrete estimates, even though they contain uncertainties which diminish as the project is continuously refined in project development. Good planning practice and SAFETEA–LU requirements dictate that these uncertainties be more explicitly described when the cost and ridership forecasts are produced. More explicit representation of uncertainties is required by SAFETEA–LU because reliability of forecasts is now a factor in project justification. An understanding of uncertainties is essential in understanding the cause of forecasts changing during project development and operation as required for before and after studies and for assessing contractor performance. Further, an understanding of uncertainties will provide information to FTA as it implements the SAFETEA–LU Cost Incentive provision, which allows FTA to provide more New Starts funding at the time a project enters into a FFGA, if project costs are no more than 10% above and ridership no less than 90% of the estimates made when the project was admitted into PE.

*Comments:* Comments were evenly distributed between those who supported and opposed this proposal. There were concerns that the proposal would be time consuming and costly and would not eliminate risk and uncertainty from forecasts. Others thought that FTA should delay implementation of the requirement until guidance is issued that defines how uncertainties should be characterized. Some thought that including uncertainty raises questions about how this uncertainty would be addressed in the cost effectiveness measure for projects.

*FTA Response:* Rather than seeking to eliminate all project risk and uncertainty, FTA proposed that project sponsors report the nature of the uncertainty in project cost and ridership forecasts as a result of their analysis. This would allow both the project sponsor and FTA to use that information as they make decisions to advance the project. Current FTA guidance on capital cost estimation and travel forecasting discusses the role of uncertainty in forecasts and describes how these uncertainties could be reported. However, to ensure that uncertainties are being reported consistently by all grantees, further guidance is needed. While FTA acknowledges that a more explicit reporting of uncertainty may raise questions about the uncertainty in the cost effectiveness measure; FTA did not propose to require the project sponsor to make multiple calculations of cost effectiveness based on the uncertainly analysis.

FTA continues to believe that such a requirement is necessary to satisfy several SAFETEA–LU requirements. Understanding uncertainty will allow FTA to better recommend funding among projects with similar costs and benefits, but with significant differences in uncertainties. A better understanding of uncertainties will facilitate a better understanding of why costs and ridership vary from predictions so that better approaches to forecasts can be developed for future projects. Additionally, because a major purpose of planning and project development studies is to disclose information for decision-making, a more explicit representation of uncertainties better informs decision-makers by providing richer information about the nature of project benefits and costs. However, the comments raised sufficient issues to convince FTA that it needs to provide more detailed guidance in order to obtain consistent results. Because of the need to issue this policy guidance and the 2008 Reporting Instructions in sufficient time for grantees to submit ridership and cost information by July 14, 2006, FTA did not have to time to prepare this additional guidance; therefore, FTA will consider this issue either as part of the rulemaking process and/or under a separate Notice and Comment to address several provisions of SAFETEA–LU requiring identification of uncertainties. In the meantime FTA strongly encourages project sponsors to describe the nature of uncertainties when forecasts of costs and ridership are presented to FTA or in planning and project development documents.

*Project Development Agreements*

FTA will not require Project Development Agreements (PDAs) for specific projects at this time, but will work with any project sponsor who requests the use of such an agreement. This requirement may be revisited during the rulemaking process. Some projects in the New Starts pipeline have been unable to advance through PE and FD, primarily because of problems securing funding commitments, problems providing satisfactory information about expected project benefits, or major changes in project scope and definition. Occasionally, projects have experienced significant changes affecting scope and cost after

approval into PE, and have, consequently, become stalled or significantly reconfigured during PE or FD. To remedy this situation, FTA proposed to selectively require PDAs with sponsors of projects that are experiencing delays advancing through the process, or have identified risks which must be addressed and mitigated in order for the project to proceed in development. The PDA would have identified principal issues to be resolved, products to be completed, and schedules for reaching significant milestones during the course of PE and FD.

*Comments:* Comments indicated some support for this proposal, however many stated a need for further guidance or clarification on when PDAs would be implemented and what elements they would include. Some commenters were concerned that the use of PDAs at FTA's discretion ''could result in inequitable treatment of some projects against all others.'' Others thought that development of PDAs would delay projects by adding another layer to the project development process. Others stated that the PDA is valuable as a partnering agreement provided that it is not required or used in a ''punitive way.'' Some thought FTA should use requirements that are already in place, such as the annual New Starts submission and PE and FD approval points to fulfill the desired goals of the PDA.

*FTA Response:* FTA contemplated the PDA as achieving many objectives, including establishing milestones for demonstrating progress (so that failure in meeting these milestones would result in removal of the project from FTA's project development pipeline) as well as committing FTA to a scope and timetable of technical services to help the sponsor meet the milestones. While PE and FD approval letters can be enhanced to include items of importance, ''warnings,'' commitments of FTA technical assistance, and other elements which would otherwise be covered under a PDA, FTA recognizes the value of PDAs, as they improve communication and coordination between FTA and project sponsors by clarifying expectations on the part of each. Based on this fact and the comments received, FTA will implement PDAs only in cases when it is mutually agreed upon by the project sponsor and FTA. In such cases, it is expected that the PDA would be a useful tool to guide agencies through project development and minimize delays in the process. Furthermore, FTA will continue to consider this requirement as part of the rulemaking.

*New Starts Funding Level Set at Final Design (FD) Approval*

FTA adopts a requirement that the amount of New Starts funding be set at the time the project is approved for entry into FD. To do so, FTA is broadening the scope of eligible PE activities for New Starts projects. To clarify the distinct nature of the activities which must be completed prior to entry into FD, FTA will refer to this stage of project development as ''New Starts Preliminary Engineering.'' To address concerns raised regarding cost increases, FTA will entertain requests for higher levels of New Starts funding when, during FD but prior to execution of the Full Funding Grant Agreement, FTA determines that the increase in costs is beyond the grantee's control. In addition, once the project has been approved for entry into FD, the project would not be subject to any changes in New Starts policy, guidance and procedures.

Certain language in SAFETEA–LU indicates a desire by Congress to minimize, to the extent possible, project cost increases between the various stages of project development. FTA agrees and feels that the products of PE should include the final project scope and a highly accurate and conservative cost estimate that addresses all major project uncertainties. To encourage project sponsors to develop reliable and accurate cost estimates during PE, FTA proposed to cap the New Starts funding amount for a project as the amount requested when the project is approved to enter FD.

*Comments:* Comments on this proposal were evenly distributed between those who supported and those who opposed it, as well as those who neither supported nor opposed it, but offered concerns and alternatives. Some asked FTA to allow for some exceptions due to genuine, unavoidable and unforeseen inflation in commodity or construction prices. Others suggested that rather than cap the New Starts funding amount at the point of entry into FD, FTA should cap funding of a project at greater than some percentage over the PE cost estimates. Another suggestion was that if the cap is implemented, the point of entry into FD should coincide with the start of FFGA negotiations and that FTA should expedite those negotiations, and that a project approved for entry into FD should not be subject to any changes in New Starts policy guidance and/or requirements. Several commenters felt that this approach could impact or inhibit the use of innovative contracting procedures such as design build and public private partnerships. However, another commenter stated the opposite, that this approach could present a problem for project sponsors using the traditional design, bid, and construct method. Finally, some comments asked that this change be subject to rulemaking.

*FTA Response:* FTA believes that the concerns expressed in the comments about recent cost increases have merit and thus has been studying ways to account for unavoidable, unexpected, and unforeseen circumstances such as the impact of natural disasters or other world events on commodity and construction prices. A specific policy paper on how FTA will treat these costs is under development. FTA plans to incorporate the outcome of that policy development process as part of this adopted policy.

FTA believes that adopting the suggestion of allowing costs (and the corresponding New Starts dollar amount) to rise some percentage over the PE estimate would remove any incentive for project sponsors to develop accurate cost estimates earlier in the project development process. With respect to concerns about the time between approval to enter into FD and the negotiation of a FFGA, FTA believes that the FD process will be shortened because by its definition the newly-defined New Starts PE process will require the project sponsor to develop information that has previously been deferred until FD in order to arrive at a sufficiently accurate and reliable cost estimate that a project sponsor and FTA will feel comfortable in locking in the New Starts funding level. Consequently, it is very likely that FTA could begin negotiations on an FFGA shortly after a project enters FD as some commenters suggested. By adopting the recommendation that projects not be subject to changes in New Starts policy, guidance, and procedures once the project is in FD, FTA is creating a process that provides more stability for grantees at this phase but allows FTA to proceed with desired policy/guidance changes without having to account for any negative impact on existing projects that are far along in the development process. It should be noted that this policy would not exempt a project from new statutory or regulatory guidelines, as it is outside FTA's authority to do so.

FTA does not believe this policy would inhibit the use of innovative contracting procedures. The policy has already been informally applied to most projects over the last several years and no grantees have indicated it poses this problem. Finally, FTA does not believe that completion of the rulemaking

process is necessary to continue to implement this policy. Because this is a discretionary program, it is not unreasonable that FTA would set some policy parameters on how it decides how much funding each project will receive. However, applying the policy now does not preclude FTA from raising this policy to a regulatory requirement as part of future rulemaking.

Accordingly, FTA adopts this policy but notes that we intend to entertain exceptions, consistent with a separate policy under development by FTA, on changes to cost beyond the grantees control that are identified during FD but prior to executing an FFGA. These cost increases are expected to be limited to unforeseen inflationary increases due to unusual occurrences (i.e. Hurricane Katrina, large commodity market fluctuations such as steel and concrete, etc.). FTA will decide on a case by case basis whether these circumstances apply to a given project and what dollar amount is attributable to these occurrences. FTA would then propose to provide its proportional share, based on the previously agreed to percentage 5309 federal share. Further, to assure that projects do not have to respond to changes in FTA policy, guidance, or procedures late in the project development process, projects will not be subject to changes in New Starts policy, guidance, and procedures once the projects are in FD.

Finally, FTA is developing ''exit criteria'' which will define in greater detail the conditions that must be met at the completion of New Starts PE. FTA understands that these expectations for New Starts PE may be different from the commonly accepted definition of PE (which often relates to completion of a certain portion of overall design efforts, or which relates to other project development milestones, such as completion of the NEPA process or other local permitting requirements). Therefore, to clarify that there are certain additional steps which must occur prior to approval to enter FD (particularly with respect to development of firmer cost estimates), FTA will now refer to this phase of project development as ''New Starts Preliminary Engineering.'' FTA believes that the ''exit criteria'' together with this more precise terminology will go a long way towards clarifying when a New Starts project is ready to move from one step to the next.

*Possible Rules for Mode Specific Constants*

Due to the complexities of calculating a standard value, FTA will not adopt a change in the way that project sponsors currently use mode specific constants at this time. FTA will continue to analyze options with the possibility of proposing a set of standard modal constants in the future.

FTA has long been aware of a technical issue related to the representation of unmeasured attributes of various transit modes in the mode-choice components of travel forecasting models. Current FTA policy on this issue effectively disadvantages New Starts projects proposed by metropolitan areas that currently have no fixed-guideway transit facilities. In response to this problem, FTA has been considering ways to permit project sponsors to represent the benefits of improvements in these unmeasured attributes (convenience, comfort, safety, and others) that are introduced by New Starts projects in a way that treats all projects fairly in competition for New Starts funding. Traditionally, these attributes have been represented by lump-sum ''constants'' in local models that predict the choice of mode by travelers. The need to preserve a level playing field for all project sponsors suggests that FTA will have to specify values of guideway constants for use in the forecasts. Several approaches are possible: (1) A standard guideway constant for all new guideway modes, (2) a set of constants that includes a different value for each guideway mode, or (3) a set of constants tied to the unmeasured attributes of guideways.

*Comments:* Comments were generally supportive of the assertion of modal constants in ridership forecasts, but with several concerns. Opinions on which of the three options suggested by FTA were also varied, with option 2 receiving the most support, followed by option 3, and finally, option 1. Some comments stated that locally derived mode-specific factors should be used in areas where those modes already exist and that regions that do have a validated constant should be allowed to use it. Others wanted more information on the values being suggested for use as modal constants before they could provide comment. One comment suggested that a panel of experts be assembled to make recommendations regarding these proposed changes and to establish constant values and permanent guidance.

*FTA Response:* Through intensive technical reviews of local travel forecasting models over the past four years, FTA and project sponsors have developed local forecasting models that derive constants that are more representative of the unmeasured attributes and less necessary as error-correction factors. Commonalities in the constants—a relatively narrow range of 10–15 minutes of equivalent travel time—that have resulted from model improvement in several metropolitan areas have led FTA to conclude that the unaccounted attributes have a real impact that should be represented. All of the constants still have some role as correction factors, however. Consequently, an even-handed evaluation of competing projects nationally can be done only through a consistent framework that assigns the same mode-specific constants to projects in different locations that have the same characteristics. No hard conclusions on the proposed values are possible, by the transit industry or by FTA. This issue concerns the prediction of traveler responses to attributes of transit systems that are difficult—or impossible—to quantify. Its very nature leads to best-guess solutions. It has become evident that FTA's current handling of the issue puts a starter-line New Starts proposal at a disadvantage compared to proposals that would expand or extend existing guideway systems.

FTA is attempting to address that disparity in a way that treats all proposals consistently within a technical area that is subject to large unknowns. Whatever strategy emerges will be far from a hard conclusion but should, at a minimum, be fair to all competing proposals. FTA will ensure that the proposed approach, or a set of alternative approaches, is evaluated by professional experts in the field of transit ridership forecasting. An initial review of options will be on the agenda for an FTA technical workshop in June 2006 on ridership forecasting for New Starts. At this point, it has not been possible to test, review, and implement any approach in time for this guidance or for inclusion in the FY 2008 Reporting Instructions for the New Starts Criteria. Consequently, FTA will continue to refine alternative approaches to this problem and work towards implementation of a specific approach in the future. Any such changes will be subject to a separate Notice and Comment.

Issued in Washington, DC, this 16th day of May, 2006.

**Sandra K. Bushue,**

*Deputy Administrator.*

[FR Doc. E6–7781 Filed 5–19–06; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2005–23093]**

### Ferrari S.p.A and Ferrari North America, Inc. Grant of Application for a Temporary Exemption From S14.2 of Federal Motor Vehicle Safety Standard No. 208

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Grant of Application for a Temporary Exemption from S14.2 of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection.*

**SUMMARY:** This notice grants the Ferrari S.p.A. and Ferrari North America (collectively, ''Ferrari'') application for a temporary exemption from the requirements of S14.2 of Federal Motor Vehicle Safety Standard (''FMVSS'') No. 208, *Occupant Crash Protection*. The exemption applies to the Ferrari F430 vehicle line. In accordance with 49 CFR Part 555, the basis for the grant is that compliance would cause substantial economic hardship to a low-volume manufacturer that has tried in good faith to comply with the standard, and the exemption would have a negligible impact on motor vehicle safety. The exemption is effective September 1, 2006 and will remain in effect until August 31, 2008.

In accordance with the requirements of 49 U.S.C. 30113(b)(2), we published a notice of receipt of the application [1] and asked for public comments.[2] We received no comments on the application.

**DATES:** The exemption from S14.2 of FMVSS No. 208 is effective from September 1, 2006 until August 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** George Feygin in the Office of Chief Counsel at NHTSA NCC–112, 400 7th Street, SW., Room 5215, Washington, DC 20590 (Phone: 202–366–2992; Fax 202–366–3820; E-mail: *George.Feygin@dot.gov*).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Ferrari applied for an exemption in July of 2005. Ferrari is a well-known small volume manufacturer of high performance automobiles. Its vehicles have been sold in the United States for several decades. Because of high costs of development and because of very small sales volumes, the product cycles of Ferrari vehicles last longer that those of mass-produced vehicles. One of these vehicles is the Ferrari F430, which was originally designed in the mid-1990s, and is scheduled for production until late 2008.

On September 1, 2006 certain ''advanced'' air bag requirements will go into effect for small volume manufacturers. Despite good-faith efforts, Ferrari has been unable to find a practicable way to bring the current F430 into compliance with these new ''advanced'' air bag requirements. Because the sales of F430 account for approximately 85 percent of its U.S. sales, Ferrari's inability to sell that vehicle until the new fully compliant model is introduced would result in substantial economic hardship.

## II. Why Ferrari Is Eligible To Petition for a Temporary Exemption

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (15 U.S.C. 1410(d)(1)). Ferrari's total production is approximately half of that amount. Fiat S.p.A., a major vehicle manufacturer, holds a 56% interest in Ferrari. Consistent with past determinations, NHTSA has determined that Fiat's interest in Ferrari does not result in the production threshold being exceeded.[3]

The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a person is a manufacturer of a vehicle by virtue of ownership or control of another person that is a manufacturer. NHTSA has stated, however, that a person may be a manufacturer of a vehicle manufactured by another person if the first person has a substantial role in the manufacturing process that it can be deemed the sponsor of the vehicle. The agency considers the statutory definition of ''manufacturer'' (15 U.S.C. 1391(5)) to be sufficiently broad to include sponsors, depending on the circumstances.

In the present instance, the Ferrari F430 bears no resemblance to any motor vehicle designed or manufactured by Fiat, and the agency understands based on the information in the petition, that the F430 was designed and engineered without assistance from Fiat. Further, the agency understands that such assistance as Ferrari may receive from Fiat relating to use of test facilities and the like is an arms length transaction for which Ferrari pays Fiat. Accordingly, NHTSA concludes that Fiat is not a manufacturer of Ferrari vehicles by virtue of being a sponsor.

## III. Why Ferrari Needs a Temporary Exemption and How Ferrari Has Tried in Good Faith To Comply With FMVSS No. 208

Ferrari states that the F430 was originally designed in the mid-1990s and designated as the 360 model. The petitioner states that the Modena (coupe) version of the 360 was launched in 1999, followed by the Spider (convertible) version in 2000, and the Challenge Stradale in 2003. Production of these vehicles continued until the end of 2004. According to the petitioner, shortly thereafter Ferrari began an aesthetic redesign of the vehicle, relying on the same chassis. Ferrari stated that the redesigned vehicle, the F430, will be produced until late 2008. According to Ferrari, 2008 will mark the end of the life cycle for the 360/F430 vehicle. The petitioner states that the 360 and F430 were designed to comply, and do comply, with all of the FMVSSs in effect at the time the 360 was originally designed. The petitioner stated that the provisions of FMVSS No. 208 established in 2000 (65 FR 30680; May 12, 2000; Advanced Air Bag rule) were not anticipated by Ferrari when the 360 vehicle model was designed.

Ferrari stated that it has been able to bring the F430 into compliance with all of the high-speed belted and unbelted crash test requirements of the Advanced Air Bag rule. However, it stated that it has not been able to bring the vehicle into compliance with the child out-of-position requirements (S19, S21, and S23), and the 5th percentile adult female out-of-position requirements for the driver seat (S25).

Ferrari stated that despite efforts to involve numerous potential suppliers, it has not identified any that are willing to work with the company to develop an occupant classification system that would enable the vehicle to comply with S19, S21, S23, and S25. Moreover, Ferrari stated that it is unable to reconfigure the F430 to accommodate an occupant classification system and air bag design that would comply with these requirements.

Ferrari has requested an exemption for the F430 from the advanced air bag provisions in FMVSS No. 208 during model years 2007 and 2008 (*i.e.*, September 1, 2006 through August 31, 2008). Ferrari claims that compliance with the advanced air bag provisions would result in substantial economic

[1] To view the application please got to: *http://dms.dot.gov/search/searchFormSimple.cfm* (Docket No. NHTSA–2005–23093).

[2] *See* 70 FR 71372 (November 28, 2005).

[3] *See* 54 FR 46321; November 2, 1989.

hardship and has filed this petition under 49 CFR 555.6(a).

Ferrari stated that its inability to sell the F430 in the United States through 2007 would lead to a substantial loss of sales and revenue. Ferrari stated that in 2004, sales of the 8-cylinder 360 models, those models being replaced by the F430, accounted for 86 percent of its U.S. sales. Ferrari projected that if it were unable to sell the F430 model in the U.S., it would realize a decrease in net profit of approximately 44 million Euros ($53,000,000) in 2007. Ferrari stated that such consequences demonstrate ''substantial economic hardship'' within the meaning of 49 U.S.C. 30113(b)(3)(B)(i).

Ferrari has requested that additional specific details regarding its finances and financial forecasts be afforded confidential treatment under 49 CFR 512.4, *Asserting a claim for confidential information*. We have determined that this information is to be afforded such treatment.

## IV. Why an Exemption Would Be in the Public Interest

The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically:

1. Ferrari states that the vehicle is equipped with a variety of ''active safety'' systems beyond that required by the FMVSSs and that these systems ''significantly improve vehicle handling and enhance controllability.'' Such systems include the Manettino control system, which adjusts vehicle handling and stability to specific driving conditions; the Control Stability System, an electronic stability control system; Electro-Hydraulic Differential, a system that manages torque distribution between the two rear wheels to improve stability; Continuous Damping Control, a system that adjusts to road conditions in order to improve braking; and a ''Sky-Hook'' strategy [4].

2. The petitioner states that the F430 also has a variety of passive safety features not required under the FMVSS, including seat belt pretensioners and a fuel system that complies with the upgraded fuel system integrity requirements in advance of the compliance date.

3. Ferrari notes that the requirements for which the F430 does not comply are primarily designed to protect children from injuries due to air bag deployment. Ferrari argues that it is unlikely that young children would be passengers in the vehicles covered by the exemption.

4. Ferrari states that the F430 will have a manual on/off switch for the passenger air bag. Ferrari also notes that a child restraint system that automatically suppresses the passenger air bag when properly installed would be available upon request of a consumer at no cost.

5. Ferrari states that the F430 was designed and marketed as a high performance, racing type vehicle, and therefore would have negligible on-road operation. Thus, Ferrari states the impact of the exemption is expected to be minimal.

6. Ferrari argues that granting the exemption would increase choices available to the U.S. driving population in the high-performance vehicle segment.

7. The petitioner argues that granting the exemption would maintain the viability of U.S. firms associated with the sales and maintenance associated with the F430. Ferrari projects the F430 to be a major part of Ferrari sales in the U.S. during the two-year period for which an exemption has been requested.

## V. Agency Decision

We are granting the petition. The ''Advanced Air Bag'' requirements present a unique challenge because they would require Ferrari to completely redesign its vehicles two years before it planned to do so. While the petitioner was aware of the new requirements for some time, it continued its good faith efforts to bring the F430 into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. No viable alternatives remain. The petitioner is unable to design a new vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006. If the petitioner is forced to discontinue selling the current model, the resulting loss of sales would cause substantial economic hardship. In addition to loss of prospective sales in the United States, its biggest market, Ferrari would also be unable to recoup all of its investment into developing the current model.

While some of the information submitted by Ferrari has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Ferrari's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.

2. Itemized costs of each component that would have to be modified in order to achieve compliance.

3. Discussion of alternative means of compliance and reasons for rejecting these alternatives.

4. List of air bag suppliers that were approached in hopes of procuring necessary components.

5. Explanation as to why components from newer, compliant vehicle lines could not be borrowed.

6. Corporate balance sheets for the past 3 years, and projected balance sheets if the petition is denied.

We note that Ferrari is a well-established company with a small but not insignificant U.S. presence and we believe that an 85 percent sales reduction would negatively affect U.S. employment. Specifically, reduction in sales would likely affect employment not only at Ferrari North America, but also at Ferrari dealers, repair specialists, and several small service providers that transport Ferrari vehicles from the port of entry to the rest of the United States. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. As discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We also note that the F430 features several advanced ''active'' safety features. These features are listed in the petitioner's application.[5] While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We also believe this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (not more than 2,000 for the duration of the exemption), and because Ferrari vehicles are not typically used for daily transportation. Their yearly usage is substantially lower compared to vehicles used for everyday transportation.

In addition, Ferrari has voluntarily included two alternative means for passenger air bag suppression for the protection of children being transported in the right front seating position. First,

[4] The ''Skyhook'' strategy detaches the vehicle body, as a sprung mass, from what is taking place on the axles and wheels by calming the movement of the body * * * In addition to improved comfort, this provides for optimal control of the vehicle body at all times.'' Page 10 of the petition.

[5] *See* page 10 of the petition.

Ferrari has provided a manual on/off switch. This will enable the passenger air bag to be manually turned off when a child is present. Second, Ferrari offers a special child restraint system that automatically suppresses the passenger air bag when it is properly installed in the right front passenger seat. Ferrari offers this automatic child restraint system at no cost to the consumer, upon request. Both of these features offer passenger air bag suppression capability in the event a child needs to be transported in the right front seating position, and support our findings that this exemption will have negligible impact on motor vehicle safety.

We note that the agency examined the Fatality Analysis Reporting System (FARS) and the National Automotive Sampling System Crashworthiness Data System (NASS CDS) data for years 1995–2004. These data indicate that over the past 10 years, there were no NASS CDS cases, and two FARS cases involving 360 Modena or the F430. Neither of the two FARS cases involved children or small women. Thus, there were no children or small women involved in crashes of Ferrari 360 or F430 included in these databases.

We also note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture ''except for Standards Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____.'' This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a Federal motor vehicle safety standard. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to S14.2, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to S14.2 without an indication of its subject matter would be of little use to consumers, since they would not know the subject of S14.2. For these reasons, we believe the two labels should read, in relevant part, ''except for S14.2 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *.'' We note that the phrase ''Advanced Air Bag Requirements'' is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

In sum, the agency concludes that Ferrari has demonstrated good faith effort to bring the F430 into compliance with S14.2 of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the requirements of S14.2 of FMVSS No. 208, *Occupant Crash Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Ferrari F430 is granted NHTSA Temporary Exemption No. EX 06–1, from S14.2 of § 571.208. The exemption is effective September 1, 2006 to August 31, 2008.

49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: May 17, 2006.

**Jacqueline Glassman,**

*Deputy Administrator.*

[FR Doc. E6–7754 Filed 5–19–06; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34812 (Sub–No. 2)]**

### BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP), pursuant to a written trackage rights agreement entered into between UP and BNSF Railway Company (BNSF), has agreed to grant BNSF temporary overhead trackage rights, to expire on May 15, 2006, over UP's Chester Subdivision between milepost 131.3, Rockview Junction, MO, and milepost 0.0, Valley Junction, IL, a distance of approximately 132 miles. The original grant of temporary overhead trackage rights exempted in *BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 34812 (STB served Jan. 6, 2006), covered the same line, but expired on March 21, 2006. The expiration date was extended to April 30, 2006 in the (Sub–No. 1) proceeding in this docket. The purpose of this transaction is to modify the temporary overhead trackage rights previously exempted by extending the expiration date from April 30, 2006, to May 15, 2006.

The transaction was scheduled to be consummated on May 9, 2006, the effective date of this notice. The temporary overhead trackage rights will allow BNSF to continue to bridge its train service over UP's Chester Subdivision while BNSF's main lines are out of service due to certain programmed track, roadbed and structural maintenance.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34812 (Sub–No. 2), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sidney L. Strickland Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 16, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E6–7762 Filed 5–19–06; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 13369

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13369, Agreement to Mediate.

**DATES:** Written comments should be received on or before July 21, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

**SUPPLEMENTARY INFORMATION:**

*Title:* Agreement to Mediate.

*OMB Number:* 1545–1844.

*Form Number:* 13369.

*Abstract:* Fast Track Mediation is a dispute resolution process designed to expedite case resolution. In order to avail themselves of this process, taxpayers and Compliance must complete the Agreement to Mediate (Form 13369) once an examination or collection determination is made. Once signed by both parties, the Agreement to Mediate will be forwarded to Appeals to schedule a mediation session.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, Business or other for-profit organizations, non-profit institutions, Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 300.

*Estimated Number of Respondents:* 3 minutes.

*Estimated Total Annual Burden Hours:* 15.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 2006.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E6–7716 Filed 5–19–06; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Notice 2000–28

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2000–28, Coal Exports.

**DATES:** Written comments should be received on or before July 21, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Coal Exports.

*Notice Number:* 1545–1690.

*Abstract:* Notice 2000–28 provides guidance relating to the coal excise tax imposed by section 4121 of the Internal Revenue Code. The notice provides rules under the Code for making a nontaxable sale of coal for export or for obtaining a credit or refund when tax has been paid with respect to a nontaxable sale of coal for export.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of currently approved collection.

*Affected Public:* Business or other-for-profit organizations.

*Estimated Number of Respondents:* 400.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 2006.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E6–7717 Filed 5–19–06; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[AC–03: OTS Nos. H4280 and 05964]**

### Liberty Bancorp, Inc. and Liberty Savings Bank, F.S.B., Liberty, Missouri; Approval of Conversion Application

Notice is hereby given that on May 12, 2006, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision (OTS), or her designee, acting pursuant to delegated authority, approved the application of Liberty Savings Bank, F.S.B., Liberty, Missouri, to convert to the stock form or organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW, Washington, DC 20552, and the OTS Midwest Regional Office, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326.

Dated: May 16, 2006.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 06–4722 Filed 5–19–06; 8:45 am]

BILLING CODE 6720–01–M

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[AC–02: OTS Nos. 12716 and H4287]**

### Monadnock Bancorp, Inc., Peterborough, New Hampshire; Approval of Conversion Application

Notice is hereby given that on May 12, 2006, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision (''OTS''), or her designee, acting pursuant to delegated authority, approved the application of Monadnock Community Bank, Peterborough, New Hampshire, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and OTS Northeast Regional Office, Harborside Financial Center Plaza Five, Suite 1600, Jersey City, New Jersey 07311.

Dated: May 16, 2006.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 06–4721 Filed 5–19–06; 8:45 am]

BILLING CODE 6720–01–M

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[AC–01: OTS Nos. 05652 and H4294]**

### Newport Bancorp, Inc., Newport, Rhode Island; Approval of Conversion Application

Notice is hereby given that on May 12, 2006, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision (''OTS''), or her designee, acting pursuant to delegated authority, approved the application of Newport Federal Savings Bank, Newport, Rhode Island, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and OTS Northeast Regional Office, Harbarside Financial Center Plaza Five, Suite 1600, Jersey City, New Jersey 07311.

Dated: May 16, 2006.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 06–4720 Filed 5–19–06; 8:45 am]

BILLING CODE 6720–01–M

## U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

### Notice of Open Public Hearing

**AGENCY:** U.S.-China Economic and Security Review Commission.

**ACTION:** Notice of open public hearing.

**SUMMARY:** Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

*Name:* Larry M. Wortzel, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on the U.S.-China economic and security relationship. The mandate specifically charges the Commission to investigate ''the degree of non-compliance by the People's Republic of China with agreements between the United States and the People's Republic of China on * * * intellectual property rights.''

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on June 7–8, 2006.

**Background**

This event is the fifth in a series of public hearings the Commission will hold during its 2006 report cycle to collect input from leading experts in academia, business, industry, government and the public on the impact of the economic and national security implications of the U.S. growing bilateral trade and economic relationship with China. The June 7–8 hearing is being conducted to obtain commentary about issues connected to China's intellectual property rights policies and implementation. Information on upcoming hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web site *http://www.uscc.gov.*

This hearing will address ''China's Enforcement of IPR; Movement of Counterfeited and Pirated Goods Into the U.S. and their Dangers'' and will be Co-chaired by Commissioners C. Richard D'Amato and Kerri Houston.

**Purpose of Hearing**

The hearing is designed to assist the Commission in fulfilling its mandate by assessing China's compliance with its World Trade Organization accession

agreement on intellectual property rights, examining how China's policies are affecting U.S. national security, and entertainment, recording, pharmaceutical and automotive industries, and identifying how the U.S. government can improve the current level of intellectual property rights protection.

Copies of the hearing agenda will be made available on the Commission's Web site *http://www.uscc.gov.* Any interested party may file a written statement by June 8, 2006, by mailing to the contact below.

Date and Time: Wednesday, June 7, 2006, 8:30 a.m. to 5 p.m., and Thursday, June 8, 2006, 9:30 a.m. to 1 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web Site at *www.uscc.gov* in the near future.

**ADDRESSES:** The hearing will be held on Capitol Hill in Room 385 Russell Senate Office Building located at Delaware & Constitution Avenues, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

**Authority:** Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Public Law 106–398 as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: May 17, 2006.

**Kathleen J. Michels,**

*Associate Director, U.S.-China Economic and Security Review Commission.*

[FR Doc. E6–7795 Filed 5–19–06; 8:45 am]

**BILLING CODE 1137–00–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Veterans' Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a town hall meeting for June 5, 2006, at the Scottish Rite Masonic Center, 1895 Camino del Rio South, San Diego, California. The town hall meeting will begin at 7 p.m. and end at 9 p.m. The meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The Commission is conducting the fifth of eight fact-finding site visits throughout the United States. The San Diego area was selected based upon criteria that included the concentration of veterans, active-duty service members and National guard and Reserves, and the location of VA and Department of Defense (DoD) facilities that are particularly involved in the transition activities. The goal of this visit is to allow the commissioners the opportunity to tour local VA and DoD facilities; examine the processes in place which assist disabled veterans, service members, and survivors in their efforts to obtain benefits; and to present these individuals and the general public with an opportunity to learn about the work of the Commission in face-to-face forums.

Interested persons may attend the meeting and present oral statements to the Commission. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may provide written comments for review by the Commission prior to the meting or at any time, by e-mail to *veterans@vetscommission.intranets.com* or by mail to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: May 12, 2006.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 06–4699 Filed 5–19–06; 8:45 am]

**BILLING CODE 8320–01–M**

Federal Register

Monday,
May 22, 2006

# Part II

# Department of Homeland Security

## Coast Guard

## Transportation Security Administration

**33 CFR Parts 1, 20 et al.; 46 CFR Parts 10, 12, and 15**

**49 CFR Parts 1515, 1570, and 1572**

**Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Proposed Rules**

**DEPARTMENT OF HOMELAND SECURITY**

**Transportation Security Administration**

**49 CFR Parts 1515, 1570, 1572**

**Coast Guard**

**33 CFR Parts 101, 103, 104, 105, 106, 125; 46 CFR Parts 10, 12, 15**

**[Docket Nos. TSA–2006–24191; USCG–2006–24196]**

**RIN 1652–AA41**

## Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

**AGENCY:** Transportation Security Administration; United States Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This is a notice of proposed rulemaking by the Department of Homeland Security, specifically by the Transportation Security Administration and the United States Coast Guard. If promulgated, this rule would implement the Transportation Worker Identification Credential program in the maritime sector. Under this program, merchant mariners holding an active License, Merchant Mariner Document, or Certificate of Registry and workers who require unescorted access to secure areas at maritime facilities or on vessels must undergo a security threat assessment, and, if found to not pose a security threat, obtain a Transportation Worker Identification Credential. Persons without Transportation Worker Identification Credentials will not be granted unescorted access to secure areas at affected maritime facilities or on vessels.

Under this proposed rule, the Coast Guard seeks to amend its regulations on vessel and facility security to require the use of the Transportation Worker Identification Credential as an access control measure. It is also proposing to amend its regulations covering merchant mariners to incorporate the requirement to obtain a Transportation Worker Identification Credential. In a separate rulemaking action published elsewhere in this edition of the **Federal Register,** the Coast Guard also is proposing to consolidate existing licensing and documentation regulations to minimize duplicative or redundant identification or background check requirements.

The Transportation Security Administration proposes amending its security threat assessment standards that currently apply to commercial drivers authorized to transport hazardous materials in commerce to also apply to merchant mariners and workers who require unescorted access to secure areas on vessels and at port facilities. These proposed amendments also relate to the notification an employer receives when an employee who holds a hazardous materials endorsement or a Transportation Worker Identification Credential is determined to pose a security threat. The Transportation Security Administration also is proposing regulations dealing with the enrollment of port workers into the Transportation Worker Identification Credential program.

In addition, the Transportation Security Administration is proposing a fee, as authorized under the Department of Homeland Security Appropriations Act of 2004, to pay for the costs related to the issuance of the Transportation Worker Identification Credentials under this rule.

This rulemaking would enhance the security of ports by requiring background checks on persons and establishing a biometric access control system to prevent those who pose a security threat from gaining unescorted access to secure areas of ports. This rulemaking implements the Maritime Transportation Security Act of 2002, which requires that credentialed merchant mariners and workers with unescorted access to secured areas of vessels and facilities be subject to a security threat assessment and receive a biometric credential needed to access secured areas.

**DATES:** Comments and related material must reach the Docket Management Facility on or before July 6, 2006. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 6, 2006.

*Public Meetings:* TSA and the Coast Guard will hold four public meetings as follows: Wednesday, May 31, 2006 in Newark, NJ; Thursday, June 1 in Tampa, FL; Wednesday, June 6 in St. Louis, MO; and Thursday, June 7 in Long Beach, CA. Interested individuals are invited to attend, provide comments and ask questions about the proposed rule. TSA and Coast Guard will provide exact locations and other additional information about the meetings in another document to be published in the **Federal Register.**

**ADDRESSES:** You may submit comments identified by TSA docket number TSA–2006–24191 or Coast Guard docket number USCG–2006–24196 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

You must mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, ATTN: Desk Officer, United States Coast Guard.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

**FOR FURTHER INFORMATION CONTACT:** For questions related to TSA's proposed standards: Rick Collins, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220, TWIC Program, 571–227–3515; e-mail: *credentialing@dhs.gov.*

For legal questions: Christine Beyer, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2657; facsimile (571) 571 1380; e-mail *Christine.Beyer@dhs.gov.*

For questions concerning the Coast Guard provisions of this proposed rule: LCDR Jonathan Maiorine, Commandant (G–PCP–2), United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593; telephone 1–877–687–2243.

For questions concerning viewing or submitting material to the docket: Renee V. Wright, Program Manager, Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (202) 493–0402.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov*

and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this rulemaking (TSA–2006–24191 or USCG–2006–24196), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please send comments on the TSA portions of the proposed rule to the TSA docket (TSA–2006–24191), and send comments on the Coast Guard portions of the proposed rule to the Coast Guard docket (USCG–2006–24196). You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like us to acknowledge receipt, 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.

*Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments:* Do not submit comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) [1] to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the TSA legal point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's FOIA regulation found in 6 CFR part 5.

*Viewing comments and documents:* To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

*Abbreviations and Terms Used in This Document*

AMS—Area Maritime Security
ASP—Alternative Security Program
ATSA—Aviation and Transportation Security Act
ATF—Bureau of Alcohol, Tobacco, Firearms, and Explosives
CDC—Certain Dangerous Cargo
CDL—Commercial drivers license
CDLIS—Commercial drivers license information system
CHRC—Criminal history records check
CJIS—Criminal Justice Information Services Division
COR—Certificate of Registry
COTP—Captain of the Port
DHS—Department of Homeland Security
DOJ—Department of Justice
DMV—Department of Motor Vehicles
DOT—Department of Transportation
FBI—Federal Bureau of Investigation
FIPS 201—Federal Information Processing Standards Publication 201
FMCSA—Federal Motor Carrier Safety Administration
FMSC—Federal Maritime Security Coordinator
FSP—Facility Security Plan
HME—Hazardous materials endorsement
HSA—Homeland Security Act
HSPD 12—Homeland Security Presidential Directive 12
ICC—Integrated Circuit Chip
MARSEC—Maritime Security
MMD—Merchant Mariner Document
MSC—Marine Safety Center
MTSA—Maritime Transportation Security Act
OCS—Outer Continental Shelf
REC—Regional Exam Center
SAFETEA–LU—Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users
STCW—International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as amended
TSA—Transportation Security Administration
TWIC—Transportation Worker Identification Credential
USA PATRIOT Act—Uniting and Strengthening America by Providing AppropriateTools Required to Intercept and Obstruct Terrorism Act
VSP—Vessel Security Plan

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[1] ''Sensitive Security Information'' or ''SSI'' is informaton obtained or developed int he conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental tot he security of transportation. The protection of SSI is governed by 49 CFR part 1520.

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## I. Background and Purpose

Under this rule, the Department of Homeland Security (DHS), through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA), proposes to require that all merchant mariners holding an active License, Mechant Mariner Document, or Certificate of Registry and all persons who need unescorted access to secure areas of a regulated facility or vessel must obtain a Transportation Worker Identification Credential (TWIC). In order to obtain a TWIC, individuals will be required to undergo a security threat assessment conducted by TSA. TSA, in conducting those security threat assessments, will use the procedures and standards established by TSA for commercial motor vehicle drivers licensed to transport hazardous materials within the United States.

The implementation of the TWIC program in the maritime sector builds upon existing Coast Guard credentialing requirements and security programs for port facilities and vessels. In a separate rulemaking action published in this issue of the **Federal Register**, Coast Guard also proposes consolidating existing merchant mariner licensing and documentation requirements to avoid duplicative credentials and background checks and to avoid interruption in commerce and reduce the burden on mariners.

The TWIC program is a DHS initiative, with joint participation of the Coast Guard and TSA. The program is supported by several statutory and regulatory authorities and presidential directives. The principal statutory authority is the Maritime Transportation Security Act (MTSA), Pub. L. 107–295, 116 Stat. 2064 (November 25, 2002) (46 U.S.C. 70105). Section 102 of MTSA requires the Secretary of Homeland Security to issue a biometric transportation security credential to merchant mariners ''issued a license, certificate of registry, or merchant mariners document'' and individuals who require unescorted access to secure areas of vessels and facilities.[2] These individuals also must undergo a security threat assessment to determine that they do not pose a security threat prior to receiving the biometric credential and authority to access the secure areas without escort. *Id.* The security threat assessment must include a review of criminal, immigration, and

[2] 46 U.S.C. 70105. Section 102 of MTSA defines ''Secretary'' to mean ''the Secretary of the department in which the Coast Guard is operating.'' Under the Homeland Security Act of 2002, the Coast Guard became part of DHS, thus the Secretary of Homeland Security is authorized to implement the credential requirements for mariners and persons seeking access to secure port facilities under MTSA.

pertinent intelligence records in determining whether the individual poses a threat, and individuals must have the opportunity to appeal an adverse determination or apply for a waiver of the standards. Specifically, an individual cannot be denied the transportation security credential required under MTSA unless the individual—

(A) Has been convicted within the preceding 7-year period of a felony or found not guilty by reason of insanity of a felony—

(i) that the Secretary believes could cause the individual to be a terrorism security risk to the United States; or

(ii) for causing a severe transportation security incident;

(B) Has been released from incarceration within the preceding 5-year period for committing a felony described in subparagraph (A);

(C) May be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) Otherwise poses a terrorism security risk to the United States.46 U.S.C. 70105(c).

Following the enactment of MTSA in November 2002, the Coast Guard issued a series of general regulations for maritime security. *See,* 33 CFR parts 101–106. The MTSA regulations set out specific requirements for owners and operators (henceforth ''owners/operators'') of vessels, facilities, and Outer Continental Shelf (OCS) facilities that had been identified by the Secretary of Homeland Security as posing a high risk of being involved in a transportation security incident.

Under MTSA and the Coast Guard's MTSA regulations, owners/operators of these vessels and facilities were required to conduct security assessments of their respective vessels and facilities, create security plans specific to their needs, and submit the plans for approval to the Coast Guard by December 31, 2003. All affected vessels and facilities are required to have been operating in accordance with their respective plans since July 1, 2004, and are required to resubmit plans every 5 years.

Each plan requires owners/operators to address specific vulnerabilities identified pursuant to their individual security assessments, including controlling access to their respective vessels and facilities. The MTSA regulations require owners/operators to implement security measures to ensure that an identification system was established for checking the identification of vessel and facility personnel or other persons seeking access to the vessel or facility.

In establishing the system, owners/operators were directed to accept identification only if it: (1) Was laminated or otherwise secure against tampering; (2) contained the individual's full name; (3) contained a photo that accurately depicted that individual's current facial appearance; and (4) bore the name of the issuing authority. *See,* 33 CFR 101.515. The issuing authority must be a government authority or organization authorized to act on behalf of the government authority, or the individual's employer, union, or trade association. There was no requirement that the identification be issued pursuant to a security threat assessment because there was no existing credential and supporting structure that could fulfill the needs specific to the maritime environment.

In addition to the regulation of ports and facilities, the Coast Guard has a long history of regulating the merchant marine. Under the current Coast Guard regulatory scheme, the Coast Guard may issue a mariner any combination of 4 credentials: (1) Merchant Mariner Document (MMD); (2) License; (3) Certificate of Registry (COR); or (4) International Convention on Standards of Training, Certification, and Watchkeeping (STCW) Endorsement. An MMD serves as a mariner's identification credential and is issued to mariners who are employed on merchant vessels of 100 gross register tons or more, except for those vessels employed exclusively in trade on the navigable waters of the U.S. Licenses are qualification certificates that are issued to officers. CORs are qualification certificates that are issued to medical personnel and pursers. STCW Endorsements are qualification certificates issued to mariners who meet international standards and serve aboard vessels to which STCW applies. The License, COR, and STCW Endorsement are qualification credentials only. Only the MMD is an identity document, and none of the current mariner credentials contain the biometric information required under MTSA.

TSA currently administers several programs involving security threat assessments of individuals engaged in the transportation industry, including certain airport and aircraft operator employees, and alien flight school students. Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) Pub. L. 107–56, 115 Stat. 272 (October 25, 2001) provides that a State cannot issue a hazardous materials endorsement (HME) to a commercial driver who poses a security threat. TSA implemented its security threat assessment processes under this provision.

TSA first issued regulations to implement security threat assessment standards for HME applicants (TSA's hazmat rule) in May 2003 and subsequently amended those regulations based on comments received from the States, employers and affected drivers. (A more detailed discussion and regulatory history of the hazmat regulations can be found at 68 FR 23852 (May 5, 2003); 68 FR 63033 (November 7, 2003); 69 FR 17696 (April 6, 2004); and 69 FR 68720 (November 24, 2004). These standards are codified at 49 CFR part 1572, where many of the standards we propose for TWIC under this rule also will reside.

TSA's hazmat regulations establish standards concerning criminal history, immigration status, mental capacity, and terrorist activity to determine whether a driver poses a security threat and is qualified to hold an HME.[3] Drivers who have been convicted or found not guilty by reason of insanity for certain crimes in the preceding 7 years, or have been released from incarceration for those crimes in the preceding 5 years, are deemed to pose a security threat and are not authorized to hold an HME. 49 CFR 1572.103. Drivers convicted of certain particularly heinous crimes, such as espionage, treason, terrorist-related offenses, or severe transportation security incidents, are permanently banned from holding an HME. *Id.* In addition, drivers who have been involuntarily committed to a mental institution or adjudicated as mentally incapacitated are considered to pose a security threat that warrants disqualification from holding an HME. 49 CFR 1572.109.

Aliens are not prohibited from obtaining an HME. The hazmat rule permits individuals who are in the United States lawfully and are authorized under applicable immigration laws to work in the United States to hold an HME upon completion of a satisfactory TSA security threat assessment. 49 CFR 1572.105. TSA reviews a driver's immigration status to determine if the applicant for an HME is authorized to be present and work in the United States under applicable

[3] In developing the hazmat regulations, TSA sought to harmonize, to the extent possible, the background check and eligibility criteria requirements of both MTSA and the USA PATRIOT Act and thus adopts privisions from both statutes where appropriate. See 68 FR at 23853.

immigration laws. In addition, as set forth in the hazmat rules, TSA conducts a security check of international databases through Interpol or other appropriate means. 49 CFR 1572.107.

TSA's hazmat regulations also include appeal and waiver procedures to ensure that no driver is wrongfully determined to pose a threat, to provide individuals who are disqualified from holding an HME the opportunity to show rehabilitation, where applicable, and to maintain consistency with other credentialing or background check requirements among transportation workers, such as those in the maritime industry covered by MTSA and this TWIC rulemaking. *See e.g.*, 49 CFR parts 1572.141 and 143.

## II. Development of TWIC Process

In 2002, TSA established the TWIC program in response to identity management shortcomings and vulnerabilities identified in the transportation system. In some segments of the transportation system, it is not possible to positively identify individuals entering secure areas or assess the threat they may pose due to a lack of pertinent background information. Also, existing identity credentials are often vulnerable to fraud. To mitigate these weaknesses, TSA determined that an integrated, credential-based, identity management system for all transportation workers who need unescorted access to secure areas of the nation's transportation system would be necessary.

Homeland Security Presidential Directive 12 (HSPD 12) requires Federal agencies to improve secure identification processes for Federal employees and contractors. The objectives of the directive are to ensure that the credentialing processes are administered by accredited providers; are based on sound criteria for verifying an individual's identity; include a credential that is resistant to fraud, tampering, counterfeiting and terrorist exploitation, and can be authenticated quickly and electronically. As designed and proposed in this rule, TWIC does not contradict the control objectives of HSPD 12.

The U.S. Department of Commerce published guidance on the standards and methods by which Agencies could reach compliance with HSPD 12. In February 2005, the Department of Commerce issued the Federal Information Processing Standards Publication 201 (FIPS 201), Personal Identification Verification of Federal Employees and Contractors in response to HSPD 12. FIPS 201 is divided into Personal Identification Verification (PIV) Parts I and II. Part I addresses the control and security objectives, particularly the personal identity proofing process. Part II provides detailed technical specifications that must be met to ensure interoperability of PIV-compliant credentials in personal authentication, access control, and credential management systems throughout the Federal government.

The development of FIPS 201 occurred concurrently with the design of TWIC. TSA and its contractors closely monitored the development of FIPS 201 and individuals working on FIPS 201 followed the design of TWIC. TSA recognized that there are many benefits to designing TWIC in alignment with FIPS 201: Leveraging the TWIC infrastructure to support other DHS or government credentialing programs; avoiding obsolescence by using the latest technology; securing critical facilities with the same process used by Federal agencies; having interoperability during an emergency; and demonstrating the functionality of FIPS 201. All of the significant components of the TWIC system align with FIPS 201.

As tested in the maritime environment and planned in this NPRM, TWIC is an identification credential containing numerous technologies to make it secure and tamper-proof. TWIC is a ''smart'' credential containing two electronic chips on which encoded data is stored to allow all subsequent TWIC functions to be performed. TWIC is designed to ensure that the identity of each TWIC holder has been verified; that a threat assessment has been completed on that identity; and that each credential issued is positively linked to the rightful holder through the use of biometric technology. Facility and vessel owners/operators subject to this rule will then determine which TWIC holders will be granted unescorted access to secure areas of their facility.

### *Prototype*

The TWIC program has been developed in three phases. Phases I, Planning, and II, Technology Evaluation, were completed in 2003, and Phase III, Prototype, was completed in 2005. In the technology evaluation, TSA tested and evaluated a range of credential-based systems in use at transportation facilities. In Prototype, TSA tested a comprehensive credentialing system, which included enrollment, threat assessments, biometric security, credential production, and credential issuance.

Prototype was conducted at twenty-eight facilities beginning November 4, 2004 in various modes of the transportation system, including air, rail, and maritime. The Prototype Phase came to an end in the summer of 2005. During Prototype, the participating facilities and associated transportation workers voluntarily provided biographical and biometric identifiers. Participants provided appropriate identity verification documentation, such as a birth certificate, driver's license, government photo identification, or similar document. TSA conducted a name-based threat assessment using the biographic information provided, and utilized the biometric information to verify identity and determine whether an applicant had previously enrolled in the program. TSA did not use biometric information to complete a security threat assessment.[4] TSA will be using both biographic and biometric information to conduct the security threat assessment once TSA implements the full program. To verify an individual's identity during Prototype, TSA followed the U.S. Citizenship and Immigration Services Employment Eligibility Verification (Form I–9) process, commonly used by the federal government and industry in the hiring process. TSA tested the TWIC as positive identification for access to secure areas of participating transportation facilities.

By testing the integration of these components, TSA was able to assess the system's performance prior to deciding how the program should be implemented. Consequently, some processes that were tested in Prototype, such as ''employer sponsorship,'' are not being proposed in this rule based on TSA's determination that the process did not add sufficient value or created operational difficulties that could not be resolved.

## III. Proposed Rule

### *A. Coast Guard*

In order to integrate TWIC into already existing security programs in the maritime environment, the Coast Guard must amend its maritime security regulations, found in 33 CFR Subchapter H. These changes will set performance standards for owners/operators of vessels, facilities, and Outer Continental Shelf facilities to meet

[4] Florida law requires persons seeking access to certain port facilities within that State to submit fingerprints and other information to obtain a State-issued credential. During Prototype conducted in Florida, therefore, participants submitted fingerprints as required under State law and the State completed a fingerprint-based criminal history records check. TSA did not use biometric information collected from Florida participants to conduct a security threat assessment.

when incorporating TWIC into their existing security programs.

The Coast Guard also must amend its regulations governing merchant mariners, found in 46 CFR parts 10, 12, and 15, in order to add the statutory mandate that they hold a TWIC. In a separate rulemaking, published in today's **Federal Register**, the Coast Guard is proposing to consolidate qualifications credentials and streamline its mariner regulations, which would ensure that no mariner is required to undergo (or pay for) more than one security threat assessment and identity verification.

Coast Guard emphasizes that possession of the TWIC credential is not intended to constitute an automatic access right to any facility. The owner/operator continues to have the ultimate authority as to access control decisions, and although holding a duly-issued TWIC is required before an individual is eligible to be granted unescorted access, the individual must also have a need for access in accordance with the approved security plan. The owner/operator's right to refuse admittance to any individual, regardless of whether he or she holds an authenticated TWIC, remains unchanged.

*B. TSA*

TSA's role in implementing the TWIC program in the maritime sector will be to conduct security threat assessments of credentialed merchant mariners and individuals with unescorted access to secure areas, providing an appeal and waiver process for applicants who receive an adverse determination, and performing related functions in the enrollment and credential issuance process. In this rule, TSA proposes changes to its regulations to extend the current processes for conducting security threat assessments for HMEs to persons seeking to obtain TWICs.

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1144 (August 10, 2005) was enacted. Section 7105 of SAFETEA–LU (49 U.S.C. 5103a(g)(1)(B)(i)) requires TSA to initiate a rulemaking to determine which background checks required by Federal law and applicable to transportation workers are equivalent to or less stringent than the security threat assessment TSA requires for HME drivers. In addition, SAFETEA–LU requires TSA to develop a process for notifying employers of the results of a threat assessment conducted on an HME applicant.

Under this rule, TSA is proposing a fee to cover the cost of the TWIC threat assessment, appeals of TSA decisions during the process, and the issuance of the credential as required under Section 520 of the Homeland Security Appropriations Act of 2004 (2004 DHS Appropriations Act), Pub. L. 108–90 (October 2003). TSA also is inviting comments from the transportation industry at large on the processes proposed under this rule as TSA and DHS are considering extending the TWIC program to other areas in the transportation industry outside of the maritime sector.

1. TWIC Process

As proposed in this rule, the purpose of the TWIC program is to ensure that only authorized personnel who have successfully completed a security threat assessment have unescorted access to secure areas of maritime facilities and vessels. The credential will include a reference biometric—fingerprints—that positively links the credential holder to the identity of the individual who was issued the credential. TWIC holders may be asked to confirm, by providing a fingerprint, that they are the rightful owner of the credential at any time. Access control procedures and systems at facilities and vessels will recognize the credential and the information encrypted on it, so that the overall maritime network will be interoperable. In addition, an individual's credential can be deactivated or revoked by TSA if disqualifying information is discovered by or presented to TSA or other DHS entity, or the credential is lost or stolen, so that the credential can no longer be used to obtain unescorted access to secure areas.

TSA has designed the TWIC process to maintain strict privacy controls so that a holder's biographic and biometric information cannot be compromised. The TWIC process proposed in this rule is described below from the perspective of an applicant.

a. Pre-Enrollment and Enrollment

TWIC enrollment will be conducted by TSA (or TSA's agent operating under TSA's direction). All enrollment personnel must successfully complete a TSA security threat assessment and receive a TWIC before they will be authorized to access documents, systems, or secure areas.

Facility and vessel owners/operators must notify workers of their responsibility to enroll, as well as the deadline for doing so. (The proposed implementation plan for enrollment is discussed in greater detail below.) Owners/operators must provide applicants enough lead time to enroll so that TSA has sufficient time to complete the security threat assessment and issue the credential before the access control procedures go into effect. Generally, owners/operators should give individuals at least 60 days notice to begin the process. TSA cannot guarantee that any threat assessment can be completed in less than 30 days, and therefore, owners/operators and applicants should make every effort to initiate enrollment in a timely fashion to prevent workers being denied access for non-compliance. TSA will provide owners/operators with locations for enrollment that they can then pass on to the workers (hereinafter referred to as applicants). For purposes of the NPRM, a list of potential enrollment center locations is provided on the TSA Web site (*www.tsa.gov*) to provide prospective owner/operators and applicants a general idea of the enrollment plan. This list is subject to change and TSA invites comment from affected parties on the potential enrollment locations.

Applicants will be able to ''pre-enroll'' online to reduce the time needed to complete the entire enrollment process at an enrollment center. For pre-enrollment, applicants need a computer with internet access. The applicant can access the TWIC Web site to provide personal information required for enrollment and select an enrollment center at which to complete enrollment. Data submitted by applicants via the Internet will be sent using Internet security protocols (i.e., SSL). All information provided is then stored in the TSA system, which encrypts and protects the data from unauthorized access. Applicants may schedule an appointment while on-line to complete the enrollment process, although appointments are not required at enrollment centers. The Web site will list the documents the applicant must bring to the enrollment center to verify identity. The convenience of pre-enrollment is a significant benefit for applicants and reduces strain on the enrollment centers. Applicants who pre-enroll must appear at enrollment centers to verify their identity, confirm that the information provided during pre-enrollment is correct, provide biometrics, and sign the enrollment documents.

At the enrollment center, applicants will receive a privacy notice and consent form, by which they agree to provide personal information for the security threat assessment and credential. (For applicants who pre-enroll, the privacy notice is provided with the application online, but the applicants must acknowledge receipt of the notice in writing at the enrollment

center.) If an applicant fails to sign the consent form or does not have the required documents to authenticate identity, enrollment will not proceed. During Prototype, 96 percent of applicants appeared for enrollment with suitable identity verification documents. As TWIC is implemented, TSA and Coast Guard will make information available to affected workers in advance of enrollment so that all are aware of what to bring to the enrollment center. This information will also be posted on the TSA/TWIC Web site at *www.tsa.gov.* All information collected at the enrollment center or during the pre-enrollment process, including the signed privacy consent form and identity documents are scanned into the TSA system for storage. All information is encrypted or stored using methods that protect the information from unauthorized retrieval or use.

At the enrollment centers, applicants must provide ten fingerprints and sit for a digital photograph. The fingerprints and photograph will be electronically captured at the enrollment center for use on the credential. Individuals must provide ten fingerprint images for use in completing the security threats assessment process. The credential itself will store two fingerprint templates, one of which is used as a reference biometric to verify identity. The entire enrollment record (including the 10 fingerprints) will be stored in the TSA system, encrypted and segmented to prevent unauthorized use. TSA will provide alternative procedures for enrollment centers to use for situations in which an applicant is unable to provide fingerprints.

The TWIC fee, which covers the complete cost of enrollment, threat assessment, and credential production and delivery, must be collected from the applicant at the enrollment center prior to the enrollment record being transmitted to the TSA system. The TWIC enrollment fee will be non-refundable, even if the threat assessment results in a TWIC not being issued.

Once all data and the fee are collected, the enrollment record is encrypted and electronically transmitted to the TSA system. The TSA system acknowledges receipt of the enrollment record, at which time all enrollment data is automatically deleted from the enrollment workstation. Once the enrollment record is transmitted to the TSA system, personal information is stored only in the TSA system, and personal data is encrypted to very high standards before it is transferred or stored. If an enrollment center temporarily loses its internet connection, the enrollment data is encrypted and stored on the enrollment workstation, but only until an internet connection is restored.

During Prototype, the average time needed for an applicant who pre-enrolled to complete enrollment was 10 minutes, 21 seconds. It is expected that it will take approximately fifteen minutes to complete enrollment of applicants who do not pre-enroll.

TSA and Coast Guard currently envision a phased enrollment process based on risk assessment and cost/benefit analysis. Locations that are considered critical and provide the greatest number of individual applicants will be among the earliest enrollment sites. There are approximately 125 locations covering approximately 300 ports where TSA plans to enroll applicants, and we are in the process of rating each location against a variety of factors to assess criticality, population, and infrastructure. TSA and Coast Guard will work closely with the maritime industry to ensure that owners/operators and workers are given as much notice as is possible when a definitive enrollment schedule is selected. TSA and Coast Guard also are contemplating implementing a more flexible rollout, with anticipated dates to be announced by notices published in the **Federal Register**. (*See* the discussion of § 1572.19 below for additional information on timing of enrollment.) TSA plans to use a combination of fixed and mobile enrollment stations to make the enrollment process as efficient as possible for applicants and owners/operators.

b. Adjudication of Security Threat Assessment

Following enrollment, the TSA system sends pertinent parts of the record to various sources so that appropriate terrorist threat, criminal history, and immigration checks can be performed. When the checks are completed, TSA makes a determination on whether or not to issue a TWIC to the applicant and notifies the applicant.

If disqualifying information is discovered, TSA issues an Initial Determination of Security Threat to the applicant with information on how the applicant can appeal an adverse decision or apply for a waiver of the standards. If the applicant does not respond to the Initial Determination within a specified period, it converts to a Final Determination of Security Threat and the applicant does not receive a TWIC. If the applicant proceeds with an appeal or application for waiver and is successful, the applicant is notified accordingly and the credential production process begins. (The appeal and waiver processes are discussed in greater detail below in the section-by-section analysis.)

TSA may provide some of the notifications to applicants via email, if an applicant provides an email address on the application for the TWIC. We invite comment from prospective applicants about the substitution of email notification for a paper process.

c. Credential Production

If the applicant is qualified to receive a TWIC, the TSA system generates an order to produce a credential. It is produced at a government credential production facility and securely shipped to the center at which the applicant enrolled. The applicant will be notified that the TWIC is ready to be retrieved and activated for use. The face of the TWIC credential contains the applicant's photograph, name, TWIC expiration date, and a unique credential number. In addition, the credential will store finger minutia templates of 2 fingers, finger pattern templates of 2 fingers, a personal identification number, and a Federal Agency Smart Credential number. The data is securely stored and protected in accordance with FIPS 201 in the various technologies used in the credential, such as magnetic stripe, contact chip, and contactless chip. The fingerprint data, the reference biometric, is used to match the credential to the person who enrolled.

The TWIC system contains many feedback mechanisms to validate the transmission and receipt of data at key points in the process. The status of each transmission is recorded within the system.

Credentials are electronically locked prior to shipment to the enrollment center so that the data cannot be accessed. Once the credentials are electronically locked, they cannot be used for access to any vessel or facility until they are activated by the TWIC enrollment station.

d. Credential Activation

The applicant is notified when the enrollment center has received the credential. The applicant then returns to the enrollment site at his or her convenience to activate the credential.

At the enrollment center, the applicant's credential is retrieved from secure storage and the photograph and name on it are compared to the applicant and the identity documents the applicant uses to authenticate identity. The applicant places a designated finger on a reader to generate a biometric match against the biometric stored on the credential and in the TSA

system. Upon successful biometric match, the TWIC is activated and the applicant selects a Personal Identification Number (PIN) that also is stored on the credential. The PIN can subsequently be used as an additional factor in proving one's identity and authorized use of the credential, or as the primary verification tool if the biometric is inoperative for some reason. The TWIC security threat assessment and credential are valid for five years, unless derogatory information is discovered and TSA revokes the credential.

The process outlined above for credential activation is the same process TSA tested in Prototype, which worked well for owner/operators and employees who enroll. However, implementation of the program nationwide involving employees that are not stationary at one facility or port may impact applicants and owner/operators differently. TSA is concerned that requiring an applicant to return to the enrollment center to activate the credential may be onerous for workers who travel a great deal and may not know where they will be when the credential is ready for pick-up. TSA is considering the security and operational impacts of alternative procedures, on which we invite comment.

TSA is considering an amendment to the process that would allow a worker to designate a specific enrollment center for credential pick up and activation. The card production facility would send the credential to that location rather than the location where the applicant enrolled. This is a change that can be accomplished, but this was not tested in Prototype and a variety of software changes may be needed, which could increase costs and affect the timing of implementation. Moreover, applicants will not know the exact date on which their credential will be ready and so those who work at a variety of ports across the country may not be able to designate a specific activation location on the enrollment application.

During Prototype, the entire process from enrollment to card production was complete in fewer than 10 days. However, that process differed from the full program we plan to implement with this rule in a few significant ways. First, nearly all of the employees who volunteered for Prototype worked at the same location every day and the enrollment center was located on that site. Second, TSA did not complete fingerprint-based criminal history records checks, and so there was no time needed to adjudicate and provide redress for criminal activity. For threat assessment programs that are currently in place nationally in which applicants are not stationary and TSA conducts a fingerprint-based CHRC, the threat assessment is generally completed in less than 30 days. The time needed to complete the threat assessment varies depending on whether the database searches produce adverse information that must be investigated, and whether the applicant files an appeal or requests a waiver. These conditions will exist for the TWIC program and therefore, TSA will not be able to predict or establish a specific date on which the threat assessment and card production process will be complete.

DHS invites comment on this option, and any other proposals that would make it easier logistically, without sacrificing security, for the public to receive and activate TWIC cards.

e. Using TWIC in an Access Control System

Once the enrollment process is complete and the credential is activated, the credential is ready to be used as an access control tool. Possession of a TWIC does not guarantee access to secure areas because the owner/operator controls the individuals who are given unescorted access to the facility or vessel. Rather, TWIC is a secure, verified credential that can be used in conjunction with the owner/operator's risk-based security plan and as required by the Coast Guard security regulations.

As envisioned in this NPRM, owners/operators will determine an individual's need for unescorted access to secure areas and then grant access using a TWIC program. The access control administrator of the vessel or facility verifies that the individual holding the TWIC matches the biometric stored on the TWIC by conducting a 1-to-1 match with the individual's finger and the fingerprint template stored on the chip in the TWIC.

The owner/operator verifies that an individual's TWIC is valid, either by directly interfacing with the TSA system or by using a list of invalid credentials downloaded from TSA. Either method provides owners/operators pertinent information concerning the validity of the credential. TSA will invalidate credentials that are reported as lost, stolen, damaged, retired, or issued to an applicant that TSA subsequently determines may pose a security threat. When the invalidation is for cause, that is, due to a security threat, TSA will revoke the credential. Invalidated credentials cannot be used or honored for unescorted access to secure areas. Cardholders who report the credential as lost, stolen, or damaged must go to the enrollment center for resolution, and/or re-issuance of a new credential.

After the individual has been granted access to the facility, the owner/operator may opt to notify the TSA system that access privileges have been granted to this worker at that facility. If the owner/operator invokes this option, the owner/operator also assumes responsibility for informing the TSA system if the owner/operator subsequently denies the individual access privileges.

f. Lost, Damaged, or Stolen TWICs

Replacement TWICs are available if a credential is lost, stolen, or damaged. As soon as the applicant is aware that the credential is missing or damaged, he or she calls the Call Center and the Center follows a standard process to invalidate the credential. The applicant then travels to an enrollment center to receive a new credential. During Prototype, the card production facility printed and shipped the new credentials within 24 hours of receiving the information. Applicants must pay a fee of $36 to cover the cost of lost/damage/stolen credential invalidation, new credential production, reissuance, shipping, and other appropriate program costs. No new TSA threat assessment-specific or enrollment costs are factored into this replacement fee.

g. Renewal

TWICs issued under this rule will expire after five years unless renewed. TSA does not plan to notify TWIC holders when their credential is about to expire because the expiration date will be displayed on the face of the credential. To renew a TWIC, the holder must appear at any enrollment center, starting up to 90 days before the expiration date of the credential, to initiate the renewal process. However, mariners are allowed and encouraged to initiate renewal 180 days prior to expiration to allow sufficient time for TSA to conduct the security threat assessment and the Coast Guard to complete any review necessary to renew any required mariner credentials. During renewal, applicants must provide the same biographic and biometric information required in the initial enrollment and pay the associated fees. A new credential is issued upon renewal.

h. Call Center

Upon publication of the final rule, TSA will refer the public to a Call Center to assist with questions about the TWIC program. An automated telephone line, listing options for the caller to select, will direct the caller to the TWIC Help Desk or the TSA/TWIC Web site.

Callers will be able to discuss questions about the program and final standard, the status of their security threat assessment, the location and time of operation of enrollment centers, and online applications and educational materials. TSA has used the Call Center when implementing other new programs and believes it will be very useful to owners/operators and applicants.

i. Notifying Employers of Threat Determinations

TSA is proposing to modify the rule text applicable to HME applicants concerning employer notification and apply the proposed changes to the TWIC applicants.

As discussed above, SAFETEA–LU established several mandates concerning the threat assessment process. One of the provisions requires TSA to invite comment on and develop a process to notify employers of HME applicants of the results of the threat assessment. Specifically, section 7105 states that—

> Within 90 days of enactment, TSA, after receiving comments from interested parties, must develop and implement a process for notifying employers designated by applicants for a HAZMAT license of the results of the applicant's background check if (1) such notification is appropriate considering the potential security implications and (2) the Director determines in a final notification of threat assessment served on the applicant that he or she does not meet the standards for granting a license.

In the November 24, 2004 hazmat rule, TSA discussed employer notification, noting that actual criminal history or other dispositive records must be maintained confidentially by TSA. *See* 69 FR at 68726. TSA may inform an employer that an employee is disqualified from holding an HME, or has had an HME revoked, so that the employer knows that the employee is not authorized to transport hazardous materials. TSA, however, generally cannot disclose the basis for the determination result of the threat assessment due to prohibitions on disclosure of such information under the Privacy Act, or other pertinent privacy laws or law enforcement or security regulations. *See e.g.*, 5 U.S.C. 552a (as amended); 46 U.S.C. 70105(e); 28 CFR 50.12. In the hazmat rule, TSA noted that if it believes an immediate threat exists, TSA may provide additional information to the employer to help prevent a security incident.

In the November hazmat rule, TSA requested comment on methods to notify an employer that a particular driver's HME is revoked or the application for an HME is denied. TSA anticipated that it would be difficult to locate a driver's employer because drivers tend to change employers frequently and may work for several employers at one time. Also, many drivers are self-employed as owners/operators and notification in these cases would be unnecessary. TSA proposed requiring each employer to maintain a current list of hazmat-endorsed driver employees on a secure Web site that TSA could access for notification purposes and employers could amend as employees change jobs. This list would minimize the chance that TSA would erroneously notify a previous employer of a disqualification. Also, the list would prevent the loss of time and resources needed to locate an employer for notification. Similar procedures are in place with respect to aviation workers who have airport security identification display area authority. 49 CFR 1542.211. TSA received no comments on this proposal or suggestions for an alternative plan, although some employers stated that they would like notification of all employee disqualifications.

Currently, when TSA determines that a driver is not qualified to hold an HME, TSA applies the following policy:

(1) TSA notifies the employer only in cases where TSA determines that an imminent security threat may exist.

(2) TSA notifies the employer listed in the driver's HME application.

(3) TSA limits the information provided to the employer to the fact that the driver's HME is being revoked or denied, but does not provide the reason for the action.

TSA developed this process to address two primary concerns. First, TSA is concerned about sharing disqualification information with incorrect employers and that the likelihood of such notifications would rise if TSA made notifications in all disqualification cases. For the many drivers who change employers frequently or are self-employed, TSA would expend considerable resources trying to determine with certainty an applicant's current employer(s).

Second, for actions in which there is not an imminent threat, employers of hazmat drivers have other procedures in place to verify whether a driver has an HME. Carriers currently are required to determine if a driver employee has been issued an HME, by checking State driver records. The Federal Motor Carrier Safety Administration (FMCSA) requires carriers to check the driver's status in the first 30 days of employment by contacting the licensing State. After that, the carrier must make an inquiry with the State at least once annually to ensure that the driver is authorized to transport hazardous materials. 49 CFR 391.25. Additionally, FMCSA requires carriers to review an employee's driving record during the three years preceding employment with the carrier, in every State in which the driver was licensed. The carriers also must investigate the driver's employment record during the preceding three years. 49 CFR 391.23. These investigations reveal whether the driver's HME has been revoked.

In light of the employer notification requirement in SAFETEA–LU, and upon further analysis, TSA proposes to amend the rule text concerning employer notification generally and apply the following proposed changes to HME and TWIC applicants. First, TSA proposes to add a statement to the application for an HME or TWIC acknowledging that TSA may notify the applicant's employer if TSA determines that the applicant poses a security threat. The applicant must acknowledge receipt of this statement. Second, TSA proposes to amend the rule text to state that TSA will notify an applicant's employer, where appropriate, when issuing final determinations of threat assessment or immediate revocations.

Aside from the employer notification issue, with TWIC applicants, TSA also proposes to notify the Federal Maritime Security Coordinator (FMSC), the chief governmental security official at the port, of revocations. The FMSC also is the Captain of the Port (COTP). 33 CFR 101.105. TSA will notify the Coast Guard concerning the outcome of threat assessments of merchant mariners because a mariner credential may not be issued by Coast Guard if TSA denies or revokes a TWIC for the mariner.

TSA invites comment on these proposed requirements for notifying employers of employee disqualifications. TSA also invites suggestions for improving this system and methods by which a current employer/employee list can be available to TSA when employer notification is necessary. TSA may change its requirements based on these comments.

2. Fee

Section 520 of the 2004 DHS Appropriations Act requires TSA to collect reasonable fees for providing credentialing and background investigations in the field of transportation. Fees may be collected to pay for the costs of the: (1) Conducting or obtaining a criminal history records check (CHRC); (2) reviewing available law enforcement databases, commercial databases, and records of other

governmental and international agencies; (3) reviewing and adjudicating requests for waivers and appeals of TSA decisions; and (4) other costs related to performing the security threat assessment or providing the credential or performing the background records check. Section 520 requires that any fee collected must be available only to pay for the costs incurred in providing services in connection with performing the security threat assessment or providing the credential or performing the background records check. The fee may remain available until expended. TSA establishes these fees in accordance with the criteria in 31 U.S.C. 9701 (General User Fee Statute), which requires fees to be fair and based on: (1) Costs to the government, (2) the value of the service or thing to the recipient, (3) public policy or interest served, and (4) other relevant facts.

In this rule, TSA proposes to establish new user fees: (1) The Information Collection and Credential Issuance fee, estimated to range from $45–$65; (2) the Threat Assessment and Credential Production fee, which will be $62, or $50 for applicants who have already received a comparable threat assessment from DHS, including those for a Merchant Mariner License (MML), Merchant Mariners Document (MMD), Hazardous Materials Endorsement (HME), and Free and Secure Trade (FAST) card holders; and (3) the fee for replacement of a lost, damaged, or stolen TWIC, which will be $36 for all TWIC holders. In addition, TSA will collect the FBI Fee for the criminal history records checks in the TWIC threat assessment process and forward the fee to the FBI. The current FBI Fee is $22.00. If the FBI increases that fee in the future, TSA will collect the increased fee. Therefore, total TWIC fees are expected to range from $95 (MML, HME, and FAST card holders already vetted by DHS) to $149 for all other applicants.

3. TWIC in Other Modes of Transportation

This rule proposes standards for the maritime environment and consequently the security threat assessment standards primarily impact merchant mariners and port workers. However, there are a variety of individuals who work in other modes of transportation that may be subject to the security threat assessment requirement proposed here. For instance, many ports include railroad operations. Rail employees may be required to obtain a TWIC depending on whether the railroad operations are situated in the secure areas. Commercial truck drivers delivering or retrieving goods at the port typically have unescorted access to secure areas and so they would be required to have a TWIC. As envisioned and currently proposed in this rule, commercial drivers that hold an HME and have completed TSA's security threat assessment under 49 CFR part 1572 would not be required to undergo a new threat assessment for TWIC until their HME threat assessment expires. These drivers would be required to provide a biometric for use on the TWIC and pay for enrollment services, credential costs, and appropriate program support costs.

TSA is considering whether to incorporate the TWIC system into all modes of transportation. Therefore, TSA requests comments from all of the transportation industry—rail, mass transit, pipeline, and aviation—not just those affected immediately by these specific proposed maritime rules. TSA invites ideas on how this security threat assessment and credentialing system can be used to its full potential in each of these areas. Each mode of transportation brings its own set of challenges to the philosophy of creating secure areas and access control procedures that provide a high level of security, protect privacy, and do not interfere with commerce. TSA welcomes the views of all interested parties as we continue to improve transportation security with TWIC and other programs.

## IV. Advisory Committee Participation

In drafting the TWIC regulations, the Coast Guard drew upon the expertise of the National Maritime Security Advisory Committee (NMSAC), which is composed of a cross-section of maritime industries and port and waterway stakeholders; including, but not limited to: Shippers, carriers, port authorities, and facility operators. NMSAC advises, consults with, and makes recommendations to, the Secretary of Homeland Security via the Commandant of the Coast Guard on matters affecting maritime security.

In response, NMSAC formed a Credentialing Work Group (CWG), which was comprised of a significant number of NMSAC members and approximately 25 other members from the public who represented various geographic cross-sections and different elements of the maritime industry. NMSAC provided the Coast Guard and TSA with specific industry sponsored comments and recommendations for consideration in developing this proposed rule. TSA and Coast Guard summarized these comments and provide their joint responses below.

*A. Access Control*

*Comment:* NMSAC recommended that ''secure area'' be defined to coincide with the access control area determined by the facility operator in its security plan.

*Response:* We agree with this recommendation and, for all of the reasons discussed in this NPRM, are including it in the Coast Guard's proposed definition of secure area.

*Comment:* NMSAC also recommended that when vessels are moored at MTSA regulated facilities, they should be allowed to rely on the facility's TWIC procedures and not be required to read an individual's TWIC again when he or she required unescorted access to the vessel from the facility.

*Response:* We agree with this recommendation in part. Nothing in the proposed rule prohibits vessels and facilities from agreeing to share the management of access control on a case-by-case or recurring basis to facilitate operations, subject to approval by the cognizant COTP. In keeping with the intent of MTSA, facilities and vessels will still retain ultimate responsibility for their own access control measures. In the interest of preserving layered security, we also anticipate there will be situations where persons seeking unescorted access should be required to follow access control procedures again—when moving from a vessel to a facility and vice versa—even if this requires repeating access control procedures.

*Comment:* NMSAC believes that TWIC should serve as the baseline requirement for unescorted access to a facility or vessel, allowing owners or operators to adopt additional measures.

*Response:* We agree with this recommendation. Nothing in this NPRM prevents an owner/operator from instituting additional requirements before granting access.

*Comment:* NMSAC also felt that possession of a TWIC should not guarantee access to a facility or vessel, or to a specific location within the site.

*Response:* We agree. Owners and operators decide who, among the TWIC holders, may have unescorted access to the facility or vessel.

*Comment:* NMSAC also recommended that access to Outer Continental Shelf facilities as defined in part 106, where access is limited and can be controlled by having the TWIC credential read at the point of embarkation.

*Response:* This arrangement is currently allowed under the existing regulations and could continue under the provisions of this NPRM.

*B. Location of Reader Points*

*Comment:* NMSAC recommends that the regulation not stipulate specific reader locations.

*Response:* We agree. Reader locations are not specified in the proposed rule. Owners/operators determine where readers are located, based on the security plan and the performance standards established in the NPRM.

*Comment:* NMSAC recommends that screening points should be placed far from critical areas and placement should be determined by owners/operators.

*Response:* Screening locations are not specified in the proposed rule. Owners/operators determine where screening points are located, based on the security plan and the performance standards established in the NPRM.

*C. Sponsorship*

*Comment:* A majority of NMSAC opposed employer sponsorship as a requirement of the TWIC application process. Many members believe sponsorship introduced several complex components, including privacy concerns, increased bureaucracy associated with approving and monitoring sponsors, and employer liability issues.

*Response:* After careful consideration, we agree that sponsorship, as originally conceived, is a challenge for the maritime TWIC program. Many of the individuals who will require a TWIC, such as truck drivers and casual laborers entering the port, would not be able to list or obtain a sponsor. Making accommodations to the sponsorship process for these workers would greatly reduce its value. Under the NPRM, applicants are asked to provide information on their employer if applicable, and to certify that they have a need to obtain a TWIC.

*D. Waiver Process/Alternative Security Arrangements*

*Comment:* NMSAC recommended that we use the list of disqualifying offenses currently used for hazmat drivers for establishing disqualifying offenses, with some qualifications and concerns. The primary concern centered on the waiver requirements found in MTSA, which require employer involvement. NMSAC believes that employer involvement in the waiver process is inconsistent with MTSA's prohibition against disclosure of details of why an applicant is denied a TWIC. NMSAC recommended that the TWIC regulations rely upon the existing waiver procedures that apply to hazmat drivers.

*Response:* We agree. We have proposed using the same list of crimes currently in place under the hazmat regulations when making determinations regarding TWIC eligibility. Additionally, the NPRM contains the waiver procedures that currently apply to hazmat drivers.

*Comment:* NMSAC also expressed concerns about individuals currently employed in the maritime industry who might be denied a TWIC due to previous criminal activity. NMSAC believes existing employees should not be denied a TWIC and possibly lose their jobs unless TSA determines the individual to pose a risk based on the entire threat assessment. NMSAC recommended a ''limited term waiver'' that would allow an individual who is employed on the date of TWIC implementation, and is not otherwise determined to be a security threat, to obtain a TWIC.

*Response:* A ''limited term waiver'' is not being proposed. As in the hazmat rule, language in the waiver provisions of the NPRM allow individuals to request a waiver of all but four disqualifying offenses. These pertain to espionage, sedition, treason, and terrorism. In accordance with MTSA and the NPRM, individuals with immigration violations would also be ineligible for the TWIC. Under the hazmat program, the majority of workers with disqualifying offenses, other than those listed above, who have applied for a waiver have been successful in obtaining their endorsement through the existing waiver process. In addition, the time between publication of the final rule and the date an individual is required to obtain a TWIC will provide existing employees ample time to apply for a waiver.

*Comment:* NMSAC believes that the fingerprint data provided by applicants should be used to search all relevant federal databases. In addition, NMSAC suggested that TSA check against criminal databases in the applicant's State of residence. NMSAC also recommended that a *nolo contendere* plea be treated as a conviction.

*Response:* We intend to use an applicant's fingerprints to search the criminal databases that require fingerprints to gain access. However, there are some databases pertinent to security that are accessed by name and therefore, we must use name and other biographic information to use these databases. Currently, we do not plan to check each State criminal database in addition to the FBI criminal databases. The administrative cost and time associated with such an undertaking would greatly increase the user fee and make adjudication of all applicant records overwhelming. Under this proposal, a *nolo contendere* plea constitutes a conviction.

*Comment:* NMSAC proposed that the regulations be consistent nationwide. NMSAC was concerned that if individual states are allowed to enact legislation that established standards different than the federal standard, it would result in additional costs and delays to the industry. NMSAC also believed that varied state background checks could result in venue shopping by applicants.

*Response:* We agree that the TWIC should be nationally consistent and that states do not have the authority to modify the federal TWIC program. However, States, when acting in their capacity as an owner or operator, retain the right of any owner or operator to impose additional security measures at their ports and facilities, as they see fit, including additional measures for access control beyond the TWIC requirements. In addition, States retain their sovereign police powers to impose statutes and regulations to protect their citizens from all manner of threats, and ensure public welfare. In that capacity, a State may impose additional measures at ports, facilities and vessels within its jurisdiction that are directed against reducing all types of crime, so long as those measures do not conflict with any existing Federal regulatory program or frustrate a Federal purpose, including the TWIC. Therefore, while the process for obtaining and maintaining a TWIC will be uniform across the country, access control measures may vary across States, and even from facility to facility, which is in keeping with the recommendations of the NMSAC and the intent of this rulemaking.

*E. Type of Biometric To Be Used, Other Than Fingerprints*

*Comment:* NMSAC recommended that the applicant's digital photograph be stored on the integrated circuit chip (ICC) on the TWIC. Its format and technological standards should conform to other national and international programs, such as US–VISIT and FAST. NMSAC recommended that we reevaluate the use of fingerprint biometrics for access control after completion of Prototype to address procedures for individuals who cannot provide fingerprints.

*Response:* Regarding the first comment, we agree and are proposing that the applicant's digital photograph be stored within the TWIC's ICC. We agree with the second comment and are proposing a credential that meets or exceeds HSPD 12 and FIPS 201 technical standards, which are the baseline for all federal identification

credentials. We also agree with the third comment and are proposing that the digital photograph be used as the alternate biometric for individuals who are unable to provide fingerprints at the time of issuance.

*F. Federally-Managed vs. Federally-Regulated*

*Comment:* NMSAC strongly supports a federally-managed approach to TWIC implementation, as opposed to a federally-regulated approach. NMSAC believes that a federally managed program would protect collective bargaining agreements, promote uniformity of process and technology, ensure appropriate auditing and oversight, protect the sensitivity of the biographic and biometric information required for application, and limit the potential for security compromises or other integrity issues. It also states that there would be significant cost savings if TWIC is implemented in a centralized, federally managed program.

*Response:* We agree and the NPRM reflects this approach.

*G. Enrollment*

*Comment:* In the interest of time, NMSAC recommended that TSA provide as many enrollment centers as practical during the initial enrollment period, staffed either by DHS personnel or trained trusted agents. NMSAC believes that enrollment personnel should be subject to a higher level of scrutiny than TWIC applicants, including financial and credit screening. NMSAC recommended that TSA streamline the enrollment process by allowing pre-enrollment through secure Internet connections, dedicated kiosks, or existing facilities. NMSAC had reservations about allowing non-safety related agencies or organizations becoming involved in this process. They also recommend DHS first look to its own agencies, such as Coast Guard License Issuing Centers, or other federal, state or local public safety offices to process enrollments before seeking partnerships with agencies with non-security missions.

*Response:* We agree with most of the NMSAC recommendations. The current rollout strategy is phased enrollment over a period of time to accommodate the majority of the maritime population centers and then geographically expands to cover all ports/facilities with mobile enrollment centers. All enrollment centers will be staffed by trained trusted agents who will be subject to a thorough threat assessment. The NPRM allows for pre-enrollment through secure Internet connections and dedicated kiosks.

*H. Costs*

*Comment:* NMSAC stated that the fee should be collected at the time of application from the applicant. Any potential employer reimbursements or other business relationships should not be defined in the regulation. Individuals who have already been screened to an equal or higher standard than the TWIC, such as the assessment done for a hazmat endorsement, should not have to pay for duplicate applications, credential issuance, and background records check. TSA should collect only the costs of the program, and the cost for TWIC should be standardized at all enrollment centers.

*Response:* We agree. The NPRM states that the fee is collected from the applicant at the time of enrollment and does not require any reimbursement arrangements. Also, we propose comparability standards so that agencies with similar checks can apply to TSA for a comparability determination. As for hazmat drivers, the check they must complete to get a hazmat endorsement is the same as the standard for TWIC. Therefore, drivers are not required to complete both checks, but must pay a reduced fee for TWIC enrollment and credential production because it was not included in the hazmat fee or process.

*I. Term of Validity*

*Comment:* The TWIC should be valid for a period of five years, unless revoked for cause. This recommendation assumes there is continual check on applicants.

*Response:* We agree and propose a 5-year period of validity for the TWIC unless revoked for cause. TSA repeats portions of the check throughout the 5-year term.

*J. Roll-Out Strategy*

*Comment:* NMSAC supported a phased in regional implementation. A timeline and deadline should be identified by TSA, and the final implementation/compliance date should be consistent across the country and provide sufficient advance lead time to allow stakeholders to prepare. To accommodate U.S. mariners, NMSAC proposed that DHS allow enrollment centers be set up at foreign facilities with a Coast Guard presence.

*Response:* We agree and § 1572.19 proposes the implementation timeline for applicants to enroll for a TWIC. Regarding oversees enrollment of U.S. mariners, we recognize that is an issue in need of resolution. As credentialed U.S. mariners pose less of a security risk due to the successful completion of security and safety background checks, they have been identified as a population who could potentially be lower on the priority list for receipt of the TWIC. In the meantime, options such as setting up TWIC enrollment stations within existing Coast Guard overseas facilities is being explored.

*K. TWIC Requirement for Access to Sensitive Security Information*

*Comment:* NMSAC recommended that TWIC be used as identification credential alone, and not affect access to SSI.

*Response:* The statute requires ''individuals with access to security sensitive information as determined by the Secretary'' to hold a TWIC. We agree that requiring all individuals with access to SSI to also hold a TWIC may be impractical. We have interpreted the language of the statute to allow that only certain individuals who will require access to SSI hold a TWIC, if they have not already been subject to an equivalent check. These individuals are clearly identified by position in the NPRM.

*L. Miscellaneous Issues*

*Comment:* NMSAC strongly urges TSA and Coast Guard to gather industry input in the TWIC rulemaking.

*Response:* In developing the TWIC program, we have benefited from the expertise and assistance of industry and government stakeholders. Our work with the NMSAC has produced several outstanding recommendations and solutions to potential challenges. Additionally, we are planning four public meetings on this NPRM, in order to engage industry and gather comments before a final rule is in place.

*Comment:* NMSAC urged TSA and Coast Guard to coordinate TWIC with other federal programs to avoid duplication and conflicts. It also urged that Merchant Mariner Licenses and Documents be merged with TWIC to the greatest extent possible to minimize the number of credentials mariners are required to carry.

*Response:* The Coast Guard National Maritime Center has expressed similar concerns over adding yet another credential to the list of those required for mariners. In a separate rulemaking published in today's **Federal Register**, the Coast Guard has proposed combining all merchant mariner credentials into a single form, in order to minimize the number of credentials a mariner must carry. That proposal would merge the existing mariner documents, consisting of the License, Merchant Mariner Document, STCW Endorsement, and Certificate of Registry, into one. The TWIC would

remain the identification credential and separate from these other credentials, at least for the time being. The consolidated mariner form would document the mariner's professional skills and capabilities and the TWIC would document the mariner's identity.

*M. Procedures for Replacement of Lost or Stolen Credentials, and Penalties for Persons Who Fraudulently Obtain or Use/Attempt to Use a TWIC*

*Comment:* NMSAC expressed concerns about the procedures to address lost or stolen credentials, and the penalty for persons who fraudulently obtain or use/attempt to use a TWIC.

*Response:* We agree that procedures for lost or stolen credentials are essential services. Applicants will be given an 800-number to call in the event they lose the TWIC or it is stolen. The applicant must return to an enrollment center to activate a new TWIC. This will not require a full enrollment process unless the biometric or biographic information has changed since the time of the initial enrollment and the period of validity of the TWIC will be the same as the lost or stolen credential it is replacing. As the NPRM states, applicants who fraudulently obtain or attempt to use a TWIC may be prosecuted criminally and/or through administrative action.

*N. On-Site TWIC Implementation*

*Comment:* NMSAC expressed concern about the possibility for delay at points of entry due to implementation of theTWIC program.

*Response:* During TSA's Prototype, possession of a TWIC ultimately accelerated access for individuals when they were entered into the local access control system. We anticipate similar results when TWIC is fully operational. As proposed, this rule would permit owners/operators to determine the details of the access control system, and so resolving access problems would largely be managed at the facility or vessel. However, we welcome industry feedback and insight on ways that we may be able to improve the proposed requirements without compromising either security or function.

## V. Section-by-Section Analysis of United States Coast Guard Proposed Rule

*General Introduction*

The following discussion highlights the changes being made to the Coast Guard regulations and address some miscellaneous effects that these changes will have on unamended sections of the regulations. The discussion is divided into parts and sections within those parts, which will enable the reader to skip to those regulations that affect him/her. In order to allow for this, some explanations are repeated from part to part (for example, the explanation for proposed amendments to the recordkeeping requirement sections in parts 104, 105, and 106, are identical).

*33 CFR Part 101*

33 CFR 101.105

Coast Guard proposes amending § 101.105 by adding new definitions for escorting, personal identification number (PIN), recurring unescorted access, secure area, TWIC, TWIC program, and unescorted access. These terms would be introduced by the amendments discussed below, and their definitions are self-explanatory.

33 CFR 101.121

Coast Guard proposes adding § 101.121 to require those organizations that have approved Alternative Security Programs (ASPs) to submit a TWIC Addendum to their ASP. This TWIC Addendum should explain how the TWIC requirements proposed in parts 104, 105, and 106 (as applicable) would be implemented in the ASP. The TWIC Addendum would be submitted to the Coast Guard for approval and, once approved, would be given the same expiration date as the overall ASP. When it is time for the overall ASP to be reapproved, the TWIC Addendum would be incorporated into the overall ASP, resulting in a single document. Any organization not submitting the TWIC Addendum by the given deadline would have their ASP declared invalid.

33 CFR 101.514

Coast Guard proposes adding § 101.514. This new section contains the requirement that all persons requiring unescorted access to secure areas of vessels, facilities, and OCS facilities regulated by parts 104, 105, or 106 of subchapter H possess a TWIC before such access is granted. Federal officials would not be required to use a TWIC, but rather would be required to use their HSPD 12-compliant agency credential. These HSPD 12-compliant, biometrically-enabled credentials will be built according to the same technical standards as the TWIC, ensuring comparable levels of security. Coast Guard has also included a provision allowing for State and local officials to voluntarily obtain a TWIC when their office or duty station falls within, or where they require recurring unescorted access to, a secure area of a vessel, facility, or an OCS facility. Coast Guard would not, at this time, require these officials to obtain a TWIC, but we may revisit this in the future.

Coast Guard also would allow for voluntary compliance with TWIC for those maritime facilities and vessels that would otherwise not be required to comply. Any owner or operator who would like to voluntarily comply with TWIC requirements would first be required to contact their cognizent COTP, who will forward the request, along with the COTP's recommendation, to TSA. Once the Coast Guard and TSA determine that use of the TWIC by the facility or vessel would benefit and improve overall maritime security, the owner/operator would receive authorization to have employees enroll at TSA enrollment centers and establish a TWIC program at their facility. Coast Guard requests that those owner/operators who would like to voluntarily comply under this provision please submit a comment.

33 CFR 101.515

Coast Guard proposes amending § 101.515 to limit its application only to those persons seeking escorted access to a secure area. This amendment would require that anyone, other than law enforcement officers in performance of their official duties, seeking access to a vessel, facility, or OCS facility provide personal identification meeting the standards listed in this section. It also would require that these individuals be escorted at all times in a secure area.

*33 CFR Part 103*

33 CFR 103.305

Coast Guard proposes amending § 103.305 to require that all Area Maritime Security (AMS) Committee members hold a TWIC or have passed a comparable security background investigation, as determined by the FMSC, with the exception of credentialed Federal, state and local officials. Coast Guard would omit credentialed Federal, state, and local officials from the requirement to hold a TWIC because the majority of these individuals undergo a security threat assessment prior to beginning their job, and because (as explained above) the Federal officials will all be issued HSPD 12-compliant, biometric identification credentials, and it is hoped that states and local entities will follow suit.

33 CFR 103.505 and 103.510

Coast Guard proposes amending §§ 103.505 and 103.510 to require that all AMS plans address biometric access programs within the port, and to require

that all AMS plans be updated to reflect this consideration.

*33 CFR Part 104*

33 CFR 104.105

Coast Guard proposes amending § 104.105 to exempt foreign vessels from the TWIC requirements. Currently foreign vessels entering U.S. ports that carry a valid International Ship and Port Facility (ISPS) certificate are deemed to be in compliance with part 104, except for §§ 104.240, 104.255, 104.292, and 104.295. However, there are a small number of foreign vessels who are not required to comply with the International Convention for Safety of Life at Sea (SOLAS) or with the ISPS Code, and therefore must submit security plans in accordance with this part. Without the proposed language, these vessels would be required to comply with the TWIC provisions. The crew of these vessels would primarily consist of foreign mariners. While not explicitly exempt from the TWIC requirements by the language of 46 U.S.C. 70105, the particular situation of foreign mariners makes it impractical to issue this population TWICs, and it has been determined that it is inappropriate to this rulemaking. Thus, the small number of foreign vessels who would otherwise be required to comply with part 104, as well as all other foreign vessels, have been exempted from complying with the TWIC provisions of this part since none of their crew would hold a TWIC. Nothing in this proposed exemption should affect the existing requirements that owners or operators have procedures in place for allowing seafarers to traverse facilities for the purpose of completing crew changes or taking shore leave.

33 CFR 104.106

Coast Guard proposes adding § 104.106 to provide for passenger access areas on board passenger vessels, ferries, and cruise ships. Implementation of the TWIC credential would have a significant impact on the way that owners and operators make access control decisions. The proposed rule would introduce the concept of a ''secure area,'' defined as the area over which an owner or operator chooses to exercise access control as set forth in § 104.265, essentially making the entire vessel a secure area. In non-passenger vessels, this is not problematic; for those that carry passengers, however, it presents difficulties. Since the law requires that no one be allowed unescorted access to secure areas unless they carry a TWIC, passenger vessels, ferries, and cruise ships would have had to either require passengers to obtain TWICs or ensure that passengers were ''escorted'' at all times while on the vessel. To avoid either outcome, Coast Guard proposes creating the ''passenger access area,'' which will allow vessel owners/operators to carve out areas within the secure areas aboard their vessels where passengers are free to move about unescorted. These passenger access areas would work in a manner similar to the already existing ''public access areas'' in part 105.

33 CFR 104.115

In § 104.115, Coast Guard proposes using the same roll-out and implementation model for TWIC as was used for vessel security plans. Vessels would have six (6) months from the date that the final rule is published to submit a TWIC addendum to the Marine Safety Center. They would be required to be operating according to the addendum between twelve (12) and eighteen (18) months following the date that the final rule is published, depending on whether enrollment for the port in which the vessel is operating has been completed.

33 CFR 104.120

The proposed amendment to § 104.120 would require that a copy of the approved TWIC addendum be kept on board the vessel, along with the already approved Vessel Security Plan (VSP) (already required to be on board). Coast Guard has included provisions for scenarios in which the TWIC addendum has been submitted to the Marine Safety Center (MSC) but not yet approved, and for vessels operating under an approved alternative security program.

33 CFR 104.200, 104.210, 104.215, 104.220, and 104.225

Coast Guard proposes amending these sections to require that all individuals with security duties, including the company security officer (CSO), acquire and maintain a TWIC. Coast Guard requests comment on whether owners/operators should also be required to obtain a TWIC, based on their access to sensitive security information (SSI). Coast Guard also proposes amending these sections to add knowledge requirements and responsibilities pertaining to TWIC to those already assigned to owners/operators, company security officers, vessel security officers, vessel employees with security duties, and all vessel employees. At this time, there are no formal training requirements proposed in order to meet the TWIC knowledge requirements. It is important that owners/operators and those with security duties be familiar with the technologies on the credential that make it resistant to tampering and forgery. Persons who will be examining TWICs at access control points should be familiar enough with its physical appearance such that variations or alterations are easily recognized.

It is important that security personnel at the access points to the vessel be familiar with alternate ways to reliably verify an individual's identity and his or her credential should the individual be unsuccessful using the primary means of verification (e.g., fingerprint match). Personnel who will be required to resolve an individual's failure to electronically verify his or her identity should be familiar with all the possible reasons for the failure. For example, an individual may not be able to verify his identity against the biometric stored on the credential due to wear on the integrated circuit chip (ICC) itself, problems with the reader, wear on the individual's fingerprints, or because the individual is an imposter. Alternate procedures for addressing failures of an individual to verify his fingerprint against the information stored on the credential should be reasonably designed to discern between a legitimate user and an imposter. All other employees should be familiar with the TWIC topology, as well as the steps to take should their own TWIC become lost or stolen.

The heaviest burden has been placed on the owner/operator, who would be required to ensure that the TWIC program is implemented on board the vessel in accordance with the proposed regulations. This would include a new requirement that the owner/operator ensure that someone on the vessel know who is on the vessel at all times. It would also include a requirement that the owner/operator ensure that computer and access control systems and hardware are secure. The Coast Guard has placed a sample document in its docket (located at the places listed in the **ADDRESSES** section above) for this NPRM that outlines the proper standard of care to be used to protect these systems and hardware. We request comment on this standard of care, as well as on any associated costs to implement it.

33 CFR 104.235

Coast Guard proposes adding a new record-keeping requirement, mandating that owners/operators maintain records for two years of all persons who are granted access to secure areas of the vessel, including when they disembark the vessel. The requirement does not distinguish between those who were granted unescorted access because they

carried a TWIC and those who were granted escorted access. For those who are granted recurring unescorted access, such as permanently attached crew or other employees, owners/operators would be required to record the span over which the individual's access privileges endured. For individuals who were granted escorted access, the owners/operators would be required to record each date that the individual is escorted, and identify his escort.

33 CFR 104.265

Coast Guard proposes amending this section to require the use of TWIC in the vessel's access control measures. This section would show the greatest changes as a result of TWIC implementation, and reflects a difficult compromise of many competing concerns, including our desire to preserve as much of the performance-based standard as possible so that vessels could tailor implementation to suit their individual operational needs while preserving the security enhancements provided by the TWIC credential.

TWIC provides for implementing graduated security measures by relying upon the three factor authentication process for establishing a person's identity. This process consists of identifying: (1) Something the person has—a TWIC credential; (2) something the person knows—a PIN, stored securely on the ICC in the credential; and (3) something the person is—in the case of the TWIC, that will be the individual's fingerprint, which also is stored on the ICC of the credential. By requiring one or all of these factors before allowing access, owners/operators can make increasingly more secure decisions regarding individuals who are requesting to board the vessel.

Currently, most access control decisions are made relying on a ''flash pass.'' Individuals requesting entry are required to show identification that conforms to § 101.515 of subchapter H, which currently encompasses a broad spectrum of credentials, including driver's licenses from all 50 states. Many of these credentials are easily forged or altered, and the sheer diversity of appearances hampers security personnel's ability to recognize a forged or altered credential when it is presented.

Even when used as a flash pass, the TWIC provides greater reliability than the existing system because it presents a uniform appearance with embedded features on the face of the credential that make it difficult to forge or alter. When presented with a TWIC, security personnel familiar with its security features are immediately able to notice any absence or destruction of these features.

Nevertheless, our intent was to discourage the use of the TWIC as a flash pass for several reasons. While security personnel can reliably detect changes to the appearance of the credential or missing features, he or she cannot know whether or not the credential has been revoked by TSA, or other competent authority, merely by examining the surface of the credential. Furthermore, comparing the individual to the photo on the credential requires focused examination that is likely to suffer when security personnel are distracted or during particularly busy periods. This is the time that an unauthorized individual is most likely to attempt entry, and is most likely to breach a system that relies solely on the flash pass system. Finally, allowing owners/operators to rely solely on the flash pass system is unreasonable in light of the additional cost of the credential, and the available security enhancements that the increased cost represents.

Thus, Coast Guard proposes to require owners/operators to use at least one of the technical enhancements on the credential to electronically verify a person's identity and also requires verification that the credential remains valid, and has not been altered or counterfeited.

Implementation of the TWIC program will require that the owner/operator use different processes for identifying persons, depending on whether or not the individual is requesting unescorted access. If the individual is requesting, or will require, unescorted access as part of his or her job responsibilities, the individual must have and maintain a TWIC.

On an owner/operator's first encounter with an individual seeking or requiring unescorted access to the vessel, we would require that all of TWIC's security features be used to verify both the individual's claimed identity and that the credential remained valid. Thus, when presented with an individual's TWIC for the first time, an owner or operator would be required to electronically verify that the individual's fingerprint matches the data stored on the ICC, and that the individual can correctly enter the PIN that is also stored on the ICC. Both of these processes will require that the individual have the TWIC in his/her possession, thus satisfying all three factors of the authentication process. In addition, the owner or operator would have to confirm that the TWIC remains valid. In order to know that the TWIC has not been revoked, some regular contact with TSA will be necessary. Coast Guard has not specified how this contact should be made so as to provide as much flexibility as possible.

These steps performed together will detect to the highest degree of certainty whether the individual is the rightful bearer of the TWIC he or she holds, and whether or not it was duly issued and remains valid. After the initial encounter, there is as much flexibility as possible for the owner/operator so that the TWIC would provide a valuable security enhancement without unnecessarily burdening daily operations. Coast Guard recognized that, particularly for smaller vessels such as towing vessels, the value by the daily validation of an individual's personal identity is less than for facilities, which generally interact with greater numbers of vendors, visitors, and facility employees. We assumed that the crew of most vessels, excluding cruise ships, would be a relatively small number of people who would quickly become familiar enough with one another so as to be able to readily identify fellow crew members and notice strangers. Thus, there is more emphasis on ensuring that the credential remains valid. Accordingly, Coast Guard has identified specific intervals, according to the Maritime Security (MARSEC) level, when a vessel owner/operator must routinely check that the credential remains valid.

As a result of this desire to provide flexibility, we propose the concept of ''recurring unescorted access,'' which is intended to allow an individual to enter on a continual basis, without repeating the personal identity verification piece. The decision to grant recurring access privileges should be based on two considerations: (1) The relationship of the individual to the vessel, or how well ''known'' he or she is; and (2) the individual's need to have frequent and unimpeded access to the vessel.

No vessel is required to grant any individual recurring unescorted access; it is intended as a tool by which owners/operators can allow persons who are well known to them to move in and out of secure areas on a repetitive basis without having to electronically verify the individual's identity each time. The credential verification requirement would remain, and owners/operators would be responsible to check the validity of the TWIC belonging to any person to whom is granted recurring unescorted access according to the identified specific interval, based on the MARSEC level.

Frequent vendors and other visitors, such as union and seafarer representatives, could seek and, at the

owner/operator's discretion, be granted recurring unescorted access. If granted, it would allow these individuals, identified by the vessel security officer, or other qualified personnel, to be entered onto the vessel's rolls of TWIC holders whose TWIC must be checked on a regular basis to ensure it remains unrevoked by TSA.

The infrequent visitor or vendor who bears a TWIC and seeks unescorted access, would be required to electronically verify his or her identity by matching the biometric information stored on the ICC. The credential's validity would also have to be verified to ensure that it has not been revoked since issuance by TSA. Coast Guard acknowledges that maintaining this connectivity with TSA will be a challenge for vessel owners and operators. However, TSA has indicated that it will be able to maintain an updated list of all invalid credentials which can be downloaded over a secure connection with the TSA Web site, and vessel owners/operators would be able to verify the validity of credentials from infrequent visitors against this list. Furthermore, Coast Guard has assumed that vessels which could not establish access to TSA via a secure Web site from time to time could obtain updated versions of the list from its agent or home office.

Persons presenting for entry who do not hold a TWIC would still be required to show an acceptable form of identification, as set forth in § 101.515 and 104.265(e)(3), and would be required to be escorted if they are granted access to secure areas. Owners/operators are not required by the proposed changes to use the TWIC as their primary badging system. As much as practical, Coast Guard has retained the performance-based standards from the existing regulations that allows owners/operators to establish identification systems that best suits their individual operational needs. If, however, owners/operators choose to rely solely on the TWIC as their badging system, the system should include a means for identifying non-TWIC holders. If owners/operators choose to use a separate badging system, it must be coordinated with the TWIC requirements in this part such that notification to the owner/operator of changes in the individual's TWIC status are also reflected in the separate badging system.

Other existing regulatory requirements that we thought were important to preserve related to coordinating access control measures and the TWIC implementation with facilities whenever possible, particularly as that would facilitate the ready access of frequent vendors, and union and seafarer representatives to the vessel, as appropriate. Coast Guard anticipates that these individuals will also obtain a TWIC. Any coordination must be outlined in the TWIC addendum.

In keeping with the longstanding tradition that seafarers keep their mariner credentials and other important documents on the bridge, or stored in a secure place, this rule does not propose that vessel crew be required to display or maintain their TWIC on their person at all times. Instead, anyone granted unescorted access to the secure areas of the vessel under this proposed rule is expected to produce his or her TWIC for inspection if so required by a competent authority. Thus, persons assigned to the vessel can keep the credential stored securely on the vessel with their other important documents. However, mariners will have to take the TWIC with them when they leave the vessel in order to gain unescorted access through the facility.

Owners/operators are required to devise backup processes for making access control decisions when any part of the TWIC system fails, with particular attention paid to not creating greater vulnerabilities that can be leveraged by a failure of the system due to deliberate efforts. Of particular concern is the occasion when an individual may not be able to match his or her biometric against the information stored on the ICC. While this could mean the person is not who he says he is, it is also possible that wear and tear on the reader, the ICC, or the person's fingerprint itself have caused the failure. In resolving these kinds of failures, security personnel should be well informed as to other reliable means of verifying identity, such as comparing the image of the individual that is electronically stored on the ICC to the person him or herself, or by having other authorized personnel vouch for his identity.

In keeping with the graduated scheme of the MTSA regulations, this rule proposes requiring increased use of TWIC security features at higher MARSEC levels. At MARSEC level 1, the owner/operator would be required to ensure that the validity of TWIC credentials is verified against the latest information available from TSA on a weekly basis. At MARSEC level 2, the owner/operator would be required to ensure that the validity of TWIC credentials is verified against the latest information available from TSA on a daily basis. At MARSEC level 3, all personnel seeking unescorted access would be required to verify their identity biometrically and using their PIN at each entry to a secure area of the vessel.

The requirements at each MARSEC level are laid out in the table that follows.

| | Vessels | | Facilities | OCS facilities | U.S. flagged cruise ships |
|---|---|---|---|---|---|
| | Recurring unescorted access | Non-recurring unescorted access | | | |
| MARSEC 1 ..... | Facial recognition minimum each entry; card validity checked weekly with information ≤1 week old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤ 1 week old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤1 week old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤1 week old; recheck those continuously aboard weekly with most current information available from TSA. | 1 to 1 biometric match at each entry; card validity checked at each entry with most current information available from TSA. |

| | Vessels | | Facilities | OCS facilities | U.S. flagged cruise ships |
|---|---|---|---|---|---|
| | Recurring unescorted access | Non-recurring unescorted access | | | |
| MARSEC 2 ..... | Facial recognition minimum each entry; card validity checked daily with the most current information available from TSA. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤1 day old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤1 day old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤1 day old; recheck those continuously aboard daily with most current information available from TSA. | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with most current information available from TSA. |
| MARSEC 3 ..... | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with information ≤1 day old. | | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with information ≤1 day old. | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with information ≤1 day old; recheck those aboard continuously daily. | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with most current information available from TSA. |

33 CFR 104.290

Coast Guard proposes amending this section to require owners/operators to have the records of persons who have been granted access to the vessel (*See,* § 104.235, discussed above) available after a security incident.

33 CFR 104.295

Coast Guard proposes amending § 104.295 to impose higher burdens on U.S. cruise ships. The same assumptions regarding crew size and connectivity (discussed in the proposed changes to § 104.265 above) do not apply to these large, sophisticated vessels whose potential to be the impetus of a transportation security incident (TSI) is much greater than other vessels. As a result, TWIC requirements more closely resemble those for facilities. Coast Guard proposes requiring that an individual's identity be checked against their TWIC at each entry to the vessel, and that the validity of the TWIC be verified with TSA at a higher rate than for other vessels.

33 CFR 104.405

Coast Guard proposes amending this section to require that when each vessel security plan is reviewed and resubmitted for approval upon its 5 year anniversary date, it incorporates the TWIC Addendum into all appropriate sections of the VSP. Most of these changes should be reflected in the plan's section on access control.

*New Subpart E (33 CFR 104.500–104.510)*

Proposed § 104.500–104.510 are new and are intended to be temporary measures that will be phased out as existing plans are renewed according to their expiration date. Rather than require owners/operators to resubmit their entire plan with the TWIC measures incorporated within, Coast Guard proposes requiring a temporary TWIC addendum to be submitted. The addendum should be drafted in conjunction with the existing plan, reflecting all modifications that the TWIC rules require. Once approved, it should be attached to and maintained as part of the entire plan, and will be given the same expiration date as the existing plan. Upon expiration, the TWIC addendum should be seamlessly incorporated into the full plan when it is renewed in accordance with the regulations in place at the time of renewal. Owners/operators may opt to resubmit their entire plan, with a list of sections amended, as their TWIC Addendum, but once approved it will carry the same expiration date as it had prior to amendment. Owners/operators are encouraged to submit the addendum via Homeport (*http://homeport.uscg.mil*).

*33 CFR Part 105*

33 CFR 105.115

In § 105.115, Coast Guard proposes using the same roll-out and implementation model for TWIC as was used for MTSA security plans. Facilities would have six (6) months from the date that the final rule is effective to submit a TWIC addendum to their cognizant Captain of the Port (COTP) and would be required to be operating according to the addendum between twelve (12) and eighteen (18) months following the effective date, depending on whether enrollment has been completed at the port where the facility is located.

33 CFR 105.120

In the proposed amendment to § 105.120, Coast Guard would require that the facility keep a copy of the approved TWIC addendum on-site, along with the already approved facility security plan (FSP) (already required to be on site). Coast Guard has included provisions for scenarios in which the TWIC addendum has been submitted to the COTP but not yet approved, and for facilities operating under an approved alternative security program.

33 CFR 105.200, 105.205, 105.210, and 105.215

Coast Guard proposes amending these sections to require that all individuals with security duties acquire and maintain a TWIC. Coast Guard requests comment on whether owners/operators should also be required to obtain a TWIC, based on their access to sensitive security information (SSI). Coast Guard also proposes adding knowledge requirements and responsibilities pertaining to TWIC to those already assigned to owners/operators, facility security officers, facility employees with security duties, and all facility employees. There are no formal training requirements in order to meet the TWIC knowledge requirements proposed at this time. It is important that owners/operators and those with security duties be familiar with the technologies on the credential, particularly the imbedded features that make the credential resistant to tampering and forgery. Persons who will be examining TWICs at access control points should be familiar enough with its physical

appearance such that variations or alterations are easily recognized.

It is important that security personnel at the access points to the facility be familiar with alternate ways to reliably verify an individual's identity and his or her credential should the individual be unsuccessful using the primary means of verification (*e.g.*, fingerprint match). For example, an individual may not be able to verify his identity against the biometric stored on the credential due to wear on the ICC itself, problems with the reader, wear on the individual's fingerprints, or because the individual is an imposter. Alternate procedures for addressing failures of an individual to verify his fingerprint against the information stored on the credential should be reasonably designed to discern between a legitimate user and an imposter. All other employees should be familiar with the TWIC topology, as well as the steps to take should their own TWIC become lost or stolen.

The heaviest burden has been placed on the owner/operator, who would be required to ensure that the TWIC program is implemented on board the facility in accordance with the proposed regulations. This would include a new requirement that the owner/operator ensure that someone on the facility know who is on the facility at all times. It would also include a requirement that the owner/operator ensure that computer and access control systems and hardware are secure. The Coast Guard has placed a sample document in its docket (located at the places listed in the **ADDRESSES** section above) for this NPRM that outlines the proper standard of care to be used to protect these systems and hardware. We request comment on this standard of care, as well as on any associated costs to implement it.

33 CFR 105.225

Coast Guard proposes adding a new record-keeping requirement, mandating that owners/operators maintain records for two years of all persons who are granted access to the facility. The requirement does not distinguish between those who were granted unescorted access because they carried a TWIC and those who were granted escorted access. For individuals who were granted escorted access, the owners/operators would be required to record each date that the individual is escorted, and identify his escort.

33 CFR 105.255

Coast Guard proposes amending this section to require the use of TWIC in the facility's access control measures. This section would show the greatest changes as a result of TWIC implementation, and reflects a difficult compromise of many competing concerns, including our desire to preserve as much of the performance-based standard as possible so that facilities could tailor implementation to suit their individual operational needs while preserving the security enhancements provided by the TWIC credential. TWIC provides graduated increases in security by relying upon the three factor authentication process for establishing a person's identity. This process consists of identifying: (1) Something the person has—a TWIC credential; (2) something the person knows—a Personal Identification Number (PIN), stored on the integrated circuit chip (ICC) in the credential; and (3) something the person is—in the case of the TWIC, it will be the individual's fingerprint, which is also stored on the ICC of the credential. By requiring one or all of these factors before allowing access, owners/operators can make increasingly more secure decisions regarding individuals who are requesting to enter the facility.

Currently, most access control decisions are made relying on a ''flash pass.'' Individuals requesting entry are required to show identification that conforms to § 101.515 of subchapter H, which currently encompasses a broad spectrum of credentials, including driver's licenses from all 50 states. Many of these credentials are easily forged or altered, and the sheer diversity of appearances hampers security personnel's ability to recognize a forged or altered credential when it is presented.

Even when used as a flash pass, the TWIC provides greater reliability than the existing system because it presents a uniform appearance with embedded features on the face of the credential that make it difficult to forge or alter. When presented with a TWIC, security personnel familiar with its security features are immediately able to notice any absence or destruction of these features.

Nevertheless, our intent was to discourage the use of the TWIC as a flash pass for several reasons. While security personnel can reliably detect changes to the appearance of the credential or missing features, he or she cannot know whether or not the credential has been revoked by TSA, or other competent authority, merely by examining the surface of the credential. Furthermore, comparing the individual to the photo on the credential requires focused examination that is likely to suffer when security personnel are distracted or during particularly busy periods. This is the time that an unauthorized individual is most likely to attempt entry, and is most likely to breach a system that relies solely on the flash pass system. Finally, allowing owners/operators to rely solely on the flash pass system is unreasonable in light of the additional cost of the credential, and the available security enhancements that the increased cost represents.

Thus, Coast Guard proposes to require owners/operators to use at least one of the technical enhancements on the credential to electronically verify a person's identity and also requires verification that the credential remains valid, and has not been altered or counterfeited.

Implementation of TWIC will require that the owner/operator use different processes for identifying persons depending on whether or not the individual is requesting unescorted access. If the individual is requesting unescorted access, or will require unescorted access as part of his or her job responsibilities, the individual must have and maintain a TWIC.

Individuals requesting unescorted access to secure areas of the facility must present a valid TWIC prior to entry and electronically verify his or her identity by matching his or her biometric against the information stored on the credential.

In addition, the owner or operator would have to confirm that the TWIC remains valid. In order to know that the TWIC has not been revoked, some regular contact with TSA will be necessary. (*See*, discussion of ''using TWIC in an access control system'' above.) No particular method has been prescribed for contacting TSA to verify the validity of credentials so as to provide as much flexibility to owners/operators as possible.

Persons presenting for entry who do not hold a TWIC would still be required to show an acceptable form of identification, as set forth in §§ 101.515 and 104.265(e)(3), and will be required to be escorted if they are granted access to secure areas. Owners/operators are not required by the proposed changes to use the TWIC as their primary badging system. As much as practical, the rule proposed to retain the performance-based standards from the existing rule that allows owners/operators to establish identification systems that best suit their individual operational needs. If, however, owners/operators choose to rely solely on the TWIC as their badging system, the system should include a means for identifying non-TWIC holders. If owners/operators choose to use a separate badging system, it must

be coordinated with the TWIC requirements in this part.

Other provisions that are important to preserve are related to coordinating access control measures and the TWIC implementation with vessels whenever possible, particularly as that would facilitate the ready access of frequent vendors, and union and seafarer representatives to the vessel and crew as appropriate.

Facility personnel are required to have their TWIC readily available for inspection if so required by a competent authority.

Coast Guard proposes that owners/operators be required to devise backup processes for making access control decisions should any part of the TWIC system fail, with particular attention paid to not creating greater vulnerabilities that can be leveraged by deliberately causing a failure of the system. Of particular concern is the occasion when an individual may not be able to match his or her biometric against the information stored on the ICC. While this could mean the person is not who he says he is, it is also possible that wear and tear on the reader, the ICC, or the person's fingerprint itself have caused the failure. In resolving these kinds of failures, security personnel should be well informed as to other reliable means of verifying identity, such as comparing the image of the individual that is electronically stored on the ICC to the person him or herself, or by having other authorized personnel vouch for his identity.

In keeping with the graduated scheme of the MTSA regulations, Coast Guard proposes requiring increased use of the TWIC at higher MARSEC levels. At MARSEC level 1, the owner/operator would be required to ensure the validity of the TWIC credentials is verified against the latest information available from TSA on a weekly basis. At MARSEC level 2, the owner/operator would be required to ensure that the validity of TWIC credentials is verified against the latest information available from TSA on a daily basis, as well as ensure all TWIC-enabled access gates are manned. At MARSEC level 3, Coast Guard would require verification of an individual's PIN at each entry to the secure area.

The requirements at each MARSEC level are laid out in the table that follows.

| | Vessels | | Facilities | OCS facilities | U.S. flagged cruise ships |
|---|---|---|---|---|---|
| | Recurring unescorted access | Non-recurring unescorted access | | | |
| MARSEC 1 ..... | Facial recognition minimum each entry; card validity checked weekly with information ≤ 1 week old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤ 1 week old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤ 1 week old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤ 1 week old; recheck those continuously aboard weekly with most current information available from TSA. | 1 to 1 biometric match at each entry; card validity checked at each entry with most current information available from TSA. |
| MARSEC 2 ..... | Facial recognition minimum each entry; card validity checked daily with most current information available from TSA. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤ 1 day old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤ 1 day old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤ 1 day old; recheck those continuously aboard daily with most current information available from TSA. | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with most current information available from TSA. |
| MARSEC 3 ..... | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with information ≤ 1 day old. | | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with information ≤ 1 day old. | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with information ≤ 1 day old; recheck those aboard continuously daily. | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with information available from TSA. |

This section would be amended to require owners/operators to have the records of persons who have been granted access to the facility (*See* § 105.225, discussed above) available after a security incident.

33 CFR 105.285

This section would be amended to clarify that passengers must be escorted within secure and restricted areas of the facility.

33 CFR 105.290

This section would be amended to clarify which activities must be done within the facility's secure area, to clarify the identifications to be checked before granting individuals entry to the facility, and to clarify that passengers must be escorted within secure and restricted areas of the facility.

33 CFR 105.295

Coast Guard proposes making a change to clarify that persons not holding TWICs must be escorted within Certain Dangerous Cargo (CDC) facilities. Coast Guard asks for comment as to whether there should be more stringent TWIC program requirements at these facilities, and what those requirements should be.

33 CFR 105.296

Coast Guard proposes amending § 105.296 to require that owners/operators of barge fleeting facilities take responsibility for ensuring that anyone seeking unescorted access to barges within the fleeting facility hold a TWIC.

33 CFR 105.405

This section would be amended to require that when each facility security plan is reviewed and resubmitted for approval upon its 5-year anniversary date, it incorporate the TWIC Addendum into all appropriate sections of the FSP. Most of these changes should be reflected in the plan's section on access control.

*New Subpart E (33 CFR 105.500–105.510)*

Proposed §§ 105.500–105.510 are new and are intended to be temporary measures that will be phased out as existing plans are renewed according to the existing plan's expiration date. Rather than require owners/operators to resubmit their entire plan with the TWIC measures incorporated within, we propose requiring a temporary TWIC addendum to be submitted. The addendum should be drafted in conjunction with the existing plan, reflecting all modifications that the TWIC rules require. Once approved, it should be attached to and maintained as part of the entire plan, and will be given the same expiration date as the existing plan. Upon expiration, the TWIC addendum should be seamlessly incorporated into the plan when it is renewed in accordance with the regulations in place at the time of renewal. Owners/operators may opt to resubmit their entire plan, with a list of sections amended, as their TWIC Addendum, but once approved it will carry the same expiration date as it had prior to amendment. Owners/operators are encouraged to submit the addendum via Homeport (*http://homeport.uscg.mil*).

*33 CFR Part 106*

33 CFR 106.110

In § 106.110, Coast Guard proposes using the same roll-out and implementation model for TWIC as was used for MTSA security plans. OCS facilities would have six (6) months from the date that the final rule is published to submit a TWIC addendum to their cognizant District Commander and would be required to be operating according to the addendum between twelve (12) and eighteen (18) months following the publication date, depending on whether enrollment has been completed at the port where the facility is located.

33 CFR 106.115

The proposed amendment to § 106.115 would require that the OCS facility keep a copy of the approved TWIC addendum on site, along with the already approved OCS FSP (already required to be on site). This proposed rule includes provisions for scenarios in which the TWIC addendum has been submitted to the District Commander but not yet approved, and for OCS facilities operating under an approved alternative security program.

33 CFR 106.200, 106.205, 106.210, 106.215, and 106.220

These sections would be amended to require that all individuals with security duties, including the CSO, acquire and maintain a TWIC. Coast Guard requests comment on whether owners/operators should also be required to obtain a TWIC, based on their access to sensitive security information (SSI). This proposal would also amend these sections to add knowledge requirements and responsibilities pertaining to TWIC to those already assigned to owners/operators, company security officers, OCS facility security officers, OCS facility employees with security duties, and all OCS facility employees. There are no formal training requirements in order to meet the TWIC knowledge requirements at this time. It is important that owners/operators and those with security duties be familiar with the technologies on the credential, particularly the imbedded features that make the credential resistant to tampering and forgery. Persons who will be examining TWICs at access control points should be familiar enough with its physical appearance such that variations or alterations are easily recognized.

It is important that security personnel at the access points to the OCS facility be familiar with alternate ways to reliably verify an individual's identity and his or her credential should the individual be unsuccessful using the primary means of verification (*e.g.*, fingerprint match). Personnel who will be required to resolve an individual's failure to electronically verify his or her identity should be familiar with all the possible reasons for the failure. For example, an individual may not be able to verify his identity against the biometric stored on the credential due to wear on the ICC itself, problems with the reader, wear on the individual's fingerprints, or because the individual is an imposter. Alternate procedures for addressing failures of an individual to verify his fingerprint against the information stored on the credential should be reasonably designed to discern between a legitimate user and an imposter. All other employees should be familiar with the TWIC topology, as well as the steps to take should their own TWIC become lost or stolen.

The heaviest burden has been placed on the owner/operator, who would be required to ensure that the TWIC program is implemented on board the OCS facility in accordance with the proposed regulations. This would include a new requirement that the owner/operator ensure that someone on the OCS facility know who is on the OCS facility at all times. It would also include a requirement that the owner/operator ensure that computer and access control systems and hardware are secure. The Coast Guard has placed a sample document in its docket (located at the places listed in the **ADDRESSES** section above) for this NPRM that outlines the proper standard of care to be used to protect these systems and hardware. We request comment on this standard of care, as well as on any associated costs to implement it.

33 CFR 106.230

Coast Guard proposes adding a new record-keeping requirement, mandating that owners/operators maintain records for two years of all persons who are granted access to the OCS facility. The requirement does not distinguish between those who were granted unescorted access because they carried a TWIC and those who were granted escorted access.

33 CFR 106.260

Coast Guard proposes amending this section to require the use of TWIC in the OCS facility's access control measures. This section would show the greatest changes as a result of TWIC implementation, and reflects a difficult compromise of many competing concerns, including our desire to preserve as much of the performance based standard as possible so that OCS facilities could tailor implementation to suit their individual operational needs while preserving the security enhancements provided by the TWIC credential.

TWIC provides for implementing graduated security measures by relying upon the three factor identification process for establishing a person's identity. This process consists of identifying (1) something the person has—a TWIC credential; (2) something the person knows—a Personal Identification Number (PIN), stored on

the integrated circuit chip (ICC) in the credential; and (3) something the person is—in the case of the TWIC, it will be the individual's fingerprint, which is also stored on the ICC of the credential. By requiring one or all of these factors before allowing access, owners/operators can make increasingly more secure decisions regarding individuals who are requesting access to the OCS facility.

Currently, most access control decisions are made relying on a ''flash pass.'' Individuals requesting entry are required to show identification that conforms to § 101.515 of subchapter H, which currently encompasses a broad spectrum of credentials, including driver's licenses from all 50 states. Many of these credentials are easily forged or altered, and the sheer diversity of appearances hampers security personnel's ability to recognize a forged or altered credential when it is presented.

Even when used as a flash pass, the TWIC provides greater reliability than the existing system because it presents a uniform appearance with embedded features on the face of the credential that make it difficult to forge or alter. When presented with a TWIC, security personnel familiar with its security features are immediately able to notice any absence or destruction of these features.

Nevertheless, our intent was to discourage the use of the TWIC as a flash pass for several reasons. While security personnel can reliably detect changes to the appearance of the credential or missing features, he or she cannot know whether or not the credential has been revoked by TSA, or other competent authority, merely by examining the surface of the credential. Furthermore, comparing the individual to the photo on the credential requires focused examination that is likely to suffer when security personnel are distracted or during particularly busy periods. This is the time that an unauthorized individual is most likely to attempt entry, and is most likely to breach a system that relies solely on the flash pass system. Finally, allowing owners/operators to rely solely on the flash pass system is unreasonable in light of the additional cost of the credential, and the available security enhancements that the increased cost represents.

Thus, Coast Guard proposes to require owners/operators to use at least one of the technical enhancements on the credential to electronically verify a person's identity and also requires verification that the credential remains valid, and has not been altered or counterfeited.

Implementation of TWIC will require that the owner/operator use different processes for identifying persons depending on whether or not the individual is requesting unescorted access. If the individual is requesting unescorted access, or will require it as part of their job responsibilities, the individual must have and maintain a TWIC.

For OCS facilities, Coast Guard proposes requiring uniformly that all of TWIC's security features be used to verify both the individual's claimed identity and that the credential remains valid each time an individual seeks unescorted access to the OCS facility. Thus, an owner/operator must ensure some means for completing an electronic verification that the individual's fingerprint is matched to the data stored on the ICC each time an individual seeks unescorted access to the OCS facility. This process will require that the individual have the TWIC in his/her possession, thus satisfying all three factors of the three factor authentication process.

In addition, the owner/operator will have to confirm that the TWIC remains valid. In order to know that the TWIC has not been revoked, some regular contact with TSA is required. The rule would not specify, however, how this contact shall be made, so as to leave as many options open as possible. (*See* discussion of ''using TWIC in an access control system'' above.) These steps performed together will detect to the highest degree of certainty whether the individual is the rightful bearer of the TWIC he or she holds, and whether or not it was duly issued and remains valid.

Persons presenting for entry who do not hold a TWIC would still be required to show an acceptable form of identification, as set forth in §§ 101.515 and 106.260(d), and would be required to be escorted if they are granted access to secure areas. Owners/operators are not required by the proposed changes to use the TWIC as their primary badging system. As much as practical, the rule proposes to retain the performance-based standards from the existing rule that allows owners/operators to establish identification systems that best suit their individual operational needs. If, however, owners/operators choose to rely solely on the TWIC as their badging system, the system should include a means for identifying non-TWIC holders. If owners and operators choose to use a separate badging system, it must be coordinated with the TWIC requirements in this part.

Other provisions that we thought were important to preserve related to coordinating access control measures and the TWIC implementation with vessels whenever possible, particularly as that would facilitate the movement of OCS facility employees using offshore supply vessels to gain access to the OCS facility. Any coordination must be outlined in the TWIC addendum.

Owners/operators are required to devise backup processes for making access control decisions when any part of the TWIC system fails, with particular attention paid to not creating greater vulnerabilities that can be leveraged by deliberately causing a failure of the system. Of particular concern is the occasion when an individual may not be able to match his or her biometric against the information stored on the ICC. While this could mean the person is not who he says he is, it is also possible that wear and tear on the reader, the ICC, or the person's fingerprint itself have caused the failure. In resolving these kinds of failures, security personnel should be well informed as to other reliable means of verifying identity, such as comparing the image of the individual that is electronically stored on the ICC to the person him or herself, or by having other authorized personnel vouch for his identity.

In keeping with the graduated scheme of the MTSA regulations, this NPRM proposes requiring increased use of the TWIC at higher MARSEC levels. At MARSEC level 1, the owner/operator would be required to ensure that the validity of TWIC credentials is verified against the latest information available from TSA on a weekly basis. At MARSEC level 2, the owner/operator would be required to ensure that the validity of TWIC credentials is verified against the latest information available from TSA on a daily basis. At MARSEC level 3, Coast Guard would require verification of an individual's PIN at each entry to the secure area.

The requirements at each MARSEC level are laid out in the table that follows.

| | Vessels | | Facilities | OCS facilities | U.S. flagged cruise ships |
|---|---|---|---|---|---|
| | Recurring unescorted access | Non-recurring unescorted access | | | |
| MARSEC 1 ..... | Facial recognition minimum each entry; card validity checked weekly with information ≤1 week old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤1 week old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤1 week old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤1 week old; recheck those continuously aboard weekly with most current information available from TSA. | 1 to 1 biometric match at each entry; card validity checked at each entry with most current information available from TSA. |
| MARSEC 2 ..... | Facial recognition minimum each entry; card validity checked daily with most current information available from TSA. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤ 1 day old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤ 1 day old. | 1 to 1 biometric match at each entry; card validity checked at each entry with information ≤ 1 day old; recheck those continuously aboard daily with most current information available from TSA. | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with most current information available from TSA. |
| MARSEC 3 ..... | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with information ≤ 1 day old. | | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with information ≤ 1 day old. | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with information ≤ 1 day old; recheck those aboard continuously daily. | 1 to 1 biometric match + PIN at each entry; card validity checked at each entry with most current information available from TSA. |

33 CFR 106.280

This section would be amended to require owners/operators to have the records of persons who have been granted access to the OCS facility (*See* § 106.230, discussed above) available after a security incident.

33 CFR 106.405

This section would be amended to require that when each OCS facility security plan (FSP) is reviewed and resubmitted for approval upon its 5-year anniversary date, it must incorporate the TWIC Addendum into all appropriate sections of the OCS FSP. Most of these changes should be reflected in the plan's section on access control.

*New Subpart E (33 CFR 106.500–106.510)*

Proposed §§ 106.500–106.510 are new and are intended to be temporary measures that will be phased out as existing plans are renewed according to the existing plan's expiration date. Rather than require owners/operators to resubmit their entire plan with the TWIC measures incorporated within, the rule would require a temporary TWIC addendum to be submitted. The addendum should be drafted in conjunction with the existing plan, reflecting all modifications that the TWIC rules require. Once approved, it should be attached to and maintained as part of the entire plan, and will be given the same expiration date as the existing plan. Upon expiration, the TWIC addendum should be seamlessly incorporated into the plan when it is renewed in accordance with the regulations in place at the time of renewal. Owners/operators may opt to resubmit their entire plan, with a list of sections amended, as their TWIC Addendum, but once approved it will carry the same expiration date as it had prior to amendment. Owners/operators are encouraged to submit the addendum via Homeport (*http://homeport.uscg.mil*).

Miscellaneous Items

The proposed changes outlined above would affect other sections within 33 CFR subchapter H, even though these sections would not be changed. Some of the greatest impacts are summarized below:

33 CFR 101.305

There are no proposed amendments to this section, but certain incidents involving TWICs would need to be reported as either a suspicious activity or breach of security. For example, under certain circumstances an individual's attempt to gain entry using an invalid TWIC (one that has been revoked or one that is counterfeit) may qualify as suspicious activity, even if that individual was denied access. Circumstance that trigger the reporting requirement in 101.305(a), are highly fact-specific and difficult to define comprehensively, but the general language found within that section (''activities that may result in a transportation security incident'') is a good guide.

If an owner/operator, or any other individual holding a TWIC, knows of a reason that an individual who holds a TWIC should have that TWIC revoked, the owner/operator should treat this as suspicious activity and report it as required in 101.305(a). The owner/operator may also deny the TWIC-holder access in this situation. Additionally, finding an individual who does not have a valid TWIC within a secure area would qualify as a breach of security, and should be reported as such pursuant to 101.305(b).

33 CFR 101.400

TSA, as the DHS entity responsible for conducting security threat assessments and issuing credentials under this rule, will have principal enforcement authority in regard to an individual's TWIC status for the misuse of a TWIC, including forgery,

counterfeiting, alteration or use of a TWIC by an unauthorized individual. The Coast Guard will work with TSA where abuses of the TWIC program are identified in the maritime sector. In addition, individuals who try to enter a facility or vessel using a stolen, forged, counterfeit, altered or otherwise unauthorized TWIC, and who are detected and turned away by the facility, may be subject to Coast Guard enforcement actions under 33 CFR 101.415 or other applicable Coast Guard authority, including, but not limited to, civil or criminal penalties.

An owner/operator is required to deny unescorted access to an individual who attempts to access a facility with a TWIC that has been revoked by TSA. Coast Guard is not asking owners/operators to take any additional steps, beyond current requirements, with respect to individuals who attempt unauthorized access to a facility. In such circumstances (*e.g.*, where an individual presents for entry at a facility with a TWIC that has been revoked by TSA or with a TWIC which the owner/operator has reason to believe is invalid due to forgery, adulteration, counterfeiting or possession by an unauthorized individual), however, the owner/operator is required to immediately report the matter to the Coast Guard and/or local law enforcement as required under 101.305.

33 CFR 104.130, 105.130, and 106.125

There are no proposed amendments to these sections. However, note that owners/operators of vessels, facilities and OCS facilities, regulated under parts 104, 105, or 106, respectively, may use the above-cited provisions to apply for waivers from the TWIC requirements. They also may suggest equivalents, under § 101.130. These requests should be made in accordance with the relevant provisions of parts 104, 105, or 106. The Coast Guard, however, will not be responsible for making determinations of requests for waivers from individuals required to obtain a TWIC. TSA is the only agency that may waive the requirement that an individual pass a security threat assessment. No one will be waived from the requirement to actually obtain a TWIC.

*33 CFR Subpart C, Parts 104, 105, and 106*

When it is time for a vessel, facility, or OCS facility to redo a security assessment, in concert with an update to a security plan, consideration of TWIC implementation must be part of the assessment. The TWIC program implemented by the vessel, facility, or OCS facility becomes part of the baseline security analyzed by the assessment.

*46 CFR Parts 10, 12, and 15*

In order to implement the MTSA mandate that all credentialed merchant mariners hold a TWIC, the Coast Guard is proposing to amend parts 10, 12, and 15 of title 46 to the CFR to require that any individual holding or working under an MMD or a license also hold a TWIC. Coast Guard, in a separate rulemaking published in today's issue of the **Federal Register**, is proposing to consolidate merchant mariner credentials to minimize duplicate or redundant identification or background check requirements.

## VI. Section-by-Section Analysis of TSA Proposed Rule

TSA proposes to amend and redesignate its existing hazmat regulations to apply those processes to a person who is eligible to obtain a TWIC. TSA does not reiterate substantive analyses of the hazmat provisions below if the standard is not changing, but instead directs the public to the section-by-section analysis of those sections contained in the interim final rule implementing the hazmat regulations at 69 FR 68720. Where standards that formerly applied only to HME applicants now apply to TWIC applicants, however, TSA provides substantive analyses below for the convenience of potential TWIC applicants.

The following is a discussion of the proposed changes to sections in title 49 of the CFR.

### 49 CFR Part 1515 Appeal and Waiver Procedures for Security Threat Assessments for Individuals

*49 CFR 1515.1 Scope*

TSA is proposing to redesignate §§ 49 CFR 1572.141 and 143 as new part 1515, Appeal and Waiver Procedures for Land and Maritime Workers to Subchapter A—Administrative and Procedural Rules. TSA developed the appeal and waiver procedures in part 1572 that currently apply to commercial drivers applying for an HME for additional transportation workers who may be subject to the security threat assessment requirement. These are the procedures TSA proposes to apply to TWIC applicants. In addition, TSA may use these procedures for other security threat assessments. For instance, TSA published a proposed rule on air cargo security that included security threat assessment requirements for certain individuals and an appeal procedure that is used currently for HME applicants. 69 FR 65258 (November 10, 2004). It makes more sense, organizationally, to place the appeal rules in a general section of the regulations.

The scope section states that the standards in part 1515 apply to an applicant who undergoes a security threat assessment and wishes to appeal an adverse decision or file a waiver request.

*49 CFR 1515.3 Terms Used in This Part*

This section lists definitions of terms that apply specifically to the appeal and waiver process. The term ''applicant'' is amended to include individuals applying for a TWIC, as well as individuals applying for an HME. The terms ''date of service'' and ''day'' are currently listed in the definition section of part 1572, and TSA proposes to move them to § 1515.3 without any change.

''Date of service'' means the date of personal delivery; the mailing date shown on a certificate of service; 10 days from the date of mailing, if there is no certificate of service; another mailing date shown by other evidence if there is no certificate of service or postmark; or the date of an electronic transmission showing when the document was sent.

TSA created this definition with mobile workers in mind, to accommodate the use of email or facsimile, and to provide a 10-day period from the date of mailing, rather than 5 or 7 days. The mariners, commercial truck drivers, train crew members, and other workers subject to the threat assessment requirements may travel from the East Coast to the West Coast on a regular basis, or be stationed away from home for days, weeks, or months at a time. We believe this definition makes the appeal process more reasonable for the group of workers affected.

The term ''day'' used in the NPRM means calendar day and is the same definition being used in part 1572 now.

*49 CFR 1515.5 Appeal Procedures*

TSA is proposing to use the substantive appeal standards that currently appear in 49 CFR 1572.141 for HME applicants for TWIC applicants, and proposes to expand the suspense deadlines. TSA has found in implementing the HME program that individuals making a good faith effort to comply with the timelines set forth in 1572.141 have difficulty doing so. Thirty days may not be adequate for workers who travel for extended periods during the month. Therefore, TSA proposes to extend response deadlines

from 30 to 60 days in the appeal process.

An individual may appeal an Initial Determination of Threat Assessment if he asserts that he meets all standards for the security threat assessment. For example, if the Initial Determination was based on information indicating the applicant is not lawfully present in the United States, but the applicant is a lawful permanent resident, he can appeal the Determination and provide TSA proof of lawful presence.

Paragraph (b) of this section sets forth the basic mechanics of the appeal process. An applicant initiates an appeal by providing TSA with a written request for the releasable materials upon which the Initial Determination was based, or by serving TSA with a written reply to the Initial Determination. Currently, if an applicant wishes to receive copies of the releasable material upon which the Initial Determination was based, he must serve TSA with a written request within 30 days after the date of service of the Initial Determination. TSA proposes to change this to 60 days after the date of service of the Initial Determination. Under the current provisions, TSA's response is due within 30 days. We propose to change this requirement so that the response would be due in 60 days. In response, TSA cannot provide any classified information, as defined under 6 CFR part 7 (DHS Classified National Security Information), or under E.O.s 12958, as amended by E.O. 13292 (68 FR 15315(Mar. 28, 2003)), and 12968, or any other information or material protected from disclosure by law.

If an applicant wishes to reply to the Initial Determination, we propose that he or she must provide TSA with a written reply within 60 days after the date of service of the Initial Determination or the date of service of TSA's response to the applicant's request for materials. The applicant should explain why he or she is appealing the Initial Determination and provide evidence that the Initial Determination was incorrect. In an applicant's reply, TSA will consider only material that is relevant to whether he or she meets the standards for the security threat assessment. If an applicant does not dispute or reply to the Initial Determination, the Initial Determination becomes a Final Determination of Threat Assessment.

Under paragraph (b)(3) of this section, an applicant has the opportunity to correct a record on which an adverse decision is based. As long as the record is not classified or protected by law from release, TSA will notify the applicant of the adverse information and provide a copy of the record. If the applicant wishes to correct the inaccurate information, he or she must provide written proof that the record is inaccurate. The applicant should contact the jurisdiction responsible for the inaccurate information to complete or correct the information contained in the record. The applicant must provide TSA with the revised record or a certified true copy of the information from the appropriate entity before TSA can reach a determination that the applicant does not pose a security threat.

The Director makes the Final Determination on appeals that involve disqualifying criminal offenses, mental capacity, and immigration status. However, in a case where an Initial Determination of Threat Assessment is based on the applicant's connection to terrorist activity or similar threat under § 1572.107, the Assistant Secretary of TSA reviews the appeal and makes the Final Determination. TSA has the Assistant Secretary review these cases to provide additional scrutiny because these cases will likely involve a review of classified information that the applicant cannot see. In addition, these applicants are not eligible for waivers if the Initial Determination stands. TSA believes that the review by the Assistant Secretary for these cases provides an additional protection that the agency's Final Determination of Threat is sound.

In considering an appeal, the Director or Assistant Secretary reviews the Initial Determination, the materials upon which the Initial Determination is based, the applicant's reply and other materials or information available to TSA. The Director or Assistant Secretary may affirm the Initial Determination by concluding that an individual poses a security threat. If this occurs, TSA serves a Final Determination of Threat Assessment on the applicant. Also, for cases involving mariners applying for a TWIC, TSA would provide the Coast Guard with the Final Determination. In cases involving HME applicants, TSA serves the licensing State with the Final Determination. For all TWIC applicants, TSA serves FMSC (who is also the Captain of the Port) with Final Determinations of Threat Assessment. DHS believes that the FMSC, as the chief Federal security officer at the port, should be aware of individuals who are denied a TWIC.

The Final Determination includes a statement that the Director or Assistant Secretary has reviewed the Initial Determination, the materials upon which the Initial Determination was based, the reply, if any, and other available information and has determined that the applicant poses a security threat.

There is no administrative appeal of the Final Determination of Threat Assessment. However, as explained below, an applicant may apply for a waiver under certain circumstances. For purposes of judicial review, the Final Determination of Threat Assessment constitutes a final TSA order.

Paragraph (e) sets forth the procedures to follow if TSA determines that the applicant does not pose a security threat. TSA serves a Withdrawal of the Initial Determination on the applicant and a Determination of No Security Threat on the issuing State for an HME applicant and on the Coast Guard when it involves a mariner applying for a TWIC.

Paragraph (f) provides that TSA cannot disclose to the applicant classified information, as defined in section 1.1(c) of E.O. 12958, as amended by E.O. 13292, and section 1.1(d) of E.O. 12968. *See also,* 6 CFR part 7. TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law, such as Sensitive Security Information (SSI); sensitive law enforcement and intelligence information; sources, methods, means, and application of intelligence techniques; and identities of confidential informants, undercover operatives, and material witnesses.

For determinations under § 1572.107, the finding that an individual poses a security threat will be based, in large part, on classified national security information, unclassified information designated as SSI, or other information that is protected from disclosure by law.

Classified national security information is information that the President or another authorized Federal official has determined, pursuant to E.O.s 12958, as amended, and 12968, must be protected against unauthorized disclosure to safeguard the security of American citizens, the country's democratic institutions, and America's participation within the community of nations. *See* 60 FR 19825 (April 20, 1995). E.O.s 12958, as amended, and 12968 prohibit Federal employees from disclosing classified information to individuals who have not been cleared to have access to such information under the requirements of that E.O. *See also,* 6 CFR part 7. If the Director determines that an applicant who is appealing the intelligence-related check is requesting classified materials, the applicant will not be able to access classified national security information.

The denial of access to classified information under these circumstances

is consistent with the treatment of classified information under the Freedom of Information Act (FOIA), which specifically exempts such information from the general requirement under FOIA that government documents are subject to public disclosure. 5 U.S.C. 552(b)(1).

SSI is unclassified information that is subject to disclosure limitations under statute and TSA regulations. *See* 49 U.S.C. 114(s); 49 CFR part 1520 as amended by 69 FR 28066 (May 18, 2004). Under 49 U.S.C. 114(s), the Assistant Secretary of TSA may designate categories of information as SSI if release of the information would be detrimental to the security of transportation. Information that is designated as SSI must only be disclosed to people with a need to know, such as those needing to carry out regulatory security duties. 49 CFR 1520.11 as added by 69 FR 28084–5. The Assistant Secretary has defined information concerning threats against transportation as SSI by regulation. *See* 49 CFR 1520.5. Thus, information that TSA obtains indicating that an applicant poses a security threat, including the source of such information and the methods through which the information was obtained, will commonly be designated SSI or classified information. The purpose of designating this information as SSI is to ensure that those who seek to do harm to the transportation system and their associates do not obtain access to information that will enable them to evade the government's efforts to detect and prevent their activities. Disclosure of this information, especially to an applicant specifically suspected of posing a threat to the transportation system, is precisely the type of harm that Congress sought to avoid by authorizing the Assistant Secretary to define and protect SSI.

Other pieces of information also are protected from disclosure by law due to their sensitivity in law enforcement and intelligence. In some instances, the release of information about a particular individual or his or her supporters or associates could have a substantial adverse impact on security matters. The release by TSA of the identities or other information regarding individuals related to a security threat determination could jeopardize sources and methods of the intelligence community, the identities of confidential sources, and techniques and procedures for law enforcement investigations or prosecution. *See* 5 U.S.C. 552(b)(7)(D), (E). Release of such information also could have a substantial adverse impact on ongoing investigations being conducted by Federal law enforcement agencies, by revealing the course and progress of an investigation. In certain instances, release of information could alert co-conspirators to the extent of the Federal investigation and the imminence of their own detection, thus provoking flight.

For the reasons discussed above, TSA will not provide any classified information to an applicant, and TSA reserves the right to withhold SSI or other sensitive material protected from disclosure under law. As noted above, TSA expects that information will be withheld only for determinations based on § 1572.107, which involve databases that list indicators of potential terrorist activity or threats. When the determination is based on the individual's criminal records, TSA expects that appropriate supporting records most likely can be disclosed to the applicant upon a written request to TSA. With respect to disqualifications based on immigration status, TSA will provide the applicant with the reason for a denial, but may not be able to provide specific documentation on the applicant's alien status.

TSA has the discretion to extend due dates both for an applicant and for the agency during the appeal process. An applicant must provide a written statement of good cause for extending the due date, within a reasonable time prior to the due date at issue. This is consistent with the rules of civil procedure. TSA anticipates that if an applicant is attempting to correct erroneous records or gather documents in support of a waiver request, the individual may need additional time for the appropriate governmental agency or entity to produce the documents. As long as the applicant provides a sufficient explanation of these problems, TSA will extend the time needed to complete the process. There are a variety of reasons or events that might require an extension of time, and TSA will review these requests liberally to give applicants as much time as is necessary to provide the correct information. Family needs and emergencies, business travel, extreme weather conditions, and lost documents are all considered legitimate reasons on which TSA would grant an extension of time to an applicant. In addition, an applicant's extension request does not have to be a formal document. A handwritten request for an extention of time in a letter to TSA is all that is required. The appeal process is designed for applicants to use without legal counsel and so informal written materials are always accepted.

There are also reasons for which TSA may need to extend a response date, particularly where an applicant is the subject of an ongoing investigation by another agency. This has been a rare circumstance with the hazmat threat assessment process, but it has occurred and undoubtedly will occur with TWIC applicants. TSA is not required under the hazmat rule or in this proposed rule, to provide notice to an applicant that TSA's response may be late. However, applicants may contact TSA to determine the status of an appeal. In the hazmat threat assessment process, TSA has an 800-number for drivers to call to ask questions about the appeal procedures and the status of a particular threat assessment. Typically, TSA is able to provide the requested information within one business day. This process will also be available for TWIC applicants.

Paragraph (i) of this section describes the procedure for appealing an immediate revocation of an HME under § 1572.13(a) or immediate invalidation of a TWIC under § 1572.21(d)(3). Immediate revocation occurs where TSA determines during the course of conducting a security threat assessment that sufficient factual and legal grounds exist to warrant immediate revocation of the HME. For a hazmat driver under these circumstances, the applicant must surrender the endorsement and cease transporting hazardous materials prior to initiating an appeal. For a TWIC, TSA would invalidate the TWIC in the TSA system. TSA understands that removing the individual from service without an opportunity to correct the record may have adverse consequences, but this mechanism will be used only in cases where the risk of imminent danger is significant and the adverse information is highly reliable. This procedure will also be used where an applicant should have surrendered the endorsement or TWIC and/or applied for a waiver, but failed to do so. The individual may appeal this decision, include all supporting documentation when he or she submits the appeal, and may request releasable documents from TSA.

*49 CFR 1515.7 Waiver Procedures*

This section applies to applicants who have been disqualified from holding or obtaining an HME or TWIC due to a disqualifying criminal offense or mental incapacity. The current standard, § 1572.143, applies to HME applicants and provides that an applicant with certain disqualifying offenses or issues of mental competence may apply for a waiver. In this NPRM, TSA proposes to use the same waiver procedures for TWIC applicants. We are

providing a discussion of this section to inform TWIC applicants, most of whom did not need to participate in the hazmat rulemaking where these sections were first discussed.

Waivers are offered because an applicant may be rehabilitated to the point that he or she can be trusted in sensitive or potentially dangerous work or has been declared mentally competent. The existing standard and this NPRM provide criteria that TSA considers if the individual does not meet the criminal history standards. TSA believes that these factors are good indicators that an individual may be rehabilitated to the point that a waiver is advisable. The factors are: (1) The circumstances of the disqualifying act or offense; (2) restitution made by the individual; (3) Federal or State mitigation remedies; (4) court records indicating that the individual has been declared mentally competent; and (5) other factors TSA believes bear on the potential security threat posed by an individual. Many of these factors are set forth in MTSA, at 46 U.S.C. 70105(c)(2).

TSA has concluded that some crimes, such as espionage, treason, sedition, a terrorist act, and a crime involving a transportation security incident, are so highly indicative of a security threat that individuals convicted of them pose an ongoing, unacceptable risk to transportation security. Most likely, these individuals will be incarcerated for a very long term, but the rule now makes clear that convictions for these crimes disqualify an individual for life, with no opportunity to apply for a waiver.

Individuals who are disqualified due to mental incompetence are eligible for a waiver. To support the waiver request TSA will accept a court order or official medical declaration showing that an individual previously declared incompetent is now competent. Generally, TSA will not grant waivers on the basis of a letter from a treating physician stating that the individual is capable of maintaining a job, because these submissions tend to be very subjective and vague. The standard in the rule states that an applicant is mentally incompetent if a court declares it or he or she is involuntarily committed to a mental hospital. Official documents that reverse these findings are necessary for TSA to grant a waiver.

TSA, however, does not grant waivers from the standards concerning immigration status or information discovered during a search under § 1572.107. With respect to immigration violations and findings under § 1572.107, individuals may appeal an Initial Determination based on assertions that the underlying records are incorrect, the applicant's identity is mistaken, or TSA's analysis of the records is not correct. However, if TSA finds that the Initial Determination is accurate, the individual is ineligible for a waiver.

After reviewing an individual's application for a waiver, TSA sends a written decision to the individual. If the waiver is granted, TSA sends a Determination of No Security Threat to the licensing State or Coast Guard within 60 days after the date of the individual's waiver application.

TSA proposes to add new requirements to paragraph (c) of this section to apply to HME and TWIC applicants. As originally conceived, HME applicants who know they have a disqualifying criminal conviction could apply to TSA for a waiver without initiaing the HME threat assessment process. Therefore, the applicants did not provide all of the biographic information or fingerprints required to conduct a full background check under Part 1572 or pay the full fee for the HME background check. However, in practice TSA would conduct a full background check in order to assess the waiver application properly. Under these conditions, TSA would not possess the best information about the applicant on which to base a waiver decision and did not recover the cost of completing the background check from the applicant. To ameliorate this situation, we propose to require all applicants who know they will be disqualified under the standards in Subpart B of part 1572 and want to apply for a waiver to undergo a full threat assessment for the HME or TWIC and pay all fees associated with the complete security threat assessment. TSA will be able to review all available information in considering an application for a waiver. TSA reviews these materials to ensure that the waiver applicant is being truthful concerning past criminal history and other pertinent activity before determining whether a waiver request should be granted. By requiring the fee and critical biographical information in the waiver submission, TSA will complete waiver evaluations more quickly and effectively. Otherwise, TSA must contact the waiver applicant to request additional information, wait for the information to be submitted and run the risk of missing critical information.

Finally, if legislation is enacted after publication of this proposed rule that would require TSA to adopt a program in which Administrative Law Judges may be used to review cases in which TSA has denied a waiver request, or other changes that would impact the waiver process, TSA will amend the final rule as appropriate to address such statutory mandates.

**49 CFR Part 1570 Land Transportation Security: General Rules**

*49 CFR 1570.3 Terms Used in This Part*

TSA proposes to move the definitions of the terms used for the security threat assessment standards from part 1572, Credentialing and Background Checks for Land Transportation Security to part 1570, Land Transportation Security: General Rules. Most of the terms have been through notice and comment in the hazmat rulemaking. TSA proposes to add definitions for terms used in the TWIC standards and amend some of the terms first promulgated in the hazmat rule.

We propose to change the definition of ''applicant'' to cover individuals who apply for any security threat assessment described in Subchapter D, rather than just individuals who apply for an HME.

The term ''Determination of No Security Threat'' is amended to clarify that such determinations apply both to the authorization to transport hazardous materials and to unescorted access to secure areas of maritime facilities and vessels. Also, TSA is amending the definition to add that TSA will notify the Coast Guard when issuing a Determination of No Security Threat for a mariner applying for a TWIC.

The definition for ''explosive or explosive device'' was published in the current hazmat rule at § 1572.3. TSA proposes to move the definition to § 1572.103 to make clear that the definition applies only to the term as it is used in the list of disqualifying criminal offenses. After publishing the hazmat rule in November 2004, TSA received comments asserting that the definition created confusion between the ''explosives'' that are hazardous materials under the federal hazardous material regulations and require placarding in transportation, and the crimes that involve explosives and are disqualifying. To resolve these questions, the definition now clearly applies only to § 1572.103, disqualifying criminal offenses. The kind of explosives offenses that are disqualifying are in 18 U.S.C. 232(5), 841(c)–(f), and 844(j), and a destructive device is defined in 18 U.S.C. 921(a)(4) and 26 U.S.C. 5845(f). The explosive material that requires placarding and triggers the requirement to obtain an HME continues to be defined in regulations issued by the U.S. Department of Transportation. 49 CFR 172.101.

TSA proposes to amend ''Final Determination of Threat Assessment'' to add that TSA will notify the Coast Guard when TSA determines that a mariner applying for a TWIC does not meet the security threat assessment standards. A Final Determination may not be administratively appealed.

TSA proposes to amend ''Initial Determination of Threat Assessment'' to also apply to issuance of a TWIC. An Initial Determination may be administratively appealed.

TSA proposes to amend ''Initial Determination of Threat Assessment and Immediate Revocation'' to extend it to the TWIC threat assessment process. This is an initial administrative determination that an applicant poses an imminent security threat and immediate revocation of an HME or TWIC is necessary. Applicants may appeal the determination after revocation has occurred. TSA issues an Immediate Revocation only where we believe the driver may pose an imminent threat to transportation, national security, or other individuals. This definition is provided to distinguish the notification documents used in an immediate revocation from the more common Initial Determination process.

''Invalidate'' means the action TSA takes when a TWIC is reported as lost, stolen, damaged, no longer necessary, or TSA determines the holder poses a security threat. This action makes the credential inoperative in access control systems.

TSA proposes to definition for the term ''owner/operator'' to refer to the maritime facilities and vessels subject to MTSA.

TSA proposes to delete the term ''pilot state'' from the definitions section because the process in which it was used is no longer in effect.

The definition for ''revoke'' or ''revocation'' is being amended to apply to the TWIC process as well as the HME process. It is the action TSA or a State takes to cancel, rescind, suspend, or deactivate an HME or TWIC when TSA determines that an applicant does not meet the security threat assessment standards set forth in § 1572.5.

TSA proposes to add a new term, ''secure area,'' which means the area on a vessel, maritime facility, or outer continental shelf facility where security measures have been implemented in a security plan approved by the Coast Guard. For purposes of TWIC, the secure area is the area in which a TWIC is required, unless under escort.

We propose to add a new term, ''sensitive security information'' to the definition section. This term means information that is described in and must be managed pursuant to the requirements codified at 49 CFR part 1520.

TSA is adding language to the definition of ''transportation security incident'' to reflect a new requirement in SAFETEA–LU. The statute requires TSA to make clear that a transportation security incident does not include work stoppage or other nonviolent action taken in an employee/employer dispute. Therefore, employees or employers who participate in a strike or other labor/management activity cannot be deemed to have committed a disqualifying offense under § 1572.103. TSA is also moving the definition to § 1572.103 to help clarify the kind of crime that is considered disqualifying.

TSA proposes to add a new definition for ''transportation worker identification credential.'' The TWIC is a Federally-issued biometric credential that TSA issues to an individual who has successfully completed a security threat assessment.

TSA proposes to add a new definition for ''TSA system'' to explain the electronic program used to sort, store, and send security threat assessment information to the appropriate database or enrollment center.

**49 CFR 1572 Credentialing and Background Checks for Land and Transportation Security**

*49 CFR 1572.5 Scope and Standards for Hazardous Materials Endorsement Security Threat Assessment*

This section describes the individuals and entities subject to the requirements in Subpart A and the standards they must meet. In addition, the general standards TSA uses to assess an individual in a security threat assessment.

Subpart A applies to State agencies responsible for issuing commercial drivers licenses and HMEs, applicants who hold or apply for an HME, and applicants who hold or apply for a TWIC.

The security threat assessment standards TSA applies to HME applicants and proposes to apply to TWIC applicants are established by statute. The USA PATRIOT Act and MTSA require TSA to review relevant criminal history, immigration status, and other watch lists and databases that TSA believes appropriate to make an informed security assessment. An applicant poses a security threat if convicted of certain serious crimes, is not lawfully present in the United States, has a connection to terrorist activity, or has been adjudicated as lacking mental capacity. The specific criteria TSA reviews to determine whether an applicant poses a security threat is described in Subpart B and is discussed in detail below.

We are proposing to add paragraph (d) to this section to establish a process by which TSA can determine if a security threat assessment completed by another government entity is comparable to the assessment required in part 1572. As noted above, SAFETEA–LU established several mandates for TSA concerning security threat assessment, one of which we address in this section. TSA must initiate a rulemaking to address the comparability of Federal background checks and eliminate redundant checks. TSA proposes to consider checks conducted by Federal, State, and local governmental bodies in the comparability assessment. TSA will evaluate all aspects of the agency threat assessment, including checks of relevant criminal history databases, immigration status, relevant intelligence and international databases, duration, identity verification and authentication, and the use of biometrics for credentialing.

It is important to note that TSA must adhere to its own security standards in evaluating other threat assessments. TSA intends to make a determination of comparability only where it is clear that the threat assessment of the agency applying for the determination includes all of the critical components of TSA's check. Many governmental bodies focus on factors that relate specifically to the work done by the agency when conducting a background check and therefore would not necessarily include a check of intelligence data or immigration status. Similarly, local and State agencies might not have conducted terrorist database checks. TSA most likely cannot issue a positive comparability determination in these cases.

The age of the threat assessment is another area that TSA will review carefully. For purposes of the threat assessment standards set forth in part 1572, a new threat assessment is required every five years. If TSA determines that another security threat assessment is comparable to part 1572 checks, then we must determine how long the check remains valid. For the most part, all checks would have to be renewed every five years. However, there may be circumstances under which the check would remain valid for a longer or shorter term, depending on other factors surrounding the breath of the threat assessment, such as whether perpetual checks are part of the assessment.

TSA plans to establish a verification process between TSA and participating agencies to ensure that only employees who have successfully completed a threat assessment through another agency are approved under TSA's comparability determination. TSA will strive to automate the verification process to reduce costs and processing time. TSA will establish rules governing the exchange of information between TSA and the participating agency, including appropriate Interface Control Documents (ICD). TSA may enter into Memoranda of Understanding (MOU) with other agencies if necessary.

TSA plans to notify the public of any determinations of comparability, unless otherwise prohibited by law or such a disclosure would reveal sensitive security information. TSA considered proposing that individuals, rather than agencies, could apply for a comparability determination, but has determined that the costs would increase substantially and the reliability of the information exchanged could be questionable. TSA proposes to notify the public when comparability determinations are made, to make certain that all individuals who are eligible are aware of the determination.

An applicant who completes a threat assessment that TSA determines to be comparable to the assessment set forth in part 1572, and wishes to apply for a TWIC to gain unescorted access to a secure area of a facility or vessel, would have to complete the enrollment process required for a TWIC and pay the corresponding fee to cover the cost of information collection and issuance of the credential. However, because a duplicate threat assessment would not be required, the applicant would not have to pay a threat assessment fee.

In making comparability determinations, TSA proposes to ''grandfather'' the comparable threat assessment for the period of time remaining before that threat assessment would expire. For instance, if an HME holder completed the threat assessment under part 1572 in October 2005 and applies for a TWIC in October 2006, TSA would issue the TWIC for the period of time remaining before the HME threat assessment expires. Therefore, the TWIC would show an expiration date of October 2010—five years from the date of the HME threat assessment.

TSA proposes to announce comparability determinations in this NPRM. First, an applicant who successfully completes the security threat assessment required for an HME would be deemed to have completed the threat assessment for a TWIC. The standards and period of validity are the same for an HME and a TWIC. However, if an HME holder wishes to apply for the TWIC credential to have unescorted access to secure areas of a facility or vessel, the applicant would complete the TWIC enrollment process and provide the biometric information for issuance of the credential.

Second, TSA deems the security threat assessment required to obtain a FAST card, as part of the Free and Secure Trade program administered by U.S. Customs and Border Protection (CBP), an agency within DHS, to be comparable to the security threat assessment set forth in part 1572. FAST is a cooperative effort among CBP and the governments of Canada and Mexico. Applicants from Canada, Mexico, and the United States may volunteer to undergo a background records check and if they complete it successfully, may receive expedited entrance privileges at the northern and southern borders, subject to other requirements. CBP conducts a fingerprint-based criminal history records check, name-based checks of pertinent intelligence databases, and a personal interview. Canada conducts a similar check for Canadian citizens. The FAST card and background check are valid for five years.

TSA invites comment on paragraph (d) from all interested parties. TSA invites other agencies and workers who may be affected by this section to propose different or additional standards to make this process as efficient and effective as possible. TSA urges all agencies interested in obtaining a comparability determination to contact TSA, not only with comments to the proposed rule, but also to inform TSA of the interest in seeking the determination. Please contact Assistant Program Manager, Attn: Federal Agency Comparability Check, Hazmat Threat Assessment Program, TSA–19, TSA, 611 South 12th Street, Arlington, VA 22202.

*49 CFR 1572.7 Waivers of Security Threat Assessment Standards*

This section describes the TWIC applicants who TSA proposes may apply for a waiver of the threat assessment standards. As we do with HME applicants, TSA proposes that TWIC applicants who have been convicted of certain criminal offenses and those who have been declared mentally incompetent in the past may apply for a waiver. Individuals convicted of treason, sedition, espionage, a crime involving a transportation security incident, and a crime of terrorism are not eligible for a waiver from TSA. TSA believes this is appropriate given the severity and level of risk these crimes reflect. For applicants who do not meet the immigration standards in § 1572.105, there is no circumstance or set of facts under which TSA would wish to suspend the application of the lawful immigration categories listed to issue a waiver. Additionally, if a TWIC applicant is disqualified under § 1572.107, the applicant should not be eligible for a waiver. Granting a waiver to an individual determined to pose a security threat would undermine the purpose of this rule and the statutes that gave rise to it.

*49 CFR 1572.9 Applicant Information Required for Security Threat Assessment for a Hazardous Materials Endorsement*

This section describes all of the identifying information an HME applicant must provide in order for TSA to complete the fingerprint- and intelligence-related checks. TSA is proposing one change in paragraph (g) relating to employer notification of adverse threat determinations. TSA proposes to add a statement to the application process, informing the applicant that TSA may notify the applicant's employer if TSA determines that he or she poses a security threat. TSA believes that applicants should be fully aware of TSA's authority and responsibility to provide employer notifications at the time of the threat assessment application.

*49 CFR 1572.11 Applicant Responsibilities for a Security Threat Assessment for a Hazardous Materials Endorsement*

This section describes the standards with which each HME applicant must comply and the actions the applicant must take in order to hold an HME. TSA is not proposing any changes to this section.

*49 CFR 1572.13 State Responsibilities for Issuance of Hazardous Materials Endorsement*

This section lists all of the responsibilities that the States must perform in order to ensure that only individuals who meet the security threat assessment standards receive a hazmat endorsement. TSA is not proposing any substantive changes to this section, except to remove sunset provisions. Former paragraph (b) included compliance dates that have passed and so are not necessary to reference in rule text. Former paragraph (c) permitted a State to apply to be a ''Pilot State'' prior to January 31, 2005 and is no longer necessary. Former paragraph (f) required

States to submit a declaration by December 27, 2004 if the State wanted to conduct fingerprint collection, and is no longer necessary.

*49 CFR 1572.15 Procedures for Security Threat Assessment for an HME*

TSA is not proposing to make any changes to this section. This section describes the security threat assessment process in detail, and provides that no State can issue an HME unless the steps outlined in this section have been completed.

*49 CFR 1572.17 Applicant Information Required for the Security Threat Assessment for TWIC*

TSA is proposing this new section to require TWIC applicants to provide biographic and biometric information necessary for TSA to conduct a comprehensive security threat assessment. This proposed section is nearly identical to § 1572.9, Applicant information required for the security threat assessment for an HME. However, in this section, TSA proposes to require the applicant to explain his or her need for a TWIC. Paragraph (a)(10) states that the applicant must provide his or her job description and the facility, vessel, or port where the applicant requires unescorted access, if it is known. Paragraph (a)(11) asks for information concerning the applicant's employer, if known. Paragraph (f) proposes to require each TWIC applicant to certify that he or she needs unescorted access to secure areas of maritime facilities as part of their employment duties, or that he or she is a merchant mariner.

TSA is proposing these requirements to limit TWIC to individuals with a legitimate need to enter secure areas of maritime facilities. First, TSA has authority to conduct threat assessments on individuals only in furtherance of its transportation security authorities. We cannot conduct security threat assessments on persons who have no such nexus. This principle is consistent with security standards in other modes of transportation. For instance, in aviation, each airport operator determines which individuals need unescorted access to the secure area of the airport, and the airport conducts a background check and provides a credential to those individuals. TSA has no employment or business relationship with the TWIC applicant and so we propose to obtain a minimum level of information from the applicant to avoid conducting security threat assessments and providing a tool for accessing facilities to any individual who may have a criminal motive or casual interest in the facility. Ultimately, the facility owner controls the individuals that are given unescorted access through the access control system, but TSA believes some sort of minimal filter is advisable to restrict TWIC to those who have a need for it. TSA also believes this may prevent an unscrupulous employer who has no connection to a facility or vessel from using the TWIC threat assessment process as a free suitability assessment in making hiring decisions. TSA does not intend for this provision to adversely impact an employee who is seeking employment in the maritime industry and applies for a TWIC to increase his or her marketability. These applicants should be able to articulate the facility, vessel or port where they may seek employment, which would satisfy paragraph (a)(10).

*49 CFR 1572.19 Applicant Responsibilities for a Security Threat Assessment for TWIC*

In this section, we propose the basic duties a TWIC applicant must comply with to satisfy the rule. Paragraphs (a) and (b) propose a timeline for enrollment for TWIC applicants. As currently envisioned, enrollment of the current population subject to this rule will be accomplished three phases:

| | Start date | End date |
|---|---|---|
| Group 1 | Effective date of rule ..... | Not later than 10 months after effective date of rule. |
| Group 2 | After Group 1 ..... | Not later than 15 months after effective date of rule. |
| Group 3 | After Group 2 ..... | Not later than 18 months after effective date of rule. |

We believe that a staggered rollout is the most efficient way to implement a program of this size and complexity. TSA and the Coast Guard plan to focus resources consistent with the schedule above and complete each grouping as quickly as possible. The length of the enrollment period at each port will vary depending on port population, with the requirement that enrollment at all regulated facilities and vessels must be completed within 18 months after the effective date of the final rule. TSA and Coast Guard also are contemplating implementing a more flexible rollout, with anticipated dates to be announced by notices published in the **Federal Register**. The timetable proposed in the rule does not include actual credential issuance. Once the enrollment process is complete for an applicant, the time required to complete the threat assessment and have the credential ready to issue will typically be 30 days.

As proposed, each FMSC, with input from the AMS Committee, would establish his/her own plan for scheduling enrollment to ensure a steady flow of enrollees, prevent long lines, and avoid disrupting commerce. TSA plans to establish enrollment times that are consistent with normal port operations. To allow flexibility and service the maritime population effectively, TSA will deploy permanent and mobile enrollment centers. Enrollment workstations will be fielded at larger ports in sufficient quantity to complete the enrollments within the required timeframe, assuming reasonably steady enrollment rates. The strategic placement of the enrollment stations will accommodate port management and operational requirements, and satisfy new enrollments and replacement of lost or stolen credentials.

Paragraph (b) of this section discusses the enrollment of mariners. Mariners who hold an MMD or License can enroll in TWIC pursuant to the schedule in paragraph (a). However, these applicants are not required to undergo the criminal history records portion of the TWIC security threat assessment if they received an MMD after February 3, 2003 or a License after February 13, 2006. These applicants must provide the information necessary for enrollment, including biometric information, and obtain the credential. These MMD and License applicants have completed a full security background check performed by the Coast Guard, including review of criminal records for all crimes listed in 46 CFR 10.201 or 46 CFR 12.02–4. These include terrorism offenses, acts of sabotage, and espionage. In addition, the Coast Guard safety and security evaluation analyzes several data sources that contain intelligence information and includes a verification of immigration status.

We have agreed to eliminate the requirement for a criminal history records check for this portion of the merchant mariner population to prevent redundancy and reduce costs for applicants and the government. Mariners who have already had their background fully vetted by the Coast

Guard are not required to undergo the full TWIC security threat assessment described in part 1572 for their first TWIC, as long as their MMD or License is current. TWICs issued in accordance with these procedures will expire five (5) years after the date of the Coast Guard security threat assessment, and align with the expiration date of the MMD or license, as applicable. Although a mariner may opt to undergo the full security vetting and be issued a TWIC that is valid for the full 5-year period, this is not required for the mariner population who have an MMD issued after February 3, 2003 or a License issued after January 13, 2006.

In paragraphs (c)–(e) we propose the same standards that currently apply to HME applicants. TWIC holders would be required to surrender the TWIC to TSA if TSA determines that the holder poses a security threat, and have a continuing obligation to report a disqualifying event to TSA. In addition, TWIC applicants would be required to submit the biometric and biographic information required in § 1572.17 and the security threat assessment fee to TSA once every five years.

Paragraph (f) addresses lost, stolen, or damaged credentials. To minimize fraud and prevent unauthorized individuals from entering the secure areas, TWIC holders must report lost or stolen credentials to TSA as soon as the holder loses possession of the credential. TSA would then invalidate the credential number in the TSA system to prevent it from being used in an access control system. Employees will pay a fee for the cost of the replacement credential, but we do not currently plan to require a new threat assessment. The expiration date on the replacement credential will be the same as the expiration date on the original card.

If a TWIC holder finds that the credential no longer operates as intended in the access control system, he or she should report it and go to an enrollment center to determine the cause of the malfunction. Unless there is an inherent defect in the credential, the holder will be charged a fee of $36 for a replacement credential.

*49 CFR 1572.21 Procedures for Security Threat Assessment for a TWIC*

This section outlines the procedures TSA, applicants, and owners/operators would follow in completing the security threat assessment. These procedures are nearly identical to the procedures followed in the HME process. However, where TSA notifies a State of a Final Determination of Threat Assessment, Determination of No Security Threat, or an Immediate Revocation in an action involving an HME, TSA would notify the Coast Guard with respect to a TWIC applicant who is a mariner. TSA provides this information to the Coast Guard because TSA's final determination bears on the mariner's credential. If the mariner is not eligible for a TWIC, the Coast Guard will not issue the mariner credential. Also, TSA will notify the FMSC of TWIC revocations and denials. As the chief governmental security officer at a port, the FMSC should be aware of an applicant who is denied a TWIC or has a TWIC that has been revoked.

*49 CFR 1572.23 Conforming Equipment; Incorporation by Reference*

Each owner/operator required to have access control systems and equipment, including card readers, in conjunction with TWIC, must meet TSA-approved standards. These readers shall conform to referenced industry standards employed by TSA for secure identity credentials. TSA plans to incorporate these standards by reference in the final rule. These standards are listed in proposed § 1572.23. Copies of these standards may be obtained through the Web sites and addresses listed in proposed § 1572.23.

*49 CFR 1572.24–40 [Reserved]*

*49 CFR 1572.41 Compliance, Inspection and Enforcement*

In this section, TSA proposes standards requiring owners/operators to permit TSA personnel to enter the secure areas of maritime facilities to evaluate, inspect, and test for compliance with the standards in part 1572.

These proposals are standard and necessary for TSA to exercise its oversight and enforcement responsibilities over trusted agents, the enrollment process, and the performance of the credential in a variety of circumstances. TSA will be subject to audits and reporting requirements on the TWIC threat assessment and credentialing system that require visual and operational assessments that necessitate access to facilities and vessels. TSA will work cooperatively with owners/operators to minimize adverse impacts on normal operations.

*49 CFR 1572.101 Scope*

TSA is amending this section to add TWIC applicants to the group of individuals subject to the threat assessment standards. Also, TSA is adding paragraph (a) to this section to acknowledge that hazmat drivers are subject to additional standards issued by the Federal Motor Carrier Safety Administration and the State that issues the commercial driver's license, including safety requirements, immigration status and criminal history standards.

*49 CFR 1572.103 Disqualifying Criminal Offenses*

TSA proposes to adopt the list of criminal acts that disqualify an applicant from holding an HME under 49 CFR 1572.103 for TWIC applicants. In addition, TSA proposes to make one substantive and several administrative changes to this section, as it applies to HME and TWIC applicants. TSA is moving the definitions of ''explosive,'' ''firearm,'' and ''transportation security incident'' from § 1572.3 to § 1572.103, where the terms are used. This should help to eliminate uncertainty about the crimes that are disqualifying. In addition, TSA is adding clarifying language concerning the kind of activity that constitutes a ''transportation security incident.'' As required in SAFETEA–LU, the definition now makes clear that nonviolent labor-management activity is not considered a disqualifying offense. TSA also adds paragraph (a)(1) to the scope of this section acknowledging that hazmat drivers are subject to other standards issued by the Federal Motor Carrier Safety Administration and the State that issues the driver's commercial license and hazmat endorsement.

TSA is proposing a substantive change to this section concerning the crimes of treason, sedition, espionage, and terrorism listed in § 1572.103(a), which are permanently disqualifying. Applicants convicted of these crimes are not eligible for a waiver. TSA is adding conspiracy to commit these crimes to the list of crimes that are not subject to a waiver request. TSA has determined that a conviction of conspiracy to commit espionage, treason, sedition, or terrorism are indicative of a serious, ongoing, unacceptable risk to security and should not be waived under any circumstances. This change applies to HME and TWIC applicants.

Paragraph (d) describes how an arrest with no indication of a conviction, plea, sentence or other information indicative of a final disposition must be handled. TSA proposes to change the time allowed for an applicant to provide correct records from 30 days to 60 days. The individual must provide TSA with written proof that the arrest did not result in a conviction of a disqualifying criminal offense within 60 days after the date TSA notifies the individual. If TSA does not receive such proof in 60 days, TSA notifies the applicant that the he or

she is disqualified from holding an HME or a TWIC.

TSA is considering whether to change the list of disqualifying criminal offenses and invites comment on this matter. TSA received comments on this list following publication of the November 2004 hazmat rule, particularly concerning crimes with explosives. Commenters suggested that possession of explosives should not be disqualifying if the conviction results from previous criminal activity, perhaps nonviolent, that makes any subsequent possession of an explosive or firearm a felony. Also, commenters suggested that explosives convictions should be disqualifying only when the crime involves explosives in the amount and packaging that require placarding in transportation.

Even assuming TSA agrees with these suggested changes, the current criminal recordation system does not include the level of detail these distinctions require. Often, criminal rap sheets list only the statute violated, which may or may not include ''explosives'' in the title. Rarely, if ever, would a rap sheet include specific facts about the amount or type of explosive involved, or whether the conviction is based on a previous underlying conviction that prohibits contact with explosives. These are the kind of facts TSA can and does evaluate during a request for a waiver, where the applicant provides background information surrounding the conviction and any mitigating information. TSA invites comment on this and any other issue related to disqualifying criminal offenses, in which the public believes TSA can improve the process.

TSA may amend § 1572.103 as it applies to TWIC and HME applicants. Any amendment to the list of disqualifying crimes will apply equally to TWIC and HME applicants.

*49 CFR 1572.105 Immigration Status*

The immigration standards in this section currently apply to HME applicants, with the exception of paragraph (a)(2)(iv), which is a new proposal. TSA now proposes to apply the entire section to TWIC applicants.

TSA proposes to add a new paragraph to permit certain drivers licensed in Canada or Mexico who frequently deliver goods to facilities and vessels to meet the immigration standards for holding a TWIC. These drivers are admitted to the United States under a North American Free Trade Agreement (NAFTA) implementation visa category. 8 CFR 214.2(b)(4)(i)(E). These drivers are lawful non-immigrants, doing business in the United States, but are not ''working in'' the United States for purposes of the immigration laws. These individuals do not possess (nor are they required to possess under this particular visa category) specific documentation authorizing them to work in the United States for a specified time, as is required of other lawful nonimmigrants applying for a TWIC under paragraph 1572.105(a)(3)(i)-(iii). This proposed paragraph is intended to cover the significant number of commercial drivers regularly entering the United States to deliver food and other products to a port or vessel. Requiring these drivers to enter the access control portion of the port under escort would interfere with normal port operations and could potentially adversely affect other businesses on the port. This proposal would not have any impact on existing requirements that must be met to receive a visa under 8 CFR 214.2(b)(4)(i)(E).

TSA invites comment on this proposal from all interested parties.

*49 CFR 1572.107 Other Analyses*

This section of TSA's HME rule currently applies to HME applicants and we are proposing to apply it to TWIC applicants. MTSA requires that TSA disqualify an individual that ''poses a terrorism security risk to the United States.'' For checks under this section for the HME process, TSA accesses relevant international databases, such as Interpol-U.S. National Central Bureau, and other appropriate sources of information on terrorists and terrorist activity, violent gangs, fugitives from justice, and international criminal records. These sources are also appropriate for TWIC applicants.

Paragraph (c) states that TSA may determine that an individual poses a security threat if TSA's search reveals an extensive or very serious domestic or foreign criminal history, conviction for serious crimes not listed in § 1572.103, or an extensive period of imprisonment, foreign or domestic, exceeding 365 consecutive days. TSA placed this language in the hazmat rule to clarify the full application of this section and to provide sufficient notice to the public that there may be cases in which an applicant's criminal record includes convictions for serious crimes that are not specifically listed in § 1572.103, but may be disqualifying. Also, if an applicant has been imprisoned for more than a year, which is generally indicative of a serious offense or a long history of criminal activity, TSA may determine that the applicant poses an unacceptable security threat.

As TSA noted in the hazmat rulemaking, we cannot possibly list all of the offenses or other information that may be relevant to determining whether an individual poses a security threat that warrants denial of an HME. TSA has discretion to carry out the intent of MTSA and the USA PATRIOT Act and assess threats to transportation and the Nation, where the intelligence and threats are so dynamic. TSA understands that the flexibility this language provides must be used cautiously and on the basis of compelling information that can withstand judicial review. TSA invites comment on this section.

*49 CFR 1572.109 Mental Capacity*

The explosives laws prohibit individuals who have been adjudicated as lacking mental capacity from transporting explosives. The hazmat rule currently provides that any person who has been determined to lack mental capacity does not meet the standards for a security threat assessment. We propose to extend this qualification standard to TWIC applicants.

An individual lacks mental capacity, for purposes of this NPRM, if he or she has been committed to a mental health facility or has been adjudicated as lacking mental capacity. An individual is adjudicated as lacking mental capacity if a court or other appropriate authority determines that the individual is a danger to himself or herself, or lacks the mental capacity to manage his or her affairs. An individual is ''committed to a mental health facility'' if formally committed by a court; this term does not refer to voluntary admissions to a mental institution or hospital.

**Subpart E—Fees for Transportation Worker Identification Credential**

*A. TWIC Maritime Population Estimation Methodology*

TSA conducted an analysis of the maritime population to determine the necessary fee level for the TWIC threat assessment, including enrollment; adjudication, appeals and waivers; and issuance of the credential. TSA estimates that during initial rollout of the program, it will issue TWIC credentials to approximately 750,000 workers requiring regular, unescorted access to secure areas of MTSA-regulated facilities. This figure is the product of survey and analysis work by TSA and Coast Guard personnel, using information provided by individual ports, public and private-sector data sources, interviews with sector subject-matter experts, and extrapolation from survey responses.

In developing this estimate, TSA first identified a wide array of worker categories at MTSA-regulated facilities

that would most likely to be required to carry a TWIC. This list evolved during the course of TSA's rulemaking process, both to reflect new information as well as consultations with Coast Guard and maritime industry representatives. The list of major port-related personnel subject to TWIC requirements is as follows:

- Cruise Workers (Land-Based Only)
- Liquid Bulk Refining/Processing Workers
- Longshoremen
- Merchant Mariner Document or License Holders
- Off-Shore Liquid Bulk Workers (*i.e.* MODUs)
- Rail Workers
- Shipyard Workers
- Site Management/Administration Workers
- Truck Drivers
- Vessel Operations/Port Support Workers
- Contractors/Other

The 750,000 figure was derived from analyzing each of these employment segments using a number of approaches and resources. First, TSA and Coast Guard conducted a maritime population survey during late 2004 and early 2005. TSA and Coast Guard interviewed management officials from 45 ports across the United States, covering many of the nation's largest cargo operations.[5] We asked senior port managers and security officers to estimate the number of workers requiring regular unescorted access to their ports, subdivided into distinct employment categories. To enable comparisons between ports and estimate the range of labor required to load/unload/transport a specific volume of freight, port officials also estimated tonnage and twenty-foot equivalent units (TEU) statistics by cargo type for their ports, such as container, liquid bulk, dry bulk, and roll-on/roll-off (''ro-ro'').

This data was utilized to generate four geographically-diverse extrapolation scenarios, each approximating the nationwide distribution of different cargo types.[6] TSA and Coast Guard used this approach to minimize the impact of the significant variation it found in labor intensiveness across ports, and to incorporate a broader array of port data in TSA's calculations. TSA and Coast Guard believe that this method yielded reliable port worker population estimates in the following categories:

- Site Management/Administration (70,000)
- Vessel Operations/Port Support (50,000)
- Rail (10,000)
- Contractors/Other (70,000)

TSA and Coast Guard also used industry-based employee research to complement the maritime population survey. The agencies believe that the survey did not produce sufficiently accurate worker counts for longshoremen and port truckers in particular, because employees in these classes sometimes work at multiple facilities and thus were likely double-counted in the TSA/Coast Guard survey data. For this reason, industry-wide estimates of port truckers and longshoremen were substituted for the agencies' initial survey data involving these sectors.

The total longshoremen estimate (60,000) was reached by aggregating data from labor unions and port management organizations.[7] The port trucker estimate (110,000) was developed using the 2002 (latest available) Vehicle Inventory and Use Survey (VIUS) of the U.S. Census Bureau, isolating respondent populations with common port container trucker characteristics. Additionally, an estimate for non-container drivers was based on a consensus percentage of the total VIUS survey data from trucking subject-matter expert interviews.[8] [9]

TSA and the Coast Guard also conducted employment category research with leading maritime associations and other relevant organizations to account for MTSA-regulated maritime population segments that the agencies believe were either not represented or under-represented in its maritime population survey. These segments include:

- Barge Operators (30,000) [10]
- Land-Based Cruise Personnel (15,000) [11]
- Liquid Bulk Refining/Processing (80,000) [12]
- MODU/Offshore Liquid Bulk (30,000)[13]
- Shipyard (55,000) [14]

Finally, TSA and the Coast Guard integrated the Coast Guard's operational data for merchant mariners. The National Maritime Center (NMC)—which provides credentialing, training, and certification services to all merchant mariners—lists 204,835 domestic MMD and MML holders.[15] While no reliable data exists on the overlap between MMD holders and active land-based port workers, representatives of NMC and TSA arrived at a rough estimate of 35,000. Thus, the net active estimate for MMDs who will require TWICs is ~170,000 (205,000–35,000 overlapping MMDs counted among other categories).

The aggregate results of TSA/Coast Guard maritime employment population research are summarized in the table below:

[5] Ports surveyed (in whole or in part) include: Baltimore, Beaumont, Boston, Brownsville, Brunswick, Burns Harbor, Charleston, Cleveland, Duluth-Superior, Gulfport, Houston, Jacksonville, Lake Charles, Long Beach, Los Angeles, Miami, Milwaukee, Mobile, Morehead City, New Orleans, New York/New Jersey, Oakland, Palm Beach, Panama City, Pascagoula, Pensacola, Philadelphia, Port Arthur, Port Canaveral, Port Hueneme, Port Manatee, Portland (ME), San Diego, San Francisco, Savannah, Seattle, South Louisiana, Tampa, Texas City, Toledo, Virginia Ports (Newport News, Norfolk, Portsmouth), Wilmington (DE), and Wilmington (NC).

[6] The TSA Office of Revenue and MARAD representatives jointly cooperated on a cargo type interpretation of U.S. Army Corps of Engineers Waterborne Commerce data, producing a single normalized basis for extrapolation projections: 49% liquid bulk, 9% container, 41% dry bulk/break bulk, 1% ro-ro.

[7] Sources consulted by TSA include the Pacific Maritime Association, United States Maritime Alliance, International Longshoreman's Association, and International Longshoremen and Warehouse Union.

[8] Sources consulted by TSA include (but are not limited to) the American Trucking Association, Owner-Operator Independent Drivers Association, International Brotherhood of Teamsters (Port Division), and academic subject-matter experts from the University of Michigan, University of Minnesota-Morris, and California State University at Long Beach.

[9] According to subject-matter experts consulted by TSA, the vast majority of port truckers (~80%) drive containers. Thus, TSA estimated non-container port truckers to be 20% of the total population. Common characteristics of this sector include: independent owner-operator status, for-hire employment basis, high proportion of short hauls (less than 100 miles).

[10] Based on sector data provided by American Waterways Operators.

[11] Extrapolation based on Maritime Population Survey population data and International Council on Cruise Lines (ICCL) market share information.

[12] MTSA-regulated refinery estimate (35,000–40,000) reflects National Petrochemical and Refiners Association (NPRA) Injuries and Illness Survey data. Other liquid bulk numbers are extrapolations based on MTSA-regulated facility population data in the EPA Risk Management Database.

[13] Based on sector data provided by the Minerals Management Services of the U.S. Department of Interior. Only MTSA-regulated offshore facilities are included.

[14] Based on data provided by MARAD's Office of Shipbuilding and Marine Technology. Sources consulted by TSA include (but are not limited to) the American Shipbuilding Association and Shipbuilders Council of America. Only MTSA-regulated shipyards are included.

[15] Date is as of June 2005. Includes both MMDs and other license holders to be covered by TWIC.

| Maritime employment sector | TSA/Coast Guard population estimate [1] |
|---|---|
| MMD and License Holders | 205,000 |
| MMD/License Overlap with Other Worker Categories | −35,000 |
| Port Truck Drivers | 110,000 |
| Liquid Bulk Refining/Processing | 80,000 |
| Site Management/Administration | 70,000 |
| Contractors/Other | 70,000 |
| Longshoremen | 60,000 |
| Shipyards | 55,000 |
| Vessel Operations/Port Support | 50,000 |
| MODU/Offshore Liquid Bulk | 30,000 |
| Barge Operators | 30,000 |
| Land-Based Cruise | 15,000 |
| *Rail Workers* | *10,000* |
| Total TWIC Initial Maritime Population | 750,000 |

[1] Population estimate is for those persons requiring regular unescorted access to secure areas of MTSA-regulated facilities.

TSA and Coast Guard have set an 18-month TWIC enrollment period for MTSA-regulated facilities and vessels beginning in the final month of FY06, with the majority of enrollments occurring in FY07 and completion by mid FY08. The enrollment plan assumes that workers at the largest U.S. ports are enrolled first, and those at small and rural locations will be completed toward the end of this cycle. TSA estimates a 1% population growth per year, not including worker turnover, in which individuals leave the port worker population and are replaced by new port workers.[16] Accounting for this annual population growth net of turnover, (or ''net population growth''), results in an 18-month initial enrollment population of approximately 758,000.

1. Recurring Population

TSA estimates that approximately 12 percent of port workers will leave the port labor force every year and thus will be replaced by new workers who will require a TWIC. This estimate is derived from TSA and Coast Guard's informal port population survey efforts and related anecdotal evidence. Given that the port population segments discussed above are extremely diverse in operations and demographics, TSA expects this annual turnover will not be consistent across all categories or locations. Assuming a 12 percent annual rate and 1 percent net population growth per year, TSA estimates a five-year total turnover of approximately 410,000.

TSA also estimates that 8 percent of port workers will lose or damage their TWIC credentials each year. This estimate is derived from anecdotal evidence from other Federal credentialing programs. Assuming an 8 percent annual rate and 1 percent net population growth per year, TSA estimates five-year lost/damaged credential totals of some 273,000.

2. Five-Year Enrollment Population

Based on these calculations, TSA estimates total five-year TWIC enrollments (initial enrollments, including annual net population growth, plus job turnover enrollments), of approximately 1,168,000. This estimate does not include the lost/damaged card replacement estimate of 273,000 over five years.

*B. Proposed Fee*

To comply with the mandates of Section 520 of the 2004 DHS Appropriations Act, TSA proposes to establish user fees for individuals who apply for or renew a TWIC, and thus are required to undergo a security threat assessment in accordance with 49 CFR part 1572. TSA proposes to establish a new user fee (with two components), separate from the fee the FBI charges to check its criminal history records databases.[17]

First, TSA proposes an Information Collection/Credential Issuance Fee to cover the costs of collecting the biometric and biographic information, transmitting the information to the appropriate process or location, and issuing the credential. Second, TSA proposes a Threat Assessment/Credential Production Fee to cover TSA's costs to perform and adjudicate security threat assessments; administer the appeal and waiver process; conduct program oversight; and produce the credential. Third, TSA proposes a fee to cover the cost of creating a new credential to replace a lost, stolen, or damaged credential. Based on the information currently available to the agency, TSA proposes the following fees: an Information Collection/Credential Issuance Fee ranging from $45–$65; a Threat Assessment/Credential Production Fee of $50–$62; and a Credential Replacement Fee of $36. The FBI currently charges a fee of $22 for the criminal history records check, which is also collected whenever a security threat assessment is required.

Pursuant to the Chief Financial Officers Act of 1990, DHS/TSA is required to review these fees no less than every two years. 31 U.S.C. 3512. Upon review, if it is found that the fees are either too high (*i.e.*, total fees exceed the total cost to provide the services) or too low (*i.e.*, total fees do not cover the total costs to provide the services), the fee will be adjusted. In addition, TSA may increase or decrease the fees described in this regulation for inflation following publication of the final rule. If TSA increases or decreases the fees for this reason, TSA will publish a Notice in the **Federal Register** notifying the public of the change.

1. Information Collection/Credential Issuance

The security threat assessment process requires all applicants who apply for or renew a TWIC to submit their fingerprints and biographic

[16] Population growth estimate derived from the Bureau of Labor Statistics' (BLS) National Employment Matrix, which estimates growth in the ''Transportation and Warehousing'' sector of the economy at 1.1 percent

[17] The FBI is authorized to establish and collect fees to process fingerprint identification records and name checks for non-criminal justice, non-law enforcement employment and licensing purposes that may be used for salaries and other expenses incurred in providing these services. *See* Title II of Pub. L. 101–515, November 5, 1990, 104 Stat. 2112, codified in a note to 28 U.S.C. 534.

information at a TSA-approved enrollment facility. The same enrollment facility will handle credential issuance to the applicant after successful completion of the threat assessment process. TSA will hire a contractor agent to provide these services. Based on TSA's research of the costs of both commercial and Government fingerprint and information collection services, as well as a prior competitive bidding and acquisition process for similar (but less extensive) services in support of TSA's HME program, TSA estimates that the per applicant cost to collect and transmit fingerprints and other required data electronically is likely to be between $45 and $65. This fee also includes the costs for related administrative support, help desk services, quality control, credential distribution and related logistics.

2. Threat Assessment/Credential Production

For the TSA security threat assessment and credential production process, each applicant's information will be checked against multiple databases and other information sources so that TSA can determine whether the applicant poses a security threat that warrants denial of a TWIC. The threat assessment includes an appeal process for individuals who believe the records upon which TSA bases its determination are incorrect. In addition, TSA will administer a waiver process for applicants denied a TWIC due to criminal activity or mental incompetence.

TSA must implement and maintain the appropriate systems, resources, and personnel to ensure that fingerprints and applicant information are appropriately linked, and that TSA can receive and act on the results of the security threat assessment. TSA must have the necessary resources—including labor, equipment, database access, and overhead—to complete the security threat assessment process.

TSA estimates that the total cost of threat assessment services will be $24.1 million over five years. This estimate includes $4.6 million for all information systems expenses, including the modification and sustainment of TSA's Screening Gateway. The Screening Gateway is an information system platform that allows TSA to submit, receive, and integrate security threat assessment information from a variety of Federal, State, and other sources in order to help make security threat assessment determinations.

Upon successful completion of the threat assessment process, the applicant's enrollment record is sent to the TSA-approved credential production facility. The production facility initiates the TWIC credential personalization process, which includes printing and magnetic stripe and chip encoding. Before the credentials are shipped back to the enrollment center, the credential production facility employees perform quality control inspections. TWIC credentials are then securely packaged and shipped to the designated enrollment center.

The credential production process will be administered by a TSA-approved federal credential production facility. It will require expenditures for the following items: card stock, customization materials (*i.e.*, contactless chips, laminates), biennial credential re-design, production equipment and maintenance, production labor, and shipping costs. TSA estimates that the total cost of credentialing production and management will be $17.5 million over five years.

TSA representatives will manage the operation and integration of the TWIC programs, including coordination of a nationwide credentialing rollout program. The Agency will also be responsible for ensuring compliance at all TWIC enrollment facilities. These tasks will require the assignment of permanent TSA personnel and temporary contract labor for program support. Contractors will also certify and accredit TWIC systems on a periodic basis. Support costs will include program travel and office supplies.

TSA has also developed an electronic network (the TSA system) to facilitate applicant information collection, coordination, credential production, applicant notification and the extensive access control activities of all TWIC cardholders and regulated facilities over time. While the majority of the TSA system development costs were financed in prior years with funds appropriated to TSA, system modification costs and recurring operational costs are included in the five-year program costs.

TSA estimates that the total for program support will be $36.1 million over five years.

Table Five details the major cost components TSA expects to incur over the next five years to implement the TWIC program.

TABLE 5.—YEAR TSA COSTS FOR TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL PROGRAM

| Operational year | Start-up | 1st Year | 2nd Year | 3rd Year | 4th Year | 5th Year |
|---|---|---|---|---|---|---|
| Estimated Annual New Applicants and Turnover | 15,000 | 708,000 | 164,000 | 93,000 | 94,000 | 95,000 |
| Estimated Annual Lost/Damaged Credential Replacement Applicants | 50 | 27,876 | 58,003 | 61,818 | 62,436 | 63,061 |
| **Cost Components*** | | | | | | |
| Threat Assessment Costs: | | | | | | |
| Personnel to conduct name-based threat assessments | $70,000 | $1,687,000 | $2,014,000 | $2,200,000 | $2,387,000 | $2,576,000 |
| Personnel to conduct redress operations (waivers and appeals) | $45,000 | $537,000 | $269,000 | $269,000 | $269,000 | $269,000 |
| Adjudication labor | $136,000 | $3,350,000 | $1,208,000 | $824,000 | $828,000 | $831,000 |
| Screening Gateway development | $300,000 | ..... | ..... | ..... | ..... | ..... |
| Screening Gateway operations, maintenance & disaster recovery | $247,000 | $993,000 | $513,000 | $513,000 | $513,000 | $513,000 |
| Document management system | $42,000 | $504,000 | $360,000 | $240,000 | $240,000 | $240,000 |
| Threat Assessment Costs—Subtotal | $840,000 | $7,071,000 | $4,364,000 | $4,046,000 | $4,237,000 | $4,429,000 |
| Card Production Costs: | | | | | | |
| Card materials | $1,750,000 | $5,250,000 | $1,750,000 | $1,750,000 | $1,750,000 | $1,750,000 |
| Card production equipment and labor | $909,000 | $1,261,000 | $937,000 | $707,000 | $707,000 | $707,000 |
| Production system design | $250,000 | ..... | ..... | $100,000 | ..... | ..... |
| Card re-design | ..... | ..... | $100,000 | ..... | $100,000 | ..... |

TABLE 5.—YEAR TSA COSTS FOR TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL PROGRAM—Continued

| Operational year | Start-up | 1st Year | 2nd Year | 3rd Year | 4th Year | 5th Year |
|---|---|---|---|---|---|---|
| Shipping | $7,000 | $331,000 | $100,000 | $70,000 | $70,000 | $71,000 |
| Card Production Costs—Subtotal | $2,916,000 | $6,842,000 | $2,887,000 | $2,627,000 | $2,627,000 | $2,528,000 |
| Identity Management System (IDMS) Costs: | | | | | | |
| IDMS labor, O&M, and help desk | $2,850,000 | $3,600,000 | $1,800,000 | $1,680,000 | $1,680,000 | $1,680,000 |
| IDMS hardware, software, and technology refresh | $188,000 | $945,000 | $885,000 | $825,000 | $825,000 | $825,000 |
| IDMS disaster recovery | $500,000 | $100,000 | $100,000 | $100,000 | $100,000 | $100,000 |
| IDMS Costs—Subtotal | $3,538,000 | $4,645,000 | $2,785,000 | $2,605,000 | $2,605,000 | $2,605,000 |
| Program Support: | | | | | | |
| Personnel for program support—federal and contract | $1,624,000 | $2,584,000 | $2,614,000 | $2,614,000 | $2,614,000 | $2,614,000 |
| Information systems security certification and accreditation | $600,000 | $250,000 | $250,000 | $500,000 | $250,000 | $500,000 |
| Program travel | $48,000 | $144,000 | $112,000 | $112,000 | $112,000 | $112,000 |
| Interagency systems and communications infrastructure | $481,000 | $1,085,000 | $659,000 | $633,000 | $630,000 | $647,000 |
| Office supplies and miscellaneous program costs | $35,000 | $60,000 | $60,000 | $60,000 | $60,000 | $60,000 |
| Fee processing & analysis | $17,000 | $100,000 | $100,000 | $100,000 | $100,000 | $100,000 |
| Program Support—Subtotal | $2,805,000 | $4,223,000 | $3,795,000 | $4,019,000 | $3,766,000 | $4,033,000 |
| Enrollment Management and Compliance: | | | | | | |
| Personnel and operational expenses for enrollment compliance | $12,000 | $584,000 | $135,000 | $76,000 | $77,000 | $78,000 |
| Enrollment Management and Compliance—Subtotal | $12,000 | $584,000 | $135,000 | $76,000 | $77,000 | $78,000 |
| Grand Totals | $10,111,000 | $23,365,000 | $13,966,000 | $13,373,000 | $13,312,000 | $13,673,000 |

Threat Assessment/Credential Production Calculation

TSA will charge a fee to recover its threat assessment, credentialing, and other program management and oversight costs associated with the implementation of this rule. TSA notes that since it received appropriated funds for the development of the TWIC program prototype and start-up operations, these costs will not be recovered in the fee charges. Substantially all costs TSA will have incurred before the beginning of program operations are considered start-up costs for calculation of the Threat Assessment/Credential Production fee. Based on the estimated costs in Table Five, TSA has calculated the per applicant Threat Assessment/Credential Production fee as follows: threat assessment cost estimate of $24.1 million over five years is added to credentialing and program expenses of $53.6 million. These total costs are then divided by 1,441,000 total estimated applicants for a TWIC—both new and lost/damaged replacement card applicants—over the first five years.

The resulting applicant charges will range from $50–$62 per applicant, as fees will vary based on the services provided to each population. Individuals requiring a complete security threat assessment will pay $62. Applicants who have completed a fingerprint-based criminal history records check that TSA deems equivalent to the TWIC check, such as MMD, MML, HME, and FAST credential holders, will not be charged for TSA's adjudication expenses associated with this portion of the threat assessment and will be assessed $50. Individuals who lose, damage, or have their credential stolen will not be assessed any threat assessment costs but will be charged $36 for a replacement credential. No new TSA threat assessment-specific or enrollment costs are factored into this replacement fee.

3. FBI Fee

As part of the security threat assessment, TSA submits fingerprints to the FBI to obtain any criminal history records that correspond to the fingerprints. The FBI is authorized to establish and collect fees to process fingerprint identification records. *See* Title II of Pub. L. 101–515, November 5, 1990, 104 Stat. 2112, codified in a note to 28 U.S.C. 534. Pursuant to Criminal Justice Information Services (CJIS) Information Letter 93–3 (October 8, 1993), this fee is currently set at $22. If the FBI increases or decreases its fee to complete the criminal history records check, the increase or decrease will apply to this regulation on the date that the new FBI fee becomes effective.

4. Total Fees

TSA proposes the following fees for TWIC applicants who submit fingerprints and applicant information to a TSA agent:

(1) Information Collection/Credential Issuance: $45–$65.

(2) Threat Assessment/Credential Production: $50–$62.

(3) Credential Replacement: $36.

(4) FBI: $22.

The total fees for TWIC applicants would be between $95 and $149, depending on threat assessment services provided. TSA will continue to work to minimize all costs and will finalize final fee charges in the final rule. TSA may increase or decrease the fees described in this regulation for inflation following publication of the final rule. TSA will publish a notice in the **Federal Register** notifying the public of the change.

*C. Section 1572.501 Fee Collection*

Section 1572.501 provides that when TSA collects fingerprints and applicant information under 49 CFR part 1572, TSA will collect fees for TWIC, in accordance with the procedures in § 1572.503.

Section 1572.503 describes the procedures that TSA and a TWIC applicant will follow. Paragraph 1572.503(a) list the specific fees: $45–65 for information collection/credential issuance; $50–62 for the threat assessment/credential production; $36

for a replacement credential; and $22 for the FBI.

Paragraph 1572.503(b) states that the fees must be provided in U.S. currency, and in check, money order, wire, or another method approved by TSA. Paragraph 1572.503(c) states that TSA will not issue refunds and paragraph 1572.503(d) states that applications would be processed only upon receipt of all applicable fees.

Paragraph 1572.503(e) states that TSA may adjust the fees annually after October 1, 2007 because of inflation, and any adjustment will be announced by notice in the **Federal Register**. Any increase would be a composite of the Federal civilian pay raise percentage and non-pay inflation factor for the current fiscal year. These figures are issued by the Office of Management and Budget.

Paragraph (f) of this section relates to any amendments the FBI may make to its fee for the criminal history records check. The change to the fee for TWIC applicants will become effective on the date that the FBI fee increase or decrease became effective.

## VII. Rulemaking Analyses and Notices

### *A. Executive Order 12866 (Regulatory Planning and Review)*

This proposed rule is a ''significant regulatory action'' under section 3(f) of E.O. 12866, Regulatory Planning and Review and therefore has been reviewed by the Office of Management and Budget. E.O. 12866 requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. A draft Assessment is available in both the TSA and Coast Guard dockets where indicated under the ''Public Participation and Request for Comments'' section of this preamble. A summary of the Assessment follows:

#### Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, E.O. 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and where appropriate, as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). The mandatory OMB A–4 Accounting Statement is located in the separate detailed regulatory evaluation.

In conducting these preliminary analyses, TSA and the USCG are proposing that this rule:

1. Is a ''significant regulatory action'' as defined in the E.O.
2. Has a yet to be determined impact on small business. We have provided an Initial Regulatory Flexibility Analysis (IRFA) for comment.
3. Imposes no significant barriers to international trade.
4. Does not impose an unfunded mandate on State, local, or tribal governments, but does on the private sector as there are two years with undiscounted costs in excess of the inflation adjusted $100 million threshold.

This regulatory evaluation is a joint effort of TSA and USCG. For ease of reading, the agencies decided to use the term ''we'' to represent both DHS components even for issues which might be directly related to proposed rule actions of only one agency. We believe this simplification will be less of a burden to the public in trying to understand and comment on the evaluation. The reader is cautioned that we did not attempt to replicate precisely the regulatory language in this discussion of the proposed rule; the regulatory text, not the text of this evaluation, is legally binding. A copy of the detailed regulatory evaluation document is available on the dockets for each agency. TSA and the USCG invite comments on all aspects of the economic analysis. We will attempt to evaluate and address all regulatory evaluation comments submitted by the public; however, those comments with specific data sources or detailed information will be more useful in improving the impact analysis. Comments may be placed on either docket as directed in the rule preamble; although there is no prohibition of submitting the evaluation comments to both dockets, duplicate submissions will be treated as a single issue submission. If possible, evaluation comments should be clearly identified with the evaluation issue or section. Including page numbers or figure references with your comments will expedite the process and insure the issue is addressed by the most appropriate agency experts.

#### Impact Summary

Section 102 of the Maritime Transportation Security Act requires a regulation regarding the issue of a biometric security card to individuals with unescorted access to secure areas of vessels and facilities. Under this authority, DHS has developed this proposed rule, and this summary provides a synopsis of the costs and benefits of the proposed rule.

#### Benefits of the Proposed Rule

The proposed rule would facilitate commerce and, most importantly, increase security at vessels, facilities, and OCS facilities regulated by 33 CFR chapter I, subchapter H.

#### Security

The proposed rule would increase security at vessels, facilities, and OCS facilities regulated by 33 CFR chapter I, subchapter H. It would accomplish this by: (1) Reducing the number of high-risk individuals with unescorted access to secure areas of vessels, facilities, and OCS facilities through the use of robust background checks; (2) enhancing the security of the credential through the use of a highly tamper-resistant card and the implementation of a strong identity-verification process to guard against fraud; and (3) increasing the stringency of access control measures throughout the maritime transportation sector.

#### Commerce

Although not the primary impetus for regulation, this NPRM would enhance the flow of commerce by streamlining the number of credentials and access control procedures, eliminating the need for several port credentialing offices and systems, and creating an interoperable credential recognizable across the maritime environment. During the TWIC Phase III Prototype, TSA learned that many individuals underwent multiple background checks, paid redundant fees, and endured long lines and short hours of operation at local credentialing offices. We anticipate this NPRM would eliminate some of these inefficient practices.

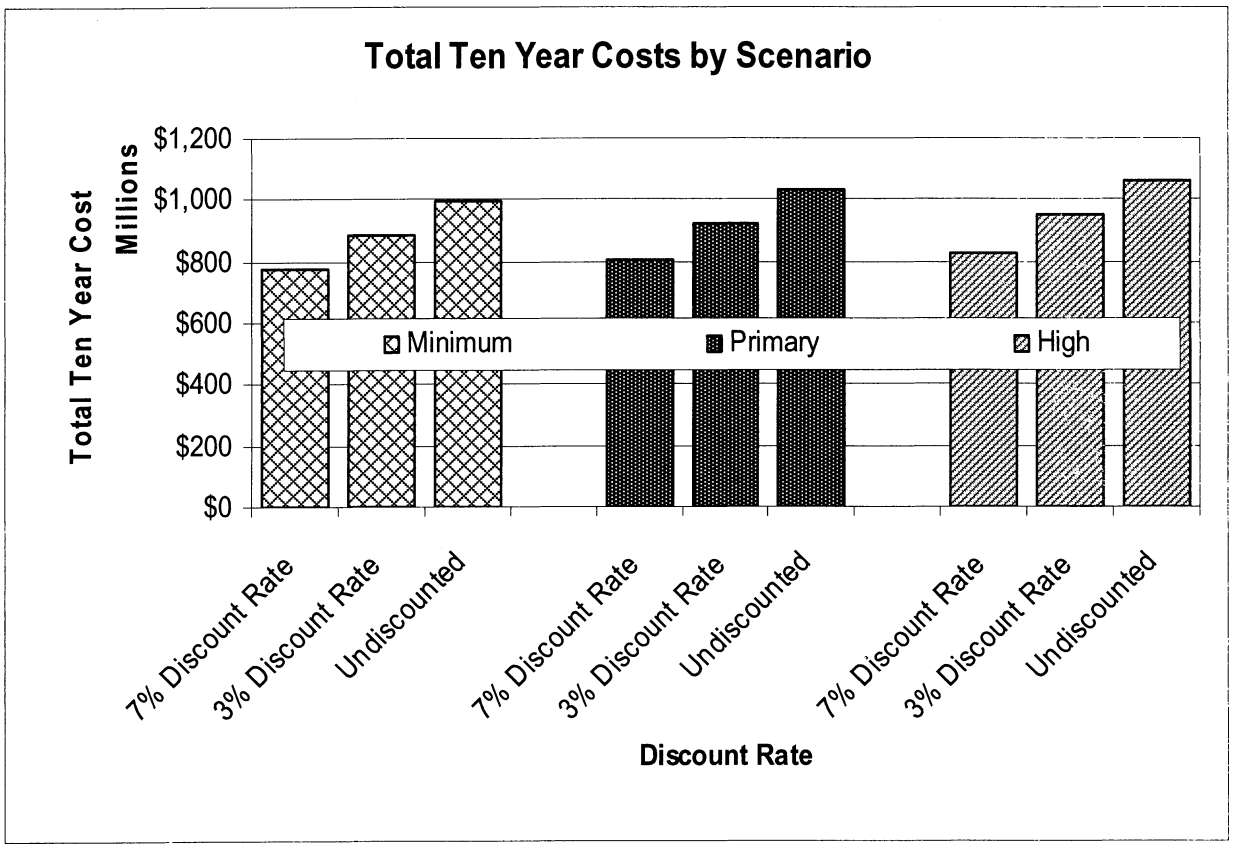
#### Economic Costs

We conclude that the primary estimate of economic costs over a 10 year period for this rule are $1,028 million undiscounted, $918.5 million with a 3 percent discount rate, and

$802.8 million at a 7 percent discount rate. In preparing estimates, we considered ranges for some values. No statistical confidence interval is associated with this range. These ranges provide an upper estimate of $1,062 million undiscounted and a lower range of $995.0 million undiscounted. The full list of scenarios and discounted values are displayed in the following charts and figures.

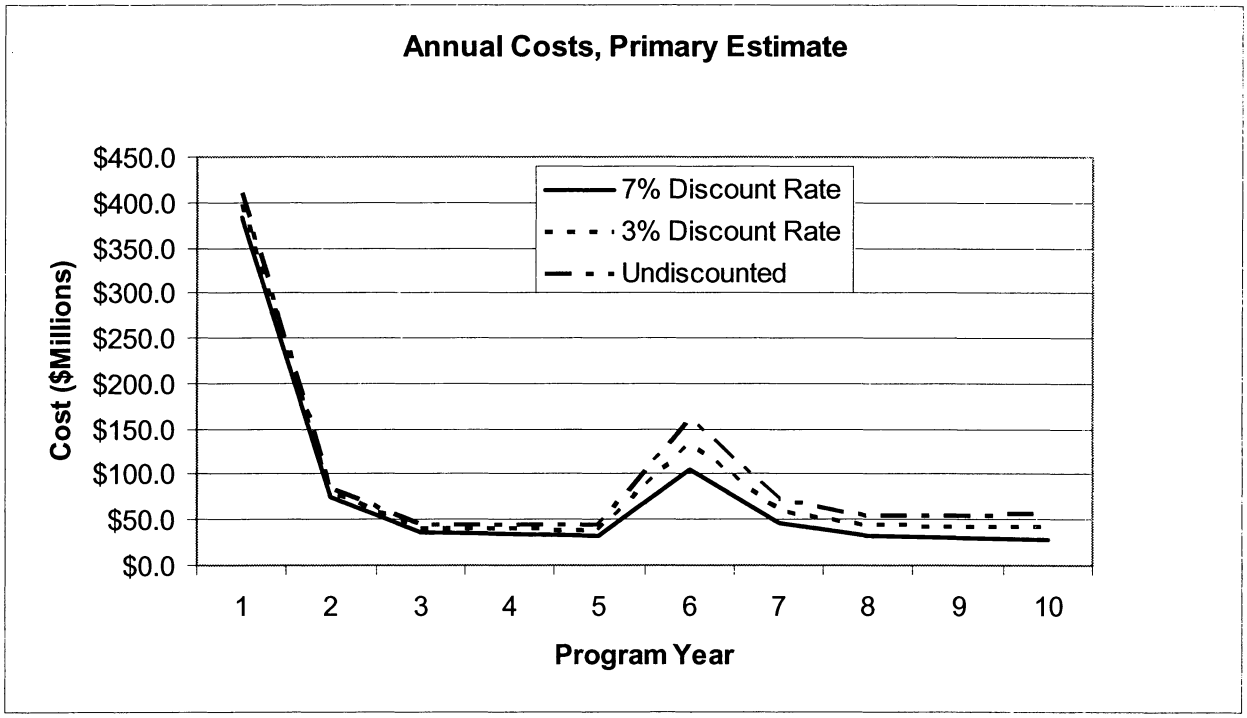
TEN YEAR COSTS

| | | |
|---|---|---|
| Minimum | 7% Discount Rate | $777,040,010 |
| | 3% Discount Rate | 888,602,138 |
| | Undiscounted | 994,986,264 |
| Primary | 7% Discount Rate | 802,830,101 |
| | 3% Discount Rate | 918,517,801 |
| | Undiscounted | 1,028,754,087 |
| High | 7% Discount Rate | 828,620,192 |
| | 3% Discount Rate | 948,433,464 |
| | Undiscounted | 1,062,521,911 |




Timing of Costs

The startup costs plus initial enrollments cause roughly 40 percent of expenses to occur in the first program year. Because credentials must be renewed after five years, there is another spike in enrollments and, therefore, expenses at year six. This spike is not as large as the initial enrollment because there is movement in and out of the labor force over those five years. This increase in enrollments in year six represents approximately 15 percent of the total costs. The other eight program years are similar in costs.




TOTAL TEN-YEAR COSTS—PRIMARY ESTIMATE

[$ millions]

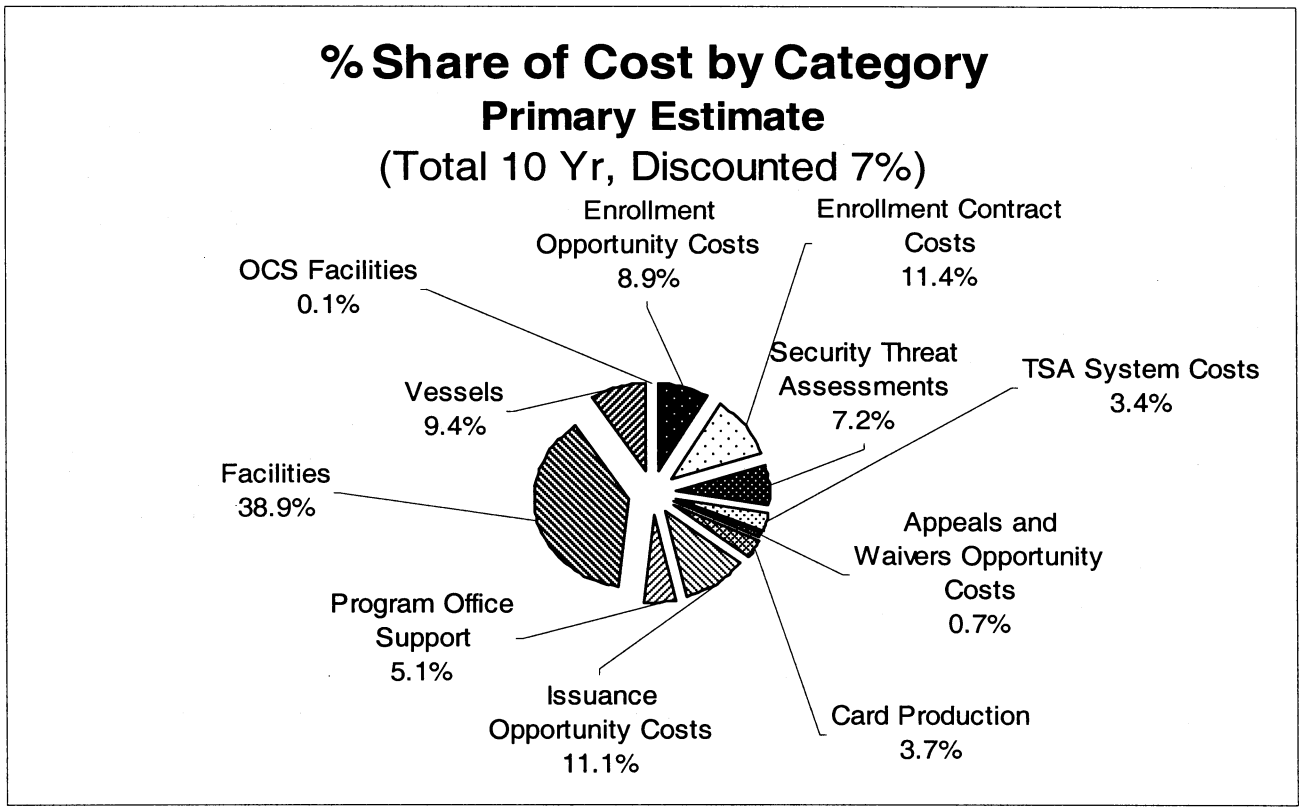
| Discount Rate/Yr | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 7% Discount Rate ..... | $383.6 | $74.0 | $36.7 | $34.2 | $32.2 | $105.7 | $45.7 | $32.2 | $30.1 | $28.4 | $802.8 |
| 3% Discount Rate ..... | 398.5 | 79.9 | 41.1 | 39.8 | 38.9 | 132.9 | 59.7 | 43.7 | 42.4 | 41.6 | 918.5 |
| Undiscounted ..... | 410.4 | 84.7 | 44.9 | 44.8 | 45.1 | 158.7 | 73.4 | 55.4 | 55.3 | 55.9 | 1,028.8 |

Distribution of Costs

The fee setting section of the NPRM and supporting documents in the docket provide details of the distribution of impacts. By category, almost 39 percent of the costs are facility costs, 11 percent enrollment contract costs, while the smallest category of costs is related to Outer Continental Shelf facilities at less than 0.1 percent of the total costs. The following series of figures summarizes the 11 categories for the range of costs discounted at 7 percent, categorical percentage share of total costs, and share differences between the primary estimate and each of the other two scenarios.

COSTS BY CATEGORY AND SCENARIO, DISCOUNTED 7%

| Component | Low | Primary | High |
|---|---|---|---|
| Enrollment Opportunity Costs ..... | $71.8 | $71.8 | $71.8 |
| Enrollment Contract Costs ..... | 91.9 | 91.9 | 91.9 |
| Security Threat Assessments ..... | 57.9 | 57.9 | 57.9 |
| TSA System Costs ..... | 27.4 | 27.4 | 27.4 |
| Appeals and Waivers Opportu ..... | 5.7 | 5.7 | 5.7 |
| Card Production ..... | 29.5 | 29.5 | 29.5 |
| Issuance Opportunity Costs ..... | 89.0 | 89.0 | 89.0 |
| Program Office Support ..... | 41.0 | 41.0 | 41.0 |
| Facilities ..... | 299.0 | 312.1 | 325.1 |
| Vessels ..... | 63.1 | 75.8 | 88.4 |
| OCS Facilities ..... | 0.6 | 0.7 | 0.8 |
| Total ..... | 777.0 | 802.8 | 828.6 |




| Component | Percent cost share by category and scenario | | | Difference from primary estimate | |
|---|---|---|---|---|---|
| | Low (percent) | Primary (percent) | High (percent) | Low (percent) | High (percent) |
| Enrollment Opportunity Costs | 9.2 | 8.9 | 8.7 | 0.3 | −0.3 |
| Enrollment Contract Costs | 11.8 | 11.4 | 11.1 | 0.4 | −0.4 |
| Security Threat Assessments | 7.5 | 7.2 | 7.0 | 0.2 | −0.2 |
| TSA System Costs | 3.5 | 3.4 | 3.3 | 0.1 | −0.1 |
| Appeals and Waivers Opportunity | 0.7 | 0.7 | 0.7 | 0.0 | −0.0 |
| Card Production | 3.8 | 3.7 | 3.6 | 0.1 | −0.1 |
| Issuance Opportunity Costs | 11.5 | 11.1 | 10.7 | 0.4 | −0.3 |
| Program Office Support | 5.3 | 5.1 | 5.0 | 0.2 | −0.2 |
| Facilities | 38.5 | 38.9 | 39.2 | −0.4 | 0.4 |
| Vessels | 8.1 | 9.4 | 10.7 | −1.3 | 1.2 |
| OCS Facilities | 0.1 | 0.1 | 0.1 | 0.0 | 0.0 |
| Total | 100.0 | 100.0 | 100.0 | ..... | – |

*B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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. Individuals are not considered small entities for the purposes of the Regulatory Flexibility Act.

At this time, we have not determined if this proposed rule would have a significant economic impact on a substantial number of small entities. We request comment on the full Initial Regulatory Flexibility Analysis, which is located on the docket. A brief summary of this analysis appears below.

With certain exceptions, the proposed rule would impact vessels, facilities, and OCS facilities presently regulated by 33 CFR chapter I, subchapter H. TSA and USCG estimated the proposed rule would cover 10,785 vessels, 3,492 facilities, and 42 OCS facilities. TSA and USCG concluded that most vessels and some facilities may be owned by small businesses, but no small businesses, as defined by the Regulatory Flexibility Act, currently operate OCS facilities.

The proposed rule would require affected vessels, facilities and OCS facilities to implement increased security measures. Because many of the proposed measures are based on performance standards, the proposed rule affords covered businesses

flexibility in complying with the requirements. Due to this flexibility, we foresee small entities complying with the proposed rule in a number of ways. We therefore used a range of estimates when characterizing the potential impacts to small entities. The following table displays this range.

| Requirement | Initial costs | | | Recurring costs | | |
|---|---|---|---|---|---|---|
| | Low | Primary | High | Low | Primary | High |
| Smart Card Reader Purchase | $2,000 | $3,500 | $5,000 | ..... | ..... | ..... |
| Smart Card Reader Software | 1,000 | 1,000 | 1,000 | ..... | ..... | ..... |
| Smart Card Reader Installation | 200 | 200 | 200 | ..... | ..... | ..... |
| Creating TWIC Addendum | 1,693 | 1,691 | 1,691 | ..... | ..... | ..... |
| Knowledge Requirements | 2,709 | 2,709 | 2,709 | ..... | ..... | ..... |
| Recordkeeping | 1,303 | 1,303 | 1,303 | ..... | ..... | ..... |
| TWIC Validation | ..... | ..... | ..... | $391 | $391 | $391 |
| Total | 8,906 | 10,403 | 11,903 | 391 | 391 | 391 |

*C. 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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LCDR Jonathan Maiorine, Commandant (G–PCP–2), United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593; telephone 1 (877) 687–2243. DHS will not retaliate against small entities that question or complain about this rule or any policy or action of DHS.

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 TSA or of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**D. Collection of Information**

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

*Title:* Transportation Worker Identification Credential (TWIC) Program.

*Summary of the Collection of Information:*

*Need for Information:* TSA has developed the Transportation Worker Identification Credential (TWIC) as an identification tool that encompasses the authorities of the Aviation and Transportation Security Act of 2001(ATSA) (Pub. L. 107–71, Sec.106), and the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295, Sec. 102) to perform background checks and issue credentials to workers within the national transportation system. The data to be collected is that biographic and biometric information necessary for TSA to complete the required security threat assessment on individuals who will seek unescorted access to secure areas of vessels and maritime facilities through the use of a TWIC. TWIC cards, when issued, will contain biographic and biometric data necessary to prove identity of the cardholder and to interoperate with access control systems on vessels and at facilities nationwide.

*Proposed Use of Information:* TSA will use the information to verify the identity of the individual applying for a TWIC and to verify that the person poses no security threat that would preclude issuance of a TWIC.

*Description of the Respondents:* The respondents to this collection of information will be workers within the national transportation system, specifically individuals who require unescorted access to secure areas of vessels or maritime facilities.

*Number of Respondents:* Although the number of respondents will vary over three years, TSA estimates that the annualized number of total respondents will be approximately 317,400. Based on research conducted by TSA and the USCG, the total estimated base population that will be affected by TWIC is 750,000. However, TSA estimates that more than seventy percent of the base maritime worker population will enroll in the program in the first year, and the remainder will enroll in year two. Turnover and growth within the affected population is expected to result in another 202,257 respondents.

*Frequency of Response:* Because renewals for the TWIC will be on a five year basis, for purposes of the Paperwork Reduction Act, to apply for a TWIC, each respondent will be required to respond once to the enrollment collection. TSA estimates an additional response from the estimated two percent of respondents who will appeal decisions made by the agency with respect to security threat assessments or ask for a waiver from disqualifying offenses. Thus, TSA estimates the number of total annual responses to be approximately 323,800.

*Burden of Response:* TSA estimates the annual hour burden for enrollment to be 476,129, or one and one half hour per respondent. TSA estimates the annual hour burden for appeals and waiver to be approximately 38,100.

TSA has determined that the information collection and card issuance portion of the TWIC fee will be between $45 and $65 per respondent. The exact fee will be determined in the final rulemaking. This portion of the fee accounts for more than the actual cost of the information collection as it includes cost of the enrollment process, system operations and maintenance, and TWIC card distribution.

*Estimate of Total Annual Burden:* TSA estimates the total annual hour burden as a result of this collection of information to be approximately 514,200. Because the TWIC fee may

change over time as actual costs are determined and annualized, TSA estimates total annual fee for respondents to be between $14,283,855 and $20,632,235.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES.**

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

*E. Federalism*

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. TSA and Coast Guard have analyzed this proposed rule under that Order and have determined that it has implications for federalism, for the same reasons that we found Federalism impacts for the Coast Guard's previously published MTSA regulations. 68 FR at 60468–9. A summary of the impacts on federalism in this proposed rule follows.

This proposed rule would have a substantial direct effect on States, local governments, or political subdivisions under section 1(a) of the Order when those states owning vessels/facilities are required to submit a TWIC Addendum and implement a TWIC program. It would also preempt State law under section 6(c) of the Order by: Continuing to prevent States from regulating mariners; and continuing to prevent the States from requiring security plans. It would impose substantial direct costs of compliance on States or local governments under section 6(b) of the Order, by requiring the submission of a TWIC Addendum and the implementation of TWIC on State owned vessels or facilities.

Regulations already issued by the Coast Guard under other sections of the MTSA of 2002 cited the need for national standards of security, claimed preemption, and received comments in support of such a scheme. See 68 FR 60448, 60468–60469. (October 23, 2003).

The law is well-settled that States may not regulate in categories expressly reserved for regulation by the Coast Guard. The law also is well-settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (Mar. 6, 2000). Since portions of this proposed rule involve the manning of U.S. vessels and the licensing of merchant mariners, it relates to personnel qualifications. Because the states may not regulate within this category, these portions of this proposed rule do not present new preemption issues under E.O. 13132.

We are only asserting field preemption in those areas where federal regulations have historically dominated the field, such as merchant mariner regulations, or where we are amending regulations that we have previously asserted preempt state regulation, such as the Marine Transportation Security Act Regulations found in 33 CFR chapter I, subchapter H. States would not be preempted from instituting their own background checks or badging systems in addition to the TWIC.

We are asking for comments specifically on the issue of preemption.

*F. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This proposed rule would result in such an expenditure, and we discuss the effects of this rule in the Draft Regulatory Evaluation, which is summarized in the E.O. 12866 section above.

*G. Taking of Private Property*

This proposed rule would not affect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*H. Civil Justice Reform*

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

*I. Protection of Children*

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. While this rule is an economically significant rule, it would not create an environmental risk to health or risk to safety that might disproportionately affect children.

*J. Indian Tribal Governments*

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

*K. Energy Effects*

We have analyzed this proposed rule under E.O. 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. While it is a ''significant regulatory action'' under E.O. 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, a Statement of Energy Effects is not required for this rule under E.O. 13211.

*L. Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rulemaking will incorporate standards for TWIC readers and card technology. These standards have been developed by the Federal government; there are no voluntary consensus standards that could be used in their place.

*M. Environment*

This Transportation Worker Identification Credential (TWIC) proposal contains a program of activities to improve the safety and security of vessels, facilities, Outer Continental Shelf facilities, and U.S. ports. It proposes requirements for developing application forms, collecting and processing forms, application evaluation criteria, and issuing determinations on applications. It also updates the training, qualifying, licensing, and disciplining of maritime personnel and proposes amendments to security plans that will contribute to a higher level of marine safety and security for vessels, facilities, Outer Continental Shelf facilities, and U.S. ports.

Implementation of this proposal will involve establishing ''enrollment stations'' inside existing port facilities to collect TWIC applications. The enrollment stations will include a small office, using existing utilities, located in space made available in existing port facilities or other available space within a 25 mile radius of the port facility. If a location does not have a port facility, or enough space, a temporary unit will be provided until either sufficient permanent space is available or the need for the enrollment station no longer exists. To meet the initial surge of enrollments expected when the rule is final, 138 stations (permanent and mobile/temporary) are expected to be operating nationwide. The on-going/maintenance phase will involve approximately 134 stations.

The provisions of this proposed rule have been analyzed under the Department of Homeland Security (DHS) Management Directive (MD) 5100.1, *Environmental Planning Program,* which is the DHS policy and procedures for implementing the National Environmental Policy Act (NEPA), and related E.O.s and requirements. The implementation of this rule is expected to be categorically excluded under the following categorical exclusions (CATEX) listed in MD 5100.1, Appendix A, Table 1: CATEX A1 (personnel, fiscal, management and administrative activities); CATEX A3 (promulgation of rules, issuance of rulings or interpretations); and CATEX A4 (information gathering, data analysis and processing, information dissemination, review, interpretation and development of documents). CATEX B3 (proposed activities and operations conducted in an existing structure that would be compatible with and similar in scope to ongoing functional uses) is also applicable. Additionally, we have determined that there are no extraordinary circumstances presented by this rule that would limit the use of a CATEX under MD 5100.1, Appendix A, paragraph 3.2.

**List of Subjects**

*33 CFR Part 101*

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

*33 CFR Part 103*

Facilities, Harbors, Maritime security, Ports, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

*33 CFR Part 104*

Incorporation by reference, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

*33 CFR Part 105*

Facilities, Maritime security, Reporting and recordkeeping requirements, Security measures.

*33 CFR Part 106*

Facilities, Maritime security, Outer Continental Shelf, Reporting and recordkeeping requirements, Security measures.

*33 CFR Part 125*

Administrative practice and procedure, Harbors, Reporting and recordkeeping requirements, Security measures, Vessels.

*46 CFR Part 10*

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

*46 CFR Part 12*

Penalties, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 15*

Reporting and recordkeeping requirements, Seamen, Vessels.

*49 CFR Part 1515*

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

*49 CFR Part 1570*

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

*49 CFR Part 1572*

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

**The Amendments**

For the reasons listed in the preamble, the Coast Guard proposes to amend 33 CFR parts 101, 103, 104, 105, 106, 125; and 46 CFR parts 10, 12, and 15 and the Transportation Security Administration proposes to add or amend 49 CFR parts 1515, 1570, and 1572 as follows:

**Title 33—Navigation and Navigable Waters**

**Chapter I—Coast Guard**

## PART 101—MARITIME SECURITY: GENERAL

1. The authority citation for part 101 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

2. In § 101.105 add, in alphabetical order, definitions for the terms escorting, personal identification number (PIN), recurring unescorted access, secure area, TWIC, TWIC program, and unescorted access, to read as follows:

**§ 101.105 Definitions.**

* * * * *

*Escorting* means ensuring that the escorted individual is continuously

accompanied or monitored while within a secure area in a manner sufficient to identify whether the escorted individual is engaged in activities other than those for which escorted access was granted.

* * * * *

*Personal Identification Number* (PIN) means a personally selected number stored electronically on the individual's TWIC.

* * * * *

*Recurring unescorted access* means authorization to enter a vessel on a continual basis after an initial personal identity and credential verification, as outlined in the vessel security plan.

* * * * *

*Secure Area* means the area on board a vessel or at a facility or outer continental shelf facility over which the owner/operator has implemented security measures for access control, as defined by a Coast Guard approved security plan. It does not include passenger access areas or public access areas, as those terms are defined in §§ 104.106 and 105.106 of this subchapter.

* * * * *

*TWIC* means a valid, non-revoked transportation worker identification credential, as defined and explained in 49 CFR part 1572.

*TWIC Program* means those procedures and systems, detailed in an approved security plan, that a vessel, facility, or outer continental shelf facility must implement in order to assess and validate TWICs when maintaining access control.

* * * * *

*Unescorted access* means having the authority to enter and move about a secure area without escort.

* * * * *

3. From [effective date of the final rule] to [effective date of final rule + 5 years], add § 101.121 to read as follows:

**§ 101.121 Alternative Security Programs—TWIC Addendum.**

(a) Submitters of Alternative Security Programs that have been approved by the Commandant (G–PC) under section 101.120 of this part, must submit a TWIC Addendum by [date six months after date of publication of final rule], or else their Alternative Security Plan is invalid. The TWIC Addendum should include an explanation of how the ASP addresses the requirements for a TWIC program contained in parts 104, 105 and 106 of this subchapter, as applicable.

(b) The Commandant (G–PC) will examine each TWIC Addendum for compliance with this part and either:

(1) Approve it and specify any conditions of approval, returning to the submitter a letter stating its approval and any conditions;

(2) Return it for revision, returning a copy to the submitter with brief descriptions of the required revisions; or

(3) Disapprove it, returning a copy to the submitter with a brief statement of the reasons for disapproval.

(c) The ASP TWIC Addendum will be given the same expiration date as the ASP.

(d) Upon gaining approval of the TWIC Addendum, the submitter of the ASP must incorporate the approved TWIC Addendum into their ASP when it is due for reapproval in accordance with § 101.120 of this subpart.

4. Add § 101.514 to read as follows:

**§ 101.514 TWIC requirement.**

(a) All persons requiring unescorted access to secure areas of vessels, facilities, and OCS facilities regulated by parts 104, 105 or 106 of this subchapter must possess a TWIC before such access is granted, except as otherwise noted in this section. A TWIC must be obtained via the procedures established by TSA in 49 CFR part 1572.

(b) Federal officials are not required to obtain or possess a TWIC. Except in cases of emergencies or other exigent circumstances, in order to gain unescorted access to a secure area of a vessel, facility, or OCS facility regulated by parts 104, 105 or 106 of this subchapter, he/she must verify his identity at a TWIC reader using his/her agency issued, HSPD 12 compliant, credential. Until each agency issues its HSPD 12 compliant cards, Federal officials may gain unescorted access by using their agency's official credential. The COTP will advise facilities and vessels within his area of responsibility as agencies come into compliance with HSPD 12.

(c) Law enforcement officials at the State or local level are not required to obtain or possess a TWIC to gain unescorted access to secure areas. They may, however, voluntarily obtain a TWIC where their offices fall within or where they desire recurring unescorted access to a secure area of a vessel, facility or OCS facility.

(d) Owners and/or operators of any vessel or maritime facility that is not required to comply with parts 104, 105, or 106 of this subchapter, respectively, who would like to implement a TWIC Program for their vessel or facility must contact their cognizant COTP to gain authorization. If approved, the Coast Guard will contact TSA, who will provide the authorization to enroll the vessel or facility employees at a TWIC enrollment center.

5. Revise § 101.515 to read as follows:

**§ 101.515 TWIC/Personal identification.**

(a) Persons not described in § 101.514 of this part shall be required to present personal identification in order to gain entry to a vessel, facility, and OCS facility regulated by parts 104, 105 or 106 of this subchapter. These individuals must be escorted at all times while in a secure area. This personal identification must, at a minimum, meet the following requirements:

(1) Be laminated or otherwise secure against tampering;

(2) Contain the individual's full name (full first and last names, middle initial is acceptable);

(3) Contain a photo that accurately depicts that individual's current facial appearance; and

(4) Bear the name of the issuing authority.

(b) The issuing authority in paragraph (a)(4) of this section must be:

(1) A government authority, or an organization authorized to act of behalf of a government authority; or

(2) The individual's employer, union, or trade association.

(c) Vessel, facility, and OCS facility owners and operators must permit law enforcement officials, in the performance of their official duties, who present proper identification in accordance with this section and § 101.514 of this part to enter or board that vessel, facility, or OCS facility at any time, without delay or obstruction. Law enforcement officials, upon entering or boarding a vessel, facility, or OCS facility, will, as soon as practicable, explain their mission to the Master, owner, or operator, or their designated agent.

## PART 103—MARITIME SECURITY: AREA MARITIME SECURITY

6. The authority citation for part 103 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. 70102, 70103, 70104, 70112; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

7. Revise § 103.305(c) to read as follows:

**§ 103.305 Composition of an Area Maritime Security (AMS) Committee.**

* * * * *

(c) Members appointed under this section serve for a term of not more than 5 years. In appointing members, the FMSC should consider the skills required by § 103.410 of this part. With the exception of credentialed Federal, state and local officials, all AMS Committee members shall hold a TWIC, or have passed a comparable security

threat assessment, as determined by the FMSC.

8. In § 103.505, revise paragraph (n) to read as follows:

**§ 103.505 Elements of the Area Maritime Security (AMS) plan.**

* * * * *

(n) Security measures designed to ensure the effective security of infrastructure, special events, vessels, passengers, cargo, and cargo handling equipment at facilities within the port not otherwise covered by a Vessel or Security Plan, approved under part 104, 105, or 106 of this subchapter. This includes the use of a TWIC program.

* * * * *

9. In § 103.510, designate the existing text as paragraph (a) and add paragraph (b) to read as follows:

**§ 103.510 Area Maritime Security (AMS) Plan review and approval.**

* * * * *

(b) From [effective date of the final rule] to [effective date of the final rule + 5 years], this paragraph (b) shall apply. Each AMS Plan shall be updated to include the implementation of the TWIC program.

## PART 104—MARITIME SECURITY: VESSELS

10. The authority citation for part 104 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No, 0170.1.

11. Amend § 104.105 by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

**§ 104.105 Applicability.**

* * * * *

(d) The TWIC requirements found in this part do not apply to foreign vessels.

* * * * *

12. Add § 104.106 to read as follows:

**§ 104.106 Passenger access area.**

(a) A ferry, passenger vessel, or cruise ship may designate areas within the vessel as passenger access areas. Any such areas must be specified in the VSP.

(b) A passenger access area is a defined space within the access control area of a ferry or passenger vessel that is open to passengers. It is not a secure area and does not require a TWIC for unescorted access.

13. From [effective date of the final rule] to [effective date of final rule + 5 years], amend § 104.115 by adding paragraph (d) to read as follows:

**§ 104.115 Compliance dates.**

* * * * *

(d) Vessel owners or operators subject to paragraph (b) of this section and not excluded by § 104.105(d) or this part must:

(1) Submit a TWIC Addendum to the Commanding Officer, Marine Safety Center, to cover each vessel they own or operate subject to this part on or before [date 6 months after publication of the final rule]; and

(2) Be operating in accordance with the TWIC provisions found within this part, as outlined in their TWIC Addendum, between [date 1 year after publication of the final rule] and [date 18 months after publication of the final rule], depending on whether enrollment has been completed in the port in which the vessel is operating, in accordance with 49 CFR 1572.19.

14. From [effective date of the final rule] to [effective date of final rule + 5 years], amend § 104.120 by adding paragraph (c) to read as follows:

**§ 104.120 Compliance documentation.**

* * * * *

(c) Each vessel owner or operator subject to this part must ensure, before [date one year after publication of the final rule] that copies of the following documentation are carried on board the vessel and are made available to the Coast Guard upon request:

(1) The approved TWIC addendum and any approved revisions or amendments thereto, and a letter of approval from the Commanding Officer, Marine Safety Center (MSC) dated within the last 5 years;

(2) The TWIC Addendum submitted for approval and current written acknowledgment from the Commanding Officer, MSC, stating that the Coast Guard is currently reviewing the TWIC Addendum submitted for approval and that the vessel may continue to operate; or

(3) For vessels operating under a Coast Guard-approved Alternative Security Program as provided in § 104.140, a copy of the Alternative Security Program the vessel is using, including a vessel specific security assessment report generated under the Alternative Security Program, as specified in § 101.120(b)(3) of this subchapter, and a letter signed by the vessel owner or operator, stating which Alternative Security Program the vessel is using and certifying that the vessel is in full compliance with that program, as it has been amended pursuant to § 101.121 of this subchapter.

### Subpart B—Vessel Security Requirements

15. Revise § 104.200(b) to read as follows:

**§ 104.200 Owner or operator.**

* * * * *

(b) For each vessel, the vessel owner or operator must:

(1) Define the security organizational structure for each vessel and provide all personnel exercising security duties or responsibilities within that structure with the support needed to fulfill security obligations;

(2) Designate, in writing, by name or title, a Company Security Officer (CSO), a Vessel Security Officer (VSO) for each vessel, and identify how those officers can be contacted at any time;

(3) Ensure personnel receive training, drills, and exercises enabling them to perform their assigned security duties;

(4) Inform vessel personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications, and of their obligation to inform TSA of any event that would render them ineligible for a TWIC, or which would invalidate their existing TWIC;

(5) Ensure vessel security records are kept;

(6) Ensure that adequate coordination of security issues takes place between vessels and facilities; this includes the execution of a Declaration of Security (DoS);

(7) Ensure coordination of shore leave, transit, or crew change-out for vessel personnel, as well as access through the facility of visitors to the vessel (including representatives of seafarers' welfare and labor organizations), with facility operators in advance of a vessel's arrival. Vessel owners or operators may refer to treaties of friendship, commerce, and navigation between the U.S. and other nations in coordinating such leave. The text of these treaties can be found at *http://www.marad.dot.gov/Programs/treaties.html;*

(8) Ensure security communication is readily available;

(9) Ensure coordination with and implementation of changes in Maritime Security (MARSEC) Level;

(10) Ensure that security systems and equipment are installed and maintained, including at least one TWIC reader that meets the standard incorporated by TSA at 49 CFR 1572.23, and that computer and access control systems and hardware are secure;

(11) Ensure that vessel access, including the embarkation of persons and their effects, are controlled;

(12) Ensure that TWIC procedures are implemented as set forth in this part, including;

(i) Ensuring that only individuals who hold a TWIC and are authorized to be in secure areas in accordance with the VSP are permitted to escort; and

(ii) Identifying what action is to be taken by an escort, or other authorized individual, should individuals under escort engage in activities other than those for which escorted access was granted.

(13) Ensure that restricted areas are controlled and TWIC provisions are coordinated, if applied to such restricted areas;

(14) Ensure that protocols are in place for responding to TWIC holders presenting for entry who cannot electronically verify a match between themselves and the information stored on the credential's ICC. These must include interim alternative security measures for an individual who cannot electronically verify his identity. Such provisions should take into account measures appropriate for occasional failures to verify and for persistent problems with verification such that a person may require a new credential;

(15) Ensure that protocols are in place for responding to TWIC holders presenting for entry whose cards have been revoked by TSA, and provisions for individuals requiring access who report a lost or stolen TWIC;

(16) Ensure there are alternate provisions in case of equipment or power failures that affect TWIC readers and other validation equipment.

(17) Ensure that appropriate personnel know who is on the vessel at all times;

(18) Ensure that cargo and vessel stores and bunkers are handled in compliance with this part;

(19) Ensure restricted areas, deck areas, and areas surrounding the vessel are monitored;

(20) Provide the Master, or for vessels on domestic routes only, the CSO, with the following information:

(i) Parties responsible for appointing vessel personnel, such as vessel management companies, manning agents, contractors, concessionaires (for example, retail sales outlets, casinos, etc.);

(ii) Parties responsible for deciding the employment of the vessel, including time or bareboat charters or any other entity acting in such capacity; and

(iii) In cases when the vessel is employed under the terms of a charter party, the contract details of those documents, including time or voyage charters; and

(21) Give particular consideration to the convenience, comfort, and personal privacy of vessel personnel and their ability to maintain their effectiveness over long periods.

16. Amend § 104.210 by adding paragraphs (a)(5), (b)(2)(xv) and (c)(15) to read as follows:

**§ 104.210 Company Security Officer (CSO).**

(a) * * *

(5) The CSO must maintain a valid TWIC.

(b) * * *

(2) * * *

(xv) Knowledge of TWIC.

(c) * * *

(15) Ensure the TWIC program is being properly implemented.

17. Amend § 104.215 by adding paragraphs (a)(6), (b)(7) and (c)(12) to read as follows:

**§ 104.215 Vessel Security Officer (VSO).**

(a) * * *

(6) The VSO must maintain a valid TWIC.

(b) * * *

(7) TWIC.

(c) * * *

(12) Ensure TWIC programs are in place and implemented appropriately.

18. Amend § 104.220 by revising the introductory paragraph and adding paragraph (n) to read as follows:

**§ 104.220 Company or vessel personnel with security duties.**

Company and vessel personnel responsible for security duties must maintain a valid TWIC, and must have knowledge, through training or equivalent job experience, in the following, as appropriate:

* * * * *

(n) Relevant aspects of the TWIC program and how to carry them out.

19. Amend § 104.225 by adding paragraph (f) to read as follows:

**§ 104.225 Security training for all other vessel personnel.**

* * * * *

(f) Relevant aspects of the TWIC program and how to carry them out.

20. Amend § 104.235 by redesignating paragraphs (b)(1) through (b)(8) as (b)(2) through (b)(9), respectively, and add new paragraph (b)(1) to read as follows:

**§ 104.235 Vessel recordkeeping requirements.**

* * * * *

(b) * * *

(1) *Access*. Records of those individuals who are granted access to secure areas of the vessel, including records of when these individuals disembark the vessel and, in the case of individuals who are escorted, the identification of the individual who escorted or the method by which the individual was escorted;

* * * * *

21. Revise § 104.265 to read as follows:

**§ 104.265 Security measures for access control.**

(a) *General*. The vessel owner or operator must ensure the implementation of security measures to:

(1) Deter the unauthorized introduction of dangerous substances and devices, including any device intended to damage or destroy persons, vessels, facilities, or ports;

(2) Secure dangerous substances and devices that are authorized by the owner or operator to be on board;

(3) Control access to the vessel; and

(4) Prevent an unescorted individual from entering an area of the vessel that is designated as a secure area unless the individual holds a duly issued TWIC and is authorized to be in the area in accordance with the vessel security plan.

(b) The vessel owner or operator must ensure that the following are specified:

(1) The locations providing means of access to the vessel where access restrictions or prohibitions are applied for each Maritime Security (MARSEC) Level, including those points where a TWIC reader is or will be deployed. ''Means of access'' include, but are not limited, to all:

(i) Access ladders;

(ii) Access gangways;

(iii) Access ramps;

(iv) Access doors, side scuttles, windows, and ports;

(v) Mooring lines and anchor chains; and

(vi) Cranes and hoisting gear;

(2) The identification of the types of restriction or prohibition to be applied and the means of enforcing them;

(3) The means used to establish the identity of individuals not in possession of a TWIC and procedures for escorting, in accordance with § 101.515 of this subchapter; and

(4) Procedures for identifying authorized and unauthorized persons at any MARSEC level.

(c) The vessel owner or operator must ensure that a TWIC program is implemented as follows:

(1) Determine whether recurring unescorted access will be used and, prior to granting any individual recurring unescorted access (as defined in § 101.105 of this subchapter) to secure areas of the vessel, ensure that the individual being granted recurring access privileges has a TWIC and verify the individual's identity. The identity

verification procedure must electronically verify a match between the individual and the biometric information stored on the TWIC's ICC, including a verification of the individual's personal identification number (PIN). The validity of the TWIC itself shall also be verified at this time;

(2) After granting recurring unescorted access, verify the individual's identity at each entry to the secure area of the vessel. This identity verification procedure must be outlined in the approved VSP and should at a minimum include visual facial recognition;

(3) Ensure that any individual granted unescorted access to secure areas of the vessel is able to produce his or her TWIC upon request;

(4) Ensure that the identity of any individual not granted recurring unescorted access and seeking unescorted access to the vessel is verified by matching the individual to the biometric information stored on the TWIC's ICC at every entry. The validity of the TWIC itself shall also be verified at this time;

(5) Includes disciplinary measures to prevent fraud and abuse;

(6) Allows certain long-term, frequent vendor representatives and visitors, including seafarers' chaplains and union representatives who hold a TWIC to be eligible for recurring unescorted access;

(7) Allows for temporary access if alternative security measures are implemented due to a failure of the TWIC system, and the individual can meet or pass those alternative security measures;

(8) Is coordinated, when practicable, with identification and TWIC systems at facilities used by the vessel; and

(9) Periodically verifies the validity of TWICs as outlined in paragraphs (f)(1), (g)(1) and (h)(1) of this section.

(d) If the vessel owner or operator uses a separate identification system, ensure that it complies and is coordinated with TWIC provisions in this part.

(e) The vessel owner or operator must establish in the approved Vessel Security Plan (VSP) the frequency of application of any security measures for access control, particularly if these security measures are applied on a random or occasional basis.

(f) *MARSEC Level 1.* The vessel owner or operator must ensure security measures in this paragraph are implemented to:

(1) Employ TWIC as set out in paragraph (c) of this section. The validity of a TWIC presented for unescorted access shall be verified using information that is no more than seven (7) days old. The validity of a TWIC held by a person previously granted recurring unescorted access shall be verified weekly, using the most current information available from TSA.

(2) Screen persons, baggage (including carry-on items), personal effects, and vehicles for dangerous substances and devices at the rate specified in the approved Vessel Security Plan (VSP), except for government-owned vehicles on official business when government personnel present identification credentials for entry;

(3) Conspicuously post signs that describe security measures currently in effect and clearly state that:

(i) Boarding the vessel is deemed valid consent to screening or inspection; and

(ii) Failure to consent or submit to screening or inspection will result in denial or revocation of authorization to board;

(4) Check the identification of any person not holding a TWIC and seeking to board the vessel, including vessel passengers, vendors, personnel duly authorized by the cognizant government authorities, and visitors. This check includes confirming the reason for boarding by examining at least one of the following:

(i) Joining instructions;

(ii) Passenger tickets;

(iii) Boarding passes;

(iv) Work orders, pilot orders, or surveyor orders;

(v) Government identification; or

(vi) Visitor badges issued in accordance with an identification system implemented under paragraph (d) of this section.

(5) Deny or revoke a person's authorization to be on board if the person is unable or unwilling, upon the request of vessel personnel, to establish his or her identity in accordance with this part or to account for his or her presence on board. Any such incident must be reported in compliance with this part;

(6) Deter unauthorized access to the vessel;

(7) Identify access points that must be secured or attended to deter unauthorized access;

(8) Lock or otherwise prevent access to unattended spaces that adjoin areas to which passengers and visitors have access;

(9) Provide a designated area on board, within the secure area, or in liaison with a facility, for conducting inspections and screening of people, baggage (including carry-on items), personal effects, vehicles and the vehicle's contents;

(10) Ensure vessel personnel are not subjected to screening, of the person or of personal effects, by other vessel personnel, unless security clearly requires it. Any such screening must be conducted in a way that takes into full account individual human rights and preserves the individual's basic human dignity;

(11) Ensure the screening of all unaccompanied baggage;

(12) Ensure checked persons and their personal effects are segregated from unchecked persons and their personal effects;

(13) Ensure embarking passengers are segregated from disembarking passengers;

(14) Ensure, in liaison with the facility, a defined percentage of vehicles to be loaded aboard passenger vessels are screened prior to loading at the rate specified in the approved VSP;

(15) Ensure, in liaison with the facility, all unaccompanied vehicles to be loaded on passenger vessels are screened prior to loading; and

(16) Respond to the presence of unauthorized persons on board, including repelling unauthorized boarders.

(g) *MARSEC Level 2.* In addition to the security measures required for MARSEC Level 1 in this section, at MARSEC Level 2, the vessel owner or operator must:

(1) Verify the validity of a TWIC presented for unescorted access using information that is no more than one (1)day old, and verify the validity of TWIC credentials presented by persons granted recurring unescorted access to the vessel daily, using the most current information available from TSA; and

(2) Ensure the implementation of additional security measures, as specified for MARSEC Level 2 in the approved VSP. These additional security measures may include:

(i) Increasing the frequency and detail of screening of people, personal effects, and vehicles being embarked or loaded onto the vessel as specified for MARSEC Level 2 in the approved VSP, except for government-owned vehicles on official business when government personnel present identification credentials for entry;

(ii) X-ray screening of all unaccompanied baggage;

(iii) Assigning additional personnel to patrol deck areas during periods of reduced vessel operations to deter unauthorized access;

(iv) Limiting the number of access points to the vessel by closing and securing some access points;

(v) Denying access to visitors who do not have a verified destination;

(vi) Deterring waterside access to the vessel, which may include, in liaison with the facility, providing boat patrols; and

(vii) Establishing a restricted area on the shore side of the vessel, in close cooperation with the facility.

(h) *MARSEC Level 3*. In addition to the security measures required for MARSEC Level 1 and MARSEC Level 2, the vessel owner or operator must:

(1) Require all persons, including those granted recurring unescorted access to secure areas of the vessel in accordance with paragraph (c)(1) of this section, to verify their identity at each entry to a secure area by electronically matching the individual to the biometric information stored on the TWIC, including a verification of the individual's PIN;

(2) Ensure the implementation of additional security measures, as specified for MARSEC Level 3 in the approved VSP. The additional security measures may include:

(i) Screening all persons, baggage, and personal effects for dangerous substances and devices;

(ii) Performing one or more of the following on unaccompanied baggage:

(A) Screen unaccompanied baggage more extensively, for example, x-raying from two or more angles;

(B) Prepare to restrict or suspend handling unaccompanied baggage; or

(C) Refuse to accept unaccompanied baggage on board;

(iii) Being prepared to cooperate with responders and facilities;

(iv) Limiting access to the vessel to a single, controlled access point;

(v) Granting access to only those responding to the security incident or threat thereof;

(vi) Suspending embarkation and/or disembarkation of personnel;

(vii) Suspending cargo operations;

(viii) Evacuating the vessel;

(ix) Moving the vessel; or

(x) Preparing for a full or partial search of the vessel.

22. Amend § 104.290 by redesignating paragraphs (a)(1) through (a)(5) as (a)(2) through (a)(6), respectively, and adding new paragraph (a)(1) to read as follows:

**§ 104.290 Security incident procedures.**

* * * * *

(a) * * *

(1) Providing a list of all individuals who have been granted access to the vessel, as maintained pursuant to § 104.235 of this part;

* * * * *

23. Revise § 104.295 to read as follows:

**§ 104.295 Additional requirements—cruise ships.**

(a) The owner or operator of a U.S.-flagged cruise ship must ensure the following:

(1) At all MARSEC levels:

(i) Each crewmember or employee's identity and TWIC must be verified prior to allowing the individual to board the vessel at each entry to the vessel. The TWIC validation procedure must rely upon the most current information available from TSA. The identity verification procedure must electronically verify a match between the individual and the biometric information stored on the TWIC's ICC.

(ii) All persons, baggage, and personal effects must be screened for dangerous substances and devices;

(iii) The identification of all persons seeking to board the vessel must be checked. Persons holding a TWIC shall be checked as set forth in paragraph (a)(1) of this section. For persons not holding a TWIC, this check includes confirming the reason for boarding by examining passenger tickets, boarding passes, government identification or visitor badges, or work orders;

(iv) Security patrols must be performed; and

(v) Selected areas must be searched prior to embarking passengers and prior to sailing.

(2) At MARSEC Level 2, in addition to the requirements of paragraph (a)(1)(i), above the owner or operator of a U.S.-flagged cruise ship must ensure that each crewmember or employee seeking to board the vessel is required to enter his or her correct PIN prior to being allowed to board.

(3) At MARSEC Level 3, the owner or operator of a U.S.-flagged cruise ship must ensure that security briefs to passengers about the specific threat are provided.

(b) The owner or operator of a foreign-flagged cruise ship must ensure the following:

(1) At all MARSEC Levels:

(i) All persons, baggage, and personal effects must be screened for dangerous substances and devices;

(ii) The identification of all persons seeking to board the vessel must be checked, and must include confirming the reason for boarding by examining joining instructions, passenger tickets, boarding passes, government identification or visitor badges, or work orders;

(iii) Perform security patrols; and

(iv) Search selected areas prior to embarking passengers and prior to sailing.

(2) At MARSEC Level 3, the owner or operator of a foreign cruise ship must ensure that security briefs to passengers about the specific threat are provided.

## Subpart D—Vessel Security Plan (VSP)

24. Revise § 104.405(a)(10) to read as follows:

**§ 104.405 Format of the Vessel Security Plan (VSP).**

(a) * * *

(10) Security measures for access control, including designated passenger access areas and TWIC implementation;

* * * * *

25. From [effective date of the final rule] to [effective date of final rule + 5 years], add Subpart E—TWIC Addendum to read as follows:

**Subpart E—TWIC Addendum**

Sec.
104.500 General.
104.505 Submission and approval.
104.510 Integration of TWIC Addendum into full VSP.

## Subpart E—TWIC Addendum

**§ 104.500 General.**

A vessel owner or operator must ensure the completion of a TWIC Addendum. The TWIC Addendum must outline the security measures to be used on the vessel in order to implement a TWIC program as discussed in § 104.265 of this part, including the alternate procedures to be used.

**§ 104.505 Submission and approval.**

(a) In accordance with § 104.115, on or before [date six months after publication of the final rule], each vessel owner or operator not operating under an ASP must submit one copy of their TWIC Addendum, in English, for review and approval to the Commanding Officer, Marine Safety Center (MSC) and a letter certifying that their TWIC Addendum meets applicable requirements of this part.

(b) Owners or operators of vessels not in service on or before [date of publication of final rule] must comply with § 104.510 and submit a complete VSP that includes details regarding the implementation of a TWIC program.

(c) The Commanding Officer, MSC, will examine each submission for compliance with this subpart and either:

(1) Approve it and specify any conditions of approval, returning to the submitter a letter stating its acceptance and any conditions;

(2) Return it for revision, returning a letter to the submitter with brief descriptions of the required revisions; or

(3) Disapprove it, returning a letter to the submitter with a brief statement of the reasons for disapproval.

(d) A TWIC Addendum may be submitted and approved to cover more than one vessel where the vessel design and operations are similar.

(e) Each company or vessel owner or operator that submits one TWIC Addendum to cover two or more vessels of similar design and operation must address vessel-specific information that includes the physical and operational characteristics of each vessel.

(f) A TWIC Addendum will be given the same expiration date as the vessel's full VSP.

**§ 104.510 Integration of TWIC Addendum into full VSP.**

Upon gaining approval for the TWIC Addendum, the vessel owner or operator must incorporate the approved TWIC Addendum into the VSP when the vessel's VSP is due for reapproval in accordance with Subpart D of this part.

## PART 105—MARITIME SECURITY: FACILITIES

26. The authority citation for part 105 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No, 0170.1.

27. From [effective date of the final rule] to [effective date of final rule + 5 years], amend § 105.115 by adding paragraph (c) to read as follows:

**§ 105.115 Compliance dates.**

* * * * *

(c) Facility owners or operators must:

(1) Submit a TWIC Addendum to their COTP to cover each facility they own or operate subject to this part on or before [date 6 months after publication of final rule]; and

(2) Be operating in accordance with the TWIC provisions found within this part, as outlined in their TWIC Addendum, between [date 1 year after publication of the final rule] and [date 18 months after publication of the final rule], depending on whether enrollment has been completed in the port where the facility is operating, in accordance with 49 CFR 1572.19.

28. Amend § 105.120 by:

a. Designating the undesignated text as paragraph (a);

b. Redesignating paragraphs (a), (b), and (c) as (a)(1), (a)(2), and (a)(3), respectively; and

c. Adding paragraph (b) to read as follows:

**§ 105.120 Compliance documentation.**

* * * * *

(b) From [effective date of final rule] to [effective date of the final rule + 5 years], this paragraph (b) shall apply. Each facility owner or operator subject to this part must ensure, before [date one year after publication of final rule] that a copies of the following documentation are available at the facility and are made available to the Coast Guard upon request:

(1) The approved TWIC addendum and any approved revisions or amendments thereto, and a letter of approval from the cognizant COTP dated within the last 5 years;

(2) The TWIC Addendum submitted for approval and current written acknowledgment from the cognizant COTP, stating that the Coast Guard is currently reviewing the TWIC Addendum submitted for approval and that the facility may continue to operate; or

(3) For facilities operating under a Coast Guard-approved Alternative Security Program as provided in § 105.140, a copy of the Alternative Security Program the facility is using, including a facility specific security assessment report generated under the Alternative Security Program, as specified in § 101.120(b)(3) of this subchapter, and a letter signed by the facility owner or operator, stating which Alternative Security Program the facility is using and certifying that the facility is in full compliance with that program, as it has been amended pursuant to § 101.121 of this subchapter.

### Subpart B—Facility Security Requirements

29. Revise § 105.200(b) to read as follows:

**§ 105.200 Owner or operator.**

* * * * *

(b) For each facility, the facility owner or operator must:

(1) Define the security organizational structure and provide each person exercising security duties and responsibilities within that structure the support needed to fulfill those obligations;

(2) Designate, in writing, by name or by title, a Facility Security Officer (FSO) and identify how the officer can be contacted at any time;

(3) Ensure that a Facility Security Assessment (FSA) is conducted;

(4) Ensure the development and submission for approval of a Facility Security Plan (FSP);

(5) Ensure that the facility operates in compliance with the approved FSP;

(6) Ensure that the TWIC program is properly implemented as set forth in this part, including;

(i) Ensuring that only individuals who hold a TWIC and are authorized to be in the area in accordance with the FSP are permitted to escort;

(ii) Identifying what action is to be taken by an escort, or other authorized individual, should individuals under escort engage in activities other than those for which escorted access was granted; and

(iii) Ensuring that security systems and equipment are installed and maintained, including at least one TWIC reader that meets the standard incorporated by TSA in 49 CFR 1572.23, and that computer and access control systems and hardware are secure;

(7) Ensure that restricted areas are controlled and TWIC provisions are coordinated, if applied to such restricted areas;

(8) Ensure that adequate coordination of security issues takes place between the facility and vessels that call on it, including the execution of a Declaration of Security (DoS) as required by this part;

(9) Ensure coordination of shore leave for vessel personnel or crew change-out, as well as access through the facility for visitors to the vessel (including representatives of seafarers' welfare and labor organizations), with vessel operators in advance of a vessel's arrival. In coordinating such leave, facility owners or operators may refer to treaties of friendship, commerce, and navigation between the U.S. and other nations. The text of these treaties can be found at *http://www.marad.dot.gov/Programs/treaties.html*;

(10) Ensure, within 12 hours of notification of an increase in MARSEC Level, implementation of the additional security measures required for the new MARSEC Level;

(11) Ensure security for unattended vessels moored at the facility;

(12) Ensure the report of all breaches of security and transportation security incidents to the National Response Center in accordance with part 101 of this chapter;

(13) Ensure consistency between security requirements and safety requirements;

(14) Inform facility personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications, and of their obligation to inform TSA of any event that would render them ineligible for a TWIC, or which would invalidate their existing TWIC;

(15) Ensure that protocols are in place for responding to TWIC holders presenting for entry who cannot electronically verify a match between themselves and the information stored on the credential's ICC. These must include interim alternative security

measures for an individual who cannot electronically verify his identity. Such provisions should take into account measures appropriate for occasional failures to verify and for persistent problems with verification such that a person may require a new credential;

(16) Ensure that protocols are in place for responding to TWIC holders presenting for entry whose cards have been revoked by TSA, or other appropriate authority, or otherwise reported as invalid, and provisions for individuals requiring access who report a lost or stolen TWIC;

(17) Ensure there are alternate provisions in case of equipment or power failures that affect TWIC readers and other validation equipment; and

(18) Ensure that appropriate personnel know who is on the facility at all times.

30. Amend § 105.205 by adding paragraphs (a)(4), (b)(2)(xv) and (c)(19) to read as follows:

**§ 105.205 Facility Security Officer (FSO).**

(a) * * *

(4) The FSO must maintain a valid TWIC.

(b) * * *

(2) * * *

(xv) Knowledge of TWIC.

(c) * * *

(19) Ensure the TWIC program is being properly implemented.

31. Amend § 105.210 by revising the introductory paragraph and adding paragraph (n) to read as follows:

**§ 105.210 Facility personnel with security duties.**

Facility personnel responsible for security duties must maintain a valid TWIC, and must have knowledge, through training or equivalent job experience, in the following, as appropriate:

* * * * *

(n) Familiar with all relevant aspects of the TWIC program and how to carry them out.

32. Amend § 105.215 by adding paragraph (f) to read as follows:

**§ 105.215 Security training for all other facility personnel.**

* * * * *

(f) Familiar with all relevant aspects of the TWIC program and how to carry them out.

33. Amend § 105.225 by adding paragraph (b)(9) to read as follows:

**§ 105.225 Facility recordkeeping requirements.**

* * * * *

(b) * * *

(9) Records of those individuals who are granted access to the secure areas of the facility, including records of when these individuals exit the facility and, in the case of individuals who are escorted, the identification of the individual who escorted or the method by which the individual was escorted.

* * * * *

34. Revise § 105.255 to read as follows:

**§ 105.255 Security measures for access control.**

(a) *General.* The facility owner or operator must ensure the implementation of security measures to:

(1) Deter the unauthorized introduction of dangerous substances and devices, including any device intended to damage or destroy persons, vessels, facilities, or ports;

(2) Secure dangerous substances and devices that are authorized by the owner or operator to be on the facility;

(3) Control access to the facility; and

(4) Prevent an unescorted individual from entering an area of the facility that is designated as a secure area unless the individual holds a duly issued TWIC and is authorized to be in the area in accordance with the facility security plan.

(b) The facility owner or operator must ensure that the following are specified:

(1) The locations where restrictions or prohibitions that prevent unauthorized access are applied for each MARSEC Level, including those points where a TWIC reader is or will be deployed. Each location allowing means of access to the facility must be addressed;

(2) The types of restrictions or prohibitions to be applied and the means of enforcing them;

(3) The means used to establish the identity of individuals not in possession of a TWIC, in accordance with § 101.515 of this subchapter, and procedures for escorting them;

(4) Procedures for identifying authorized and unauthorized persons at any MARSEC level; and

(5) The locations where persons, personal effects and vehicle screenings are to be conducted. The designated screening areas should be covered to provide for continuous operations regardless of the weather conditions.

(c) The facility owner or operator must ensure that a TWIC program is implemented as follows:

(1) Prior to granting any individual unescorted access to secure areas of the facility, ensure that the individual being granted access privileges has a TWIC and verify the individual's identity. The identity verification procedure must electronically verify a match between the individual and the biometric information stored on the TWIC's ICC. The validity of the TWIC itself shall also be verified at this time;

(2) Ensure that any individual granted unescorted access to secure areas of the facility is able to produce his or her TWIC upon request;

(3) Uses disciplinary measures to prevent fraud and abuse;

(4) Allows for temporary access if alternative security measures are implemented due to a failure of the TWIC system, and the individual can meet or pass those alternative security measures;

(5) Is coordinated, when practicable, with identification and TWIC systems of vessels or other transportation conveyances that use the facility; and

(6) Periodically verifies the validity of TWICs as outlined in paragraphs (f)(1), (g)(1) and (h)(1) of this section.

(d) If the facility owner or operator uses a separate identification system, ensure that it complies and is coordinated with TWIC provisions in this part.

(e) The facility owner or operator must establish in the approved Facility Security Plan (FSP) the frequency of application of any access controls, particularly if they are to be applied on a random or occasional basis.

(f) *MARSEC Level 1.* The facility owner or operator must ensure the following security measures are implemented at the facility:

(1) Implement TWIC as set out in paragraph (c) of this section. The validity of a TWIC presented for unescorted access shall be verified using information that is no more than seven (7) days old;

(2) Screen persons, baggage (including carry-on items), personal effects, and vehicles, for dangerous substances and devices at the rate specified in the approved FSP, excluding government-owned vehicles on official business when government personnel present identification credentials for entry;

(3) Conspicuously post signs that describe security measures currently in effect and clearly state that:

(i) Entering the facility is deemed valid consent to screening or inspection; and

(ii) Failure to consent or submit to screening or inspection will result in denial or revocation of authorization to enter;

(4) Check the identification of any person not holding a TWIC and seeking entry to the facility, including vessel passengers, vendors, personnel duly authorized by the cognizant government authorities, and visitors. This check shall include confirming the reason for

boarding by examining at least one of the following:

(i) Joining instructions;

(ii) Passenger tickets;

(iii) Boarding passes;

(iv) Work orders, pilot orders, or surveyor orders;

(v) Government identification; or

(vi) Visitor badges issued in accordance with an identification system implemented under paragraph (d) of this section;

(5) Deny or revoke a person's authorization to be on the facility if the person is unable or unwilling, upon the request of facility personnel, to establish his or her identity in accordance with this part or to account for his or her presence. Any such incident must be reported in compliance with this part;

(6) Designate restricted areas and provide appropriate access controls for these areas;

(7) Identify access points that must be secured or attended to deter unauthorized access;

(8) Deter unauthorized access to the facility and to designated restricted areas within the facility;

(9) Screen by hand or device, such as x-ray, all unaccompanied baggage prior to loading onto a vessel; and

(10) Secure unaccompanied baggage after screening in a designated restricted area and maintain security control during transfers between the facility and a vessel.

(g) *MARSEC Level 2.* In addition to the security measures required for MARSEC Level 1 in this section, at MARSEC Level 2, the facility owner or operator must:

(1) Verify the validity of TWIC credentials presented by all persons, using information that is no more than one (1) day old, and ensure that all TWIC enabled gates are manned; and

(2) Ensure the implementation of additional security measures, as specified for MARSEC Level 2 in their approved FSP. These additional security measures may include:

(i) Increasing the frequency and detail of the screening of persons, baggage, and personal effects for dangerous substances and devices entering the facility;

(ii) X-ray screening of all unaccompanied baggage;

(iii) Assigning additional personnel to guard access points and patrol the perimeter of the facility to deter unauthorized access;

(iv) Limiting the number of access points to the facility by closing and securing some access points and providing physical barriers to impede movement through the remaining access points;

(v) Denying access to visitors who do not have a verified destination;

(vi) Deterring waterside access to the facility, which may include, using waterborne patrols to enhance security around the facility; or

(vii) Except for government-owned vehicles on official business when government personnel present identification credentials for entry, screening vehicles and their contents for dangerous substances and devices at the rate specified for MARSEC Level 2 in the approved FSP.

(h) *MARSEC Level 3.* In addition to the security measures required for MARSEC Level 1 and MARSEC Level 2, at MARSEC level 3, the facility owner or operator must ensure that each person holding a TWIC and seeking unescorted access to a secure area is required to enter his or her correct PIN prior to being allowed to enter that area, and must ensure the implementation of additional security measures, as specified for MARSEC Level 3 in their approved FSP. These additional security measures may include:

(1) Screening all persons, baggage, and personal effects for dangerous substances and devices;

(2) Performing one or more of the following on unaccompanied baggage:

(i) Screen unaccompanied baggage more extensively; for example, x-raying from two or more angles;

(ii) Prepare to restrict or suspend handling unaccompanied baggage; or

(iii) Refuse to accept unaccompanied baggage;

(3) Being prepared to cooperate with responders and facilities;

(4) Granting access to only those responding to the security incident or threat thereof;

(5) Suspending access to the facility;

(6) Suspending cargo operations;

(7) Evacuating the facility;

(8) Restricting pedestrian or vehicular movement on the grounds of the facility; or

(9) Increasing security patrols within the facility.

35. Amend § 105.280 by adding paragraph (f) to read as follows:

**§ 105.280 Security incident procedures.**

* * * * *

(f) Provide a list of all persons granted access to the facility, as required to be maintained in § 105.225.

36. Amend § 105.285 by revising paragraph (a)(4) to read as follows:

**§ 105.285 Additional requirements-passenger and ferry facilities.**

(a) * * *

(4) Deny passenger access to secure and restricted areas unless escorted by authorized facility security personnel; and

* * * * *

37. Revise § 105.290 to read as follows:

**§ 105.290 Additional requirements-cruise ship terminals.**

At all MARSEC Levels, in coordination with a vessel moored at the facility, the facility owner or operator must ensure the following security measures:

(a) Screen all persons, baggage, and personal effects for dangerous substances and devices;

(b) Check the identification of all persons seeking to enter the facility. Persons holding a TWIC shall be checked as set forth in this part. For persons not holding a TWIC, this check includes confirming the reason for boarding by examining passenger tickets, boarding passes, government identification or visitor badges, or work orders;

(c) Designate holding, waiting, or embarkation areas within the facility's secure area to segregate screened persons and their personal effects awaiting embarkation from unscreened persons and their personal effects;

(d) Provide additional security personnel to designated holding, waiting, or embarkation areas within the facility's secure area; and

(e) Deny individuals not holding a TWIC access to secure and restricted areas unless escorted.

38. Amend § 105.295 by revising paragraph (a)(1) to read as follows:

**§ 105.295 Additional requirements-Certain Dangerous Cargo (CDC) facilities.**

(a) * * *

(1) Escort all non-TWIC holders at all times while on the facility;

* * * * *

39. Amend § 105.296 by adding paragraph (a)(4) to read as follows:

**§ 105.296 Additional requirements-barge fleeting facilities.**

(a) * * *

(4) Control access to the barges once tied to the fleeting area by implementing TWIC as described in § 105.255 of this part.

* * * * *

## Subpart D—Facility Security Plan (FSP)

40. Revise § 105.405(a)(10) to read as follows:

**§ 105.405 Format and content of the Facility Security Plan (FSP).**

(a) * * *

(10) Security measures for access control, including designated public access areas and TWIC implementation;

* * * * *

41. From [effective date of the final rule] to [effective date of final rule + 5 years], add Subpart E—TWIC Addendum to read as follows:

**Subpart E—TWIC Addendum**

Sec.
105.500 General.
105.505 Submission and approval.
105.510 Integration of TWIC Addendum into full FSP.

## Subpart E—TWIC Addendum

### § 105.500 General.

A facility owner or operator must ensure the completion of a TWIC Addendum. The TWIC Addendum must outline the security measures to be used on the facility in order to implement a TWIC program as discussed in § 105.255 of this part, including the alternate procedures to be used.

### § 105.505 Submission and approval.

(a) In accordance with § 105.115, on or before [date six months after publication of the final rule], each facility owner or operator must either:

(1) Submit one copy of their TWIC Addendum, in English, for review and approval to the cognizant COTP and a letter certifying that their TWIC Addendum meets applicable requirements of this part; or

(2) If operating under a Coast Guard-approved Alternative Security Program (ASP), a letter signed by the facility owner or operator stating which approved ASP the owner or operator is using, and affirming that any new provisions of that ASP regarding TWIC have been implemented.

(b) Owners or operators of facilities not in service on or before [date of publication of the final rule] must comply with § 105.510 and submit a complete FSP that includes details regarding the implementation of a TWIC program.

(c) The cognizant COTP will examine each submission for compliance with this subpart and either:

(1) Approve it and specify any conditions of approval, returning to the submitter a letter stating its acceptance and any conditions;

(2) Return it for revision, returning a copy to the submitter with brief descriptions of the required revisions; or

(3) Disapprove it, returning a copy to the submitter with a brief statement of the reasons for disapproval.

(d) A TWIC Addendum may be submitted and approved to cover more than one facility where they share similarities in design and operations, if authorized and approved by each cognizant COTP.

(e) Each facility owner or operator that submits one TWIC Addendum to cover two or more facilities of similar design and operation must address facility-specific information that includes the design and operational characteristics of each facility.

(f) A TWIC Addendum will be given the same expiration date as the facility's full FSP.

### § 105.510 Integration of TWIC Addendum into full FSP.

* * * * *

Upon gaining approval for the TWIC Addendum, the facility owner or operator must incorporate the approved TWIC Addendum into the FSP when the facility's FSP is due for reapproval in accordance with Subpart D of this part.

## PART 106—MARITIME SECURITY: OUTER CONTINENTAL SHELF (OCS) FACILITIES

42. The authority citation for part 106 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No, 0170.1.

43. From [effective date of the final rule] to [effective date of final rule + 5 years] amend § 106.110 by adding paragraph (d) to read as follows:

### § 106.110 Compliance dates.

(d) OCS facility owners and operators must:

(1) Submit a TWIC Addendum to the cognizant District Commander to cover each facility they own or operate subject to this part on or before [date 6 months after publication of final rule]; and

(2) Be operating in accordance with the TWIC provisions found within this part, as outlined in their TWIC Addendum, between [date 1 year after publication of the final rule] and [date 18 months after publication of the final rule], depending on whether enrollment has been completed in the port where the facility is operating, in accordance with 49 CFR 1572.19.

44. Amend § 106.115 by:

a. Designating the undesignated text as paragraph (a);

b. Redesignating paragraphs (a), (b), and (c) as (a)(1), (a)(2), and (a)(3), respectively; and

c. Adding paragraph (b) to read as follows:

### § 106.115 Compliance documentation.

* * * * *

(b) From [effective date of final rule] to [effective date of final rule + 5 years], this paragraph (b) shall apply. Each OCS facility owner or operator subject to this part must ensure, before [date one year after publication of final rule] that a copies of the following documentation are available at the OCS facility and are made available to the Coast Guard upon request:

(1) The approved TWIC addendum and any approved revisions or amendments thereto, and a letter of approval from the cognizant District Commander dated within the last 5 years;

(2) The TWIC Addendum submitted for approval and current written acknowledgment from the cognizant District Commander, stating that the Coast Guard is currently reviewing the TWIC Addendum submitted for approval and that the OCS facility may continue to operate; or

(3) For OCS facilities operating under a Coast Guard-approved Alternative Security Program as provided in § 106.135, a copy of the Alternative Security Program the OCS facility is using, including a facility specific security assessment report generated under the Alternative Security Program, as specified in § 101.120(b)(3) of this subchapter, and a letter signed by the OCS facility owner or operator, stating which Alternative Security Program the OCS facility is using and certifying that the OCS facility is in full compliance with that program, as it has been amended pursuant to § 101.121 of this subchapter.

45. Revise § 106.200(b) to read as follows:

### § 106.200 Owner or operator.

* * * * *

(b) For each OCS facility, the OCS facility owner or operator must:

(1) Define the security organizational structure for each OCS Facility and provide each person exercising security duties or responsibilities within that structure the support needed to fulfill those obligations;

(2) Designate in writing, by name or title, a Company Security Officer (CSO) and a Facility Security Officer (FSO) for each OCS Facility and identify how those officers can be contacted at any time;

(3) Ensure that a Facility Security Assessment (FSA) is conducted;

(4) Ensure the development and submission for approval of a Facility Security Plan (FSP);

(5) Ensure that the OCS facility operates in compliance with the approved FSP;

(6) Ensure that the TWIC program is properly implemented as set forth in this part, including:

(i) Ensuring that only individuals who hold a TWIC and are authorized to be in the area in accordance with the OCS FSP are permitted to escort;

(ii) Identifying what action is to be taken by an escort, or other authorized individual, should individuals under escort engage in activities other than those for which escorted access was granted; and

(iii) Ensuring that security systems and equipment are installed and maintained, including at least one TWIC reader that meets the standard incorporated by TSA in 49 CFR 1572.23, and that computer and access control systems and hardware are secure;

(7) Ensure that adequate coordination of security issues takes place between OCS facilities and vessels, including the execution of a Declaration of Security (DoS) as required by this part;

(8) Ensure, within 12 hours of notification of an increase in MARSEC Level, implementation of the additional security measures required by the FSP for the new MARSEC Level;

(9) Ensure all breaches of security and security incidents are reported in accordance with part 101 of this subchapter;

(10) Ensure consistency between security requirements and safety requirements;

(11) Inform OCS facility personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications, and of their obligation to inform TSA of any event that would render them ineligible for a TWIC, or which would invalidate their existing TWIC;

(12) Ensure that protocols are in place for responding to TWIC holders presenting for entry who cannot electronically verify a match between themselves and the biometric information stored on the credential's ICC. These must include interim alternative security measures for an individual who cannot electronically identify his identity. Such provisions should take into account measures appropriate for occasional failures to verify and for persistent problems with verification such that a person may require a new credential;

(13) Ensure that protocols are in place for responding to TWIC holders presenting for entry whose cards have been revoked by TSA, or other appropriate authority, or otherwise reported as invalid, and provisions for individuals requiring access who report a lost or stolen TWIC;

(14) Ensure there are alternate provisions in case of equipment or power failures that affect TWIC readers and other validation equipment; and

(15) Ensure that appropriate personnel know who is on the OCS facility at all times.

46. Amend § 106.205 by adding paragraphs (a)(4), (c)(13) and (d)(13) to read as follows:

**§ 106.205 Company Security Officer (CSO).**

(a) * * *

(4) The CSO must maintain a valid TWIC.

* * * * *

(c) * * *

(13) Knowledge of TWIC.

(d) * * *

(13) Ensure the TWIC program is being properly implemented.

47. Amend § 106.210 by adding paragraphs (a)(4) and (c)(15) to read as follows:

**§ 106.210 OCS Facility Security Officer (FSO).**

(a) * * *

(4) The FSO must maintain a valid TWIC.

* * * * *

(c) * * *

(15) Ensure the TWIC programs is properly implemented.

48. Amend § 106.215 by revising the introductory paragraph and redesignating paragraphs (k) and (l) as (l) and (m), respectively, and adding new paragraph (k) to read as follows:

**§ 106.215 Company of OCS facility personnel with security duties.**

Company and OCS facility personnel responsible for security duties must maintain a valid TWIC, and must have knowledge, through training or equivalent job experience, in the following, as appropriate:

* * * * *

(k) Familiarity with all relevant aspects of the TWIC program and how to carry them out;

* * * * *

49. Amend § 106.220 by adding paragraph (f) to read as follows:

**§ 106.220 Security training for all other OCS personnel.**

* * * * *

(f) Familiarity with all relevant aspects of the TWIC program and how to carry them out.

50. Revise § 106.230 by adding paragraph (b)(9) to read as follows:

**§ 106.230 OCS facility recordkeeping requirements.**

* * * * *

(b) * * *

(9) Records of those individuals who are granted access to the secure area of the OCS facility, including records of when these individuals exit the OCS facility and, in the case of individuals who are escorted, the identification of the individual who escorted or the method by which the individual was escorted.

51. Revise § 106.260 to read as follows:

**§ 106.260 Security measures for access control.**

(a) *General.* The OCS facility owner or operator must ensure the implementation of security measures to:

(1) Deter the unauthorized introduction of dangerous substances and devices, including any device intended to damage or destroy persons, vessels, or the OCS facility;

(2) Secure dangerous substances and devices that are authorized by the OCS facility owner or operator to be on board;

(3) Control access to the OCS facility; and

(4) Prevent an unescorted individual from entering the OCS facility unless the individual holds a duly issued TWIC and is authorized to be on the OCS facility in accordance with the OCS facility security plan.

(b) The OCS facility owner or operator must ensure that the following are specified:

(1) All locations providing means of access to the OCS facility where access restrictions or prohibitions are applied for each security level to prevent unauthorized access, including those points where a TWIC reader is or will be deployed;

(2) The identification of the types of restriction or prohibition to be applied and the means of enforcing them;

(3) The means used to establish the identity of individuals not in possession of a TWIC and the means by which they will be allowed access to the OCS facility; and

(4) Procedures for identifying authorized and unauthorized persons at any MARSEC level.

(c) The OCS facility owner or operator must ensure that a TWIC program is implemented as follows:

(1) Prior to granting any individual unescorted access to the OCS facility, ensure that the individual has a TWIC and verify the individual's identity. The identity verification procedure must electronically verify a match between the individual and the biometric information stored on the TWIC's ICC. The validity of the TWIC itself must also be verified at this time;

(2) Ensure that any individual granted unescorted access to the OCS facility is able to produce his or her TWIC upon request;

(3) Uses disciplinary measures to prevent fraud and abuse;

(4) Allows for temporary access if alternative security measures are implemented due to a failure of the TWIC system, and the individual can meet or pass those alternative security measures; and

(5) Periodically verifies the validity of TWICs, using the latest information available from TSA, as outlined in paragraphs (f)(1), (g)(1) and (h)(1) of this section.

(d) If the OCS facility owner or operator uses a separate identification system, ensure that it is coordinated with identification and TWIC systems in place on vessels conducting operations with the OCS facility.

(e) The OCS facility owner or operator must establish in the approved Facility Security Plan (FSP) the frequency of application of any access controls, particularly if they are to be applied on a random or occasional basis.

(f) *MARSEC Level 1.* The OCS facility owner or operator must ensure the following security measures are implemented at the facility:

(1) Implement TWIC as set out in paragraph (c) of this section. The validity of a TWIC presented for unescorted access shall be verified using information that is no more than seven (7) days old. The validity of a TWIC held by a person already granted access to the OCS facility shall be verified weekly, using the most current information available from TSA;

(2) Screen persons and personal effects going aboard the OCS facility for dangerous substances and devices at the rate specified in the approved FSP;

(3) Conspicuously post signs that describe security measures currently in effect and clearly stating that:

(i) Boarding an OCS facility is deemed valid consent to screening or inspection; and

(ii) Failure to consent or submit to screening or inspection will result in denial or revocation of authorization to be on board;

(4) Check the identification of any person seeking to board the OCS facility, including OCS facility employees, passengers and crews of vessels interfacing with the OCS facility, vendors, and visitors and ensure that non-TWIC holders are denied unescorted access to the OCS facility;

(5) Deny or revoke a person's authorization to be on board if the person is unable or unwilling, upon the request of OCS facility personnel, to establish his or her identity in accordance with this part or to account for his or her presence on board. Any such incident must be reported in compliance with this part;

(6) Deter unauthorized access to the OCS facility;

(7) Identify access points that must be secured or attended to deter unauthorized access;

(8) Lock or otherwise prevent access to unattended spaces that adjoin areas to which OCS facility personnel and visitors have access;

(9) Ensure OCS facility personnel are not required to engage in or be subjected to screening, of the person or of personal effects, by other OCS facility personnel, unless security clearly requires it;

(10) Provide a designated secure area on board, or in liaison with a vessel interfacing with the OCS facility, for conducting inspections and screening of people and their personal effects; and

(11) Respond to the presence of unauthorized persons on board.

(g) *MARSEC Level 2.* In addition to the security measures required for MARSEC Level 1 in this section, at MARSEC Level 2, the OCS facility owner or operator must:

(1) Verify the validity of a TWIC presented for unescorted access shall be verified using information that is no more than one (1) day old, and verify the validity of a TWIC held by a person already granted access to the OCS facility daily, using the most current information available from TSA;

(2) Ensure the implementation of additional security measures, as specified for MARSEC Level 2 in the approved FSP. These additional security measures may include:

(i) Increasing the frequency and detail of screening of people and personal effects embarking onto the OCS facility as specified for MARSEC Level 2 in the approved FSP;

(ii) Assigning additional personnel to patrol deck areas during periods of reduced OCS facility operations to deter unauthorized access;

(iii) Limiting the number of access points to the OCS facility by closing and securing some access points; or

(iv) Deterring waterside access to the OCS facility, which may include, providing boat patrols.

(h) *MARSEC Level 3.* In addition to the security measures required for MARSEC Level 1 and MARSEC Level 2, at MARSEC level 3, the facility owner or operator must ensure that each person holding a TWIC and seeking unescorted access to a secure area is required to enter his or her correct PIN prior to being allowed to enter that area, and must ensure the implementation of additional security measures, as specified for MARSEC Level 3 in their approved FSP. The additional security measures may include:

(1) Screening all persons and personal effects for dangerous substances and devices;

(2) Being prepared to cooperate with responders;

(3) Limiting access to the OCS facility to a single, controlled access point;

(4) Granting access to only those responding to the security incident or threat thereof;

(5) Suspending embarkation and/or disembarkation of personnel;

(6) Suspending the loading of stores or industrial supplies;

(7) Evacuating the OCS facility; or

(8) Preparing for a full or partial search of the OCS facility.

52. Amend § 106.280 by adding paragraph (g) to read as follows:

**§ 106.280 Security incident procedures.**

* * * * *

(g) Provide a list of all persons granted access to the OCS facility, as required to be maintained in § 106.230.

## Subpart D—Outer Continental Shelf (OCS) Facility Security Plan (FSP)

53. Revise § 106.405(a)(10) to read as follows:

**§ 106.405 Format of the Facility Security Plan (FSP).**

(a) * * *

(10) Security measures for access control, including TWIC implementation;

* * * * *

54. From [effective date of the final rule] to [effective date of final rule + 5 years], add Subpart E—TWIC Addendum to read as follows:

**Subpart E—TWIC Addendum**

Sec.
106.500 General.
106.505 Submission and approval.
106.510 Integration of TWIC Addendum into full FSP.

## Subpart E—TWIC Addendum

**§ 106.500 General.**

An OCS facility owner or operator must ensure the completion of a TWIC Addendum. The TWIC Addendum must outline the security measures to be used on the OCS facility in order to implement a TWIC program as discussed in § 106.260 of this part, including the alternate procedures to be used.

**§ 106.505 Submission and approval.**

(a) In accordance with § 106.115, on or before [date six months after date of publication of final rule], each OCS facility owner or operator must either:

(1) Submit one copy of their TWIC Addendum, in English, for review and approval to the cognizant District Commander and a letter certifying that their TWIC Addendum meets applicable requirements of this part; or

(2) If operating under a Coast Guard-approved Alternative Security Program (ASP), a letter signed by the OCS facility owner or operator stating which approved ASP the owner or operator is using, and affirming that any new provisions of that ASP regarding TWIC have been implemented.

(b) Owners or operators of OCS facilities not in service on or before [date of publication of final rule] must comply with § 106.510 and submit a complete FSP that includes details regarding the implementation of a TWIC program.

(c) The cognizant District Commander will examine each submission for compliance with this subpart and either:

(1) Approve it and specify any conditions of approval, returning to the submitter a letter stating its acceptance and any conditions;

(2) Return it for revision, returning a copy to the submitter with brief descriptions of the required revisions; or

(3) Disapprove it, returning a copy to the submitter with a brief statement of the reasons for disapproval.

(d) A TWIC Addendum may be submitted and approved to cover more than one facility where they share similarities in physical characteristics, location, and operations.

(e) Each OCS facility owner or operator that submits one TWIC Addendum to cover two or more OCS facilities of similar design, location, and operation must address OCS facility-specific information that includes the physical and operational characteristics of each OCS facility.

(f) A TWIC Addendum will be given the same expiration date as the OCS facility's full FSP.

#### § 106.510 Integration of TWIC Addendum into full FSP.

Upon gaining approval for the TWIC Addendum, the OCS facility owner or operator must incorporate the approved TWIC Addendum into the FSP when the OCS facility's FSP is due for reapproval in accordance with Subpart D of this part.

### PART 125—IDENTIFICATION CREDENTIALS FOR PERSONS REQUIRING ACCESS TO WATERFRONT FACILITIES OR VESSELS

55. The authority citation for part 125 is revised to read as follows:

**Authority:** R.S. 4517, 4518, secs. 19, 2, 23 Stat. 58, 118, sec. 7, 49 Stat. 1936, sec. 1, 40 Stat. 220; 46 U.S.C. 570'572, 2, 689, and 70105; 50 U.S.C. 191, EO 10173, EO 10277, EO 10352, 3 CFR, 1949—1953 Comp. pp. 356, 778, 873.

56. In § 125.09, revise paragraph (f) and add paragraph (g) to read as follows:

#### § 125.09 Identification credentials.

* * * * *

(f) Transportation Worker Identification Credential.

(g) Such other identification as may be approved by the Commandant from time to time.

## Title 46—Shipping

### Chapter I—Coast Guard

### PART 10—LICENSING OF MARITIME PERSONEL

57. The authority citation for part 10 continues to read as follows:

**Authority:** 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

58. Add new § 10.113 to read as follows:

#### § 10.113 Transportation Worker Identification Credential

In accordance with the implementation schedule contained in 49 CFR 1572.19, all mariners holding an active License, Certificate of Registry or STCW endorsement issued under this Part must hold a valid Transportation Worker Identification Credential (TWIC) issued by the Transportation Security Administration under title 49 CFR part 1572.

### PART 12—CERTIFICATION OF SEAMEN

59. The authority citation for part 12 is revised to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701, and 70105; Department of Homeland Security Delegation No. 0170.1.

60. Add new § 12.01–11 to read as follows:

#### § 12.01–11 Transportation Worker Identification Credential.

In accordance with the implementation schedule contained in 49 CFR 1572.19, all mariners holding a Merchant Mariner's Document or STCW endorsement issued under this Part must hold a valid Transportation Worker Identification Credential (TWIC) issued by the Transportation Security Administration under 49 CFR part 1572.

### PART 15—MANNING REQUIREMENTS

61. The authority citation for part 15 is revised to read as follows:

**Authority:** 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, 9102, and 70105; and Department of Homeland Security Delegation No. 0170.1.

62. Add new § 15.415 to read as follows:

#### § 15.415 Transportation Worker Identification Credential.

In accordance with the implementation schedule contained in 49 CFR 1572.19, a person may not employ or engage an individual, and an individual may not serve in a position in which an individual is required by law or regulation to hold an active License, Merchant Mariner Document, Certificate of Registry or STCW endorsement, unless the individual holds a valid Transportation Security Identification Credential (TWIC). All mariners holding an active License, Merchant Mariner Document, Certificate of Registry or STCW endorsement issued by the Coast Guard must hold a valid TWIC issued by the Transportation Security Administration under 49 CFR part 1572.

## Title 49—Transportation

### Chapter XII—Transportation Security Administration

#### Subchapter A—Administrative and Procedural Rules

63. Add a new part 1515 to subchapter A to read as follows:

### PART 1515—APPEAL AND WAIVER PROCEDURES FOR SECURITY THREAT ASSESSMENTS FOR INDIVIDUALS

Sec.
1515.1 Scope.
1515.3 Terms used in this part.
1515.5 Appeal procedures.
1515.7 Waiver procedures.

**Authority:** 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

#### § 1515.1 Scope.

This part applies to applicants who undergo one of the following security threat assessments and wish to appeal an Initial Determination of Threat Assessment or an Initial Determination of Threat Assessment and Immediate Revocation or apply for a waiver:

(a) For a hazardous materials endorsement (HME) as described in 49 CFR part 1572.

(b) For a Transportation Worker Identification Credential (TWIC) as described in 49 CFR part 1572.

**§ 1515.3 Terms used in this part.**

The terms used in 49 CFR parts 1500, 1540, 1570, and 1572 also apply in this part. In addition, the following terms are used in this part:

*Applicant* means a person who has applied for one of the security threat assessments identified in § 1515.1.

*Date of service* means—

(1) In the case of personal service, the date of personal delivery to the residential address listed on the application;

(2) In the case of mailing with a certificate of service, the date shown on the certificate of service;

(3) In the case of mailing and there is no certificate of service, 10 days from the date mailed to the address designated on the application as the mailing address;

(4) In the case of mailing with no certificate of service or postmark, the date mailed to the address designated on the application as the mailing address shown by other evidence; or

(5) The date on which an electronic transmission occurs.

*Day* means calendar day.

*Security threat assessment* means the threat assessment for which the applicant has applied, as described in § 1515.1.

**§ 1515.5 Appeal procedures.**

(a) *Scope*. This section applies to appeals from an Initial Determination of Threat—

(1) For a hazardous materials endorsement (HME) as described in 49 CFR 1572.15.

(2) For a Transportation Worker Identification Credential (TWIC) as described in 49 CFR 1572.15.

(b) *Grounds for appeal*. An applicant may appeal an Initial Determination of Threat Assessment if the applicant is asserting that he or she meets the standards for the security threat assessment for which he or she is applying.

(c) *Appeal*—(1) *Initiating an appeal.* An applicant initiates an appeal by submitting a written reply to TSA or written request for materials from TSA. If the applicant does not initiate an appeal within 60 days of receipt, the Initial Determination of Threat Assessment becomes final. TSA then serves a Final Determination of Threat Assessment on the applicant.

(i) In the case of an HME, TSA also serves a Final Determination of Threat Assessment on the licensing State.

(ii) In the case of a mariner applying for TWIC, TSA also serves a Final Determination of Threat Assessment on the Coast Guard.

(2) *Request for materials.* Within 60 days of the date of service of the Initial Determination of Threat Assessment, the applicant may serve upon TSA a written request for copies of the materials upon which the Initial Determination was based.

(3) *TSA response.* (i) Within 60 days of receiving the applicant's request for materials, TSA serves copies of the releasable materials upon the applicant on which the Initial Determination was based. TSA will not include any classified information or other protected information described in paragraph (f) of this section.

(ii) Within 60 days of receiving the applicant's request for materials or written reply, TSA may request additional information or documents from the applicant that TSA believes are necessary to make a Final Determination.

(4) *Correction of records.* If the Initial Determination of Threat Assessment was based on a record that the applicant believes is erroneous, the applicant may correct the record, as follows:

(i) The applicant contacts the jurisdiction or entity responsible for the information and attempts to correct or complete information contained in his or her record.

(ii) The applicant provides TSA with the revised record, or a certified true copy of the information from the appropriate entity, before TSA determines that the applicant meets the standards for the security threat assessment.

(5) *Reply*. (i) The applicant may serve upon TSA a written reply to the Initial Determination of Threat Assessment within 60 days of service of the Initial Determination, or 60 days after the date of service of TSA's response to the applicant's request for materials under paragraph (b)(1) of this section, if the applicant served such request. The reply must include the rationale and information on which the applicant disputes TSA's Initial Determination.

(ii) In an applicant's reply, TSA will consider only material that is relevant to whether the applicant meets the standards described in 49 CFR 1572.5(a).

(6) *Final determination*. Within 60 days after TSA receives the applicant's reply, TSA serves a Final Determination of Threat Assessment or a Withdrawal of the Initial Determination as provided in paragraphs (c) or (d) of this section.

(d) *Final Determination of Threat Assessment*. (1) If the Director concludes that the applicant does not meet the standards described in 49 CFR 1572.5(a)(1), (a)(2), or (a)(4) following an appeal, TSA serves a Final Determination of Threat Assessment upon the applicant. In addition—

(i) In the case of an HME, TSA serves a Final Determination of Threat Assessment on the licensing State.

(ii) In the case of a mariner applying for TWIC, TSA serves a Final Determination of Threat Assessment on the Coast Guard.

(iii) In the case of a TWIC, TSA serves a Final Determination of Threat Assessment on the Federal Maritime Security Coordinator (FMSC).

(2) If the Assistant Secretary concludes that the applicant does not meet the security threat assessment standards described in 49 CFR 1572.5(a)(3) following an appeal, TSA serves a Final Determination of Threat Assessment upon the applicant. In addition—

(i) In the case of an HME, TSA serves a Final Determination of Threat Assessment on the licensing State.

(ii) In the case of a mariner applying for TWIC, TSA serves a Final Determination of Threat Assessment on the Coast Guard.

(iii) In the case of a TWIC, TSA serves a Final Determination of Threat Assessment on the FMSC.

(3) The Final Determination includes a statement that the Director or Assistant Secretary has reviewed the Initial Determination, the applicant's reply and any accompanying information, and any other materials or information available to him or her, and has determined that the applicant poses a security threat warranting denial of the security threat assessment for which the applicant has applied.

(e) *Withdrawal of Initial Determination*. If the Director or Assistant Secretary concludes that the applicant does not pose a security threat, TSA serves a Withdrawal of the Initial Determination upon the applicant.

(f) *Nondisclosure of certain information*. In connection with the procedures under this section, TSA does not disclose classified information to the applicant, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

(g) *Extension of time*. TSA may grant an applicant an extension of time of the limits described in this section for good cause shown. An applicant's request for an extension of time must be in writing and be received by TSA within a reasonable time before the due date to

be extended. TSA may grant itself an extension of time for good cause.

(h) *Judicial review*. For purposes of judicial review, the Final Determination of Threat Assessment constitutes a final TSA order in accordance with 49 U.S.C. 46110.

(i) *Appeal of immediate revocation*. If TSA directs an immediate revocation, the applicant may appeal this determination by following the appeal procedures described in paragraph (b) of this section. This applies to—

(1) If TSA directs a State to revoke an HME pursuant to 49 CFR 1572.13(a).

(2) If TSA invalidates a TWIC by issuing an Initial Determination of Threat Assessment and Immediate Revocation pursuant to 49 CFR 1572.21(d)(3).

**§ 1515.7 Waiver procedures.**

(a) *Scope*. This section applies if an applicant does not meet certain standards for a security threat assessment but wishes to obtain a waiver of those standards, for—

(1) For a hazardous materials endorsement (HME) as described in 49 CFR part 1572.

(2) For a Transportation Worker Identification Credential (TWIC) as described in 49 CFR part 1572.

(b) *Grounds for waiver*. TSA may issue a waiver of certain standards and grant an HME or TWIC, if TSA determines that an applicant no longer poses a security threat based on a review of information described in paragraph (c) of this section. An applicant disqualified for the reasons described in paragraphs (b)(1) through (b)(3) of this section may apply for a waiver of the standards.

(1) A disqualifying criminal offense described in 49 CFR 1572.103(a)(5) through (a)(9), and § 1572.103(a)(10), if the underlying criminal offense is in §§ 1572.103 (a)(5) through (a)(9); or

(2) A disqualifying criminal offense described in 49 CFR 1572.103(b); or

(3) Mental incapacity as described in 49 CFR 1572.109.

(c) *Initiating waiver*. (1) An applicant initiates a waiver request by—

(i) Providing the information required in 49 CFR 1572.9 for an HME or 49 CFR 1572.17 for a TWIC;

(ii) Paying the fees required in 49 CFR 1572.405 (a)(1) through (a)(3) for an HME or in 49 CFR 1572.503(a)(1)(i) through (a)(1)(iii) for a TWIC; and

(iii) Sending a written request to TSA for a waiver at any time, but not later than 60 days after the date of service of the Final Determination of Threat Assessment.

(2) In determining whether to grant a waiver, TSA will consider the following factors:

(i) The circumstances of the disqualifying act or offense.

(ii) Restitution made by the applicant.

(iii) Any Federal or State mitigation remedies.

(iv) Court records or official medical release documents indicating that the individual no longer lacks mental capacity.

(v) Other factors that indicate the applicant does not pose a security threat warranting denial of the HME or TWIC.

(d) *Grant or denial of waivers*. (1) The Director will send a written decision granting or denying the waiver to the applicant within 60 days of service the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(2) In the case of an HME, if the Director grants the waiver, the Director will send a Determination of No Security Threat to the licensing State within 60 days of service the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(3) In the case of a mariner applying for TWIC, if the Director grants the waiver, the Director will send a Determination of No Security Threat to the Coast Guard within 60 days of service the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(e) *Extension of time*. TSA may grant an applicant an extension of time of the limits described in paragraph (b) and (c) of this section for good cause shown. An applicant's request for an extension of time must be in writing and be received by TSA within a reasonable time before the due date to be extended. TSA may grant itself an extension of time for good cause.

**Subchapter D—Maritime and Land Transportation Security**

64. Revise part 1570 to read as follows:

## PART 1570—GENERAL RULES

Sec.
1570.1 Scope.
1570.3 Terms used in this subchapter.
1570.5 Fraud and intentional falsification of records.

**Authority:** 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

**§ 1570.1 Scope.**

This part applies to any person involved in land or maritime transportation as specified in this part.

**§ 1570.3 Terms used in this subchapter.**

For purposes of this subchapter:

*Adjudicate* means to make an administrative determination of whether an applicant meets the standards in this subchapter, based on the merits of the issues raised.

*Alien* means any person not a citizen or national of the United States.

*Alien registration number* means the number issued by the U.S. Department of Homeland Security to an individual when he or she becomes a lawful permanent resident of the United States or attains other lawful, non-citizen status.

*Applicant* means a person who has applied for one of the security threat assessments identified in this subchapter.

*Assistant Secretary* means Assistant Secretary for Homeland Security, Transportation Security Administration (Assistant Secretary), the highest ranking TSA official, or his or her designee, and who is responsible for making the final determination on the appeal of an intelligence-related check under this part.

*Commercial drivers license (CDL)* is used as defined in 49 CFR 383.5.

*Convicted* means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this subchapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this subchapter.

*Determination of No Security Threat* means an administrative determination by TSA that an individual does not pose a security threat warranting denial of an HME or a TWIC.

*Director* means the officer designated by the Assistant Secretary to administer the appeal and waiver programs described in this part, except where the Assistant Secretary is specifically designated in this part to administer the appeal or waiver program. The Director may appoint a designee to assume his or her duties.

*Federal Maritime Security Coordinator (FMSC)* has the same meaning as defined in 46 U.S.C. 70103(a)(2)(G); is the Captain of the Port (COTP) exercising authority for the COTP zones described in 33 CFR part 3, and is the Port Facility Security Officer

as described in the International Ship and Port Facility Security (ISPS) Code, part A.

*Final Determination of Threat Assessment* means a final administrative determination by TSA, including the resolution of related appeals, that an individual poses a security threat warranting denial of an HME or a TWIC.

*Hazardous materials endorsement (HME)* means the authorization for an individual to transport hazardous materials in commerce, an indication of which must be on the individual's commercial driver's license, as provided in the Federal Motor Carrier Safety Administration (FMCSA) regulations in 49 CFR part 383.

*Imprisoned or imprisonment* means confined to a prison, jail, or institution for the criminally insane, on a full-time basis, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity. Time spent confined or restricted to a half-way house, treatment facility, or similar institution, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity, does not constitute imprisonment for purposes of this rule.

*Incarceration* means confined or otherwise restricted to a jail-type institution, half-way house, treatment facility, or another institution, on a full or part-time basis, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity.

*Initial Determination of Threat Assessment* means an initial administrative determination by TSA that an individual poses a security threat warranting denial of an HME or a TWIC.

*Initial Determination of Threat Assessment and Immediate Revocation* means an initial administrative determination that an individual poses a security threat that warrants immediate revocation of an HME or invalidation of a TWIC. In the case of an HME, the State must immediately revoke the HME if TSA issues an Initial Determination of Threat Assessment and Immediate Revocation. In the case of a TWIC, TSA invalidates the TWIC when TSA issues an Initial Determination of Threat Assessment and Immediate Revocation.

*Invalidate* means the action TSA takes to make a credential inoperative when it is reported as lost, stolen, damaged, no longer needed, or when TSA determines an applicant does not meet the security threat assessment standards of 49 CFR part 1572.

*Lawful permanent resident* means an individual, lawfully admitted to the United States for permanent residence, as defined in 8 U.S.C. 1101.

*Maritime facility* has the same meaning as ''facility'' together with ''OCS facility'' (Outer Continental Shelf facility), as defined in 33 CFR 101.105.

*Mental health facility* means a mental institution, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

*Owner/operator* with respect to a maritime facility or a vessel has the same meaning as defined in 33 CFR 101.105.

*Revocation* means the termination, deactivation, rescission, invalidation, cancellation, or withdrawal of the privileges and duties conferred by an HME or TWIC, when TSA determines an applicant does not meet the security threat assessment standards of 49 CFR part 1572.

*Secure area* means the area on board a vessel or at a facility or outer continental shelf facility, over which the owner/operator has implemented security measures for access control, as defined by a Coast Guard approved security plan. It does not include passenger access areas or public access areas, as those terms are defined in 33 CFR 104.106 and 105.106 respectively.

*Security threat* means an individual whom TSA determines or suspects of posing a threat to national security; to transportation security; or of terrorism.

*Sensitive security information (SSI)* means information that is described in, and must be managed in accordance with, 49 CFR part 1520.

*State* means a State of the United States and the District of Columbia.

*Transportation Worker Identification Credential (TWIC)* means a Federal biometric credential, issued to an individual, when TSA determines that the individual does not pose security threat.

*Withdrawal of Initial Determination of Threat Assessment* is the document that TSA issues after issuing an Initial Determination of Security Threat, when TSA determines that an individual does not pose a security threat, warranting denial of an HME or TWIC.

**§ 1570.5 Fraud and intentional falsification of records.**

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any record or report that is kept, made, or used to show compliance with the subchapter, or exercise any privileges under this subchapter.

(b) Any reproduction or alteration, for fraudulent purpose, of any record, report, security program, access medium, or identification medium issued under this subchapter or pursuant to standards in this subchapter.

65. Revise part 1572 to read as follows:

## PART 1572—CREDENTIALING AND SECURITY THREAT ASSESSMENTS

### Subpart A—Procedures and General Standards

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1572.501 Fee collection.
1572.503 Fee procedures for collection by TSA or its agent.

**Authority:** 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

## Subpart A—Procedures and General Standards

### § 1572.1 Applicability.

This part establishes regulations for credentialing and security threat assessments for certain maritime and land transportation workers.

### § 1572.3 Scope.

This part applies to—

(a) State agencies responsible for issuing a hazardous materials endorsement (HME); and

(b) An applicant who—

(1) Is qualified to hold a commercial driver's license under 49 CFR parts 383 and 384, and is applying to obtain, renew, or transfer an HME; or

(2) Is applying to obtain or renew a TWIC in accordance with 33 CFR parts 104 through 106 or 46 CFR part 10;

### § 1572.5 Standards for security threat assessments.

(a) *Standards.* TSA determines that an applicant poses a security threat warranting denial of an HME or TWIC, if—

(1) The applicant has a disqualifying criminal offense described in § 1572.103;

(2) The applicant does not meet the immigration status requirements described in § 1572.105;

(3) TSA conducts the analyses described in § 1572.107 and determines that the applicant poses a security threat; or

(4) The applicant has been adjudicated as lacking mental capacity or committed to a mental health facility, as described in § 1572.109.

(b) *Immediate revocation/invalidation.* TSA may invalidate a TWIC or direct a State to revoke an HME immediately, if TSA determines during the security threat assessment that an applicant poses an immediate threat to transportation security, national security, or of terrorism.

(c) *Violation of FMCSA standards.* The regulations of the Federal Motor Carrier Safety Administration (FMCSA) provide that an applicant is disqualified from operating a commercial motor vehicle for specified periods, if he or she has an offense that is listed in the FMCSA rules at 49 CFR 383.51. If records indicate that an applicant has committed an offense that would disqualify the applicant from operating a commercial motor vehicle under 49 CFR 383.51, TSA will not issue a Determination of No Security Threat until the State or the FMCSA determine that the applicant is not disqualified under that section.

(d) *Comparability of other security threat assessment standards.* TSA may determine that security threat assessments conducted by other governmental agencies are comparable to the threat assessment described in this part, which TSA conducts for HME and TWIC applicants.

(1) In making a comparability determination, TSA will consider—

(i) The minimum standards used for the security threat assessment;

(ii) The frequency of the threat assessment;

(iii) The date of the most recent threat assessment; and

(iv) Whether the threat assessment includes biometric identification and a biometric credential.

(2) To apply for a comparability determination, the agency seeking the determination must contact the Assistant Program Manager, Attn: Federal Agency Comparability Check, Hazmat Threat Assessment Program, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

(3) TSA will notify the public when a comparability determination is made.

(4) An applicant, who has completed a security threat assessment that is determined to be comparable under this section to the threat assessment described in this part, must complete the enrollment process and provide biometric information to obtain a TWIC, if the applicant seeks unescorted access to a secure area of a vessel or facility. The applicant must pay the fee listed in § 1572.503 for information collection/credential issuance.

(5) TSA has determined that the security threat assessment for an HME under this part is comparable to the security threat assessment for TWIC.

(6) TSA has determined that the security threat assessment for a FAST card, under the Free and Secure Trade program administered by the U.S. Customs and Border Protection, is comparable to the security threat assessment described in this part.

### § 1572.7 Waiver of security threat assessment standards.

(a) An applicant may apply to TSA for a waiver of the standards described in § 1572.5, if the applicant—

(1) Has a disqualifying criminal offense described in § 1572.103(a)(5) through (a)(9), and § 1572.103 (a)(10), if the underlying criminal offense is in § 1572.103 (a)(5) through (a)(9); or

(2) Has a disqualifying criminal offense described in § 1572.103(b); or

(3) Has a history of mental incapacity described in § 1572.109.

(b) HME and TWIC applicants must follow the procedures described in 49 CFR 1515.7 when applying for a waiver.

### § 1572.9 Applicant information required for HME security threat assessment.

An applicant must supply the information required in this section, in a form acceptable to TSA, when applying to obtain or renew an HME. When applying to transfer an HME from one State to another, § 1572.13(e) applies.

(a) The applicant must provide the following identifying information:

(1) Legal name, including first, middle, and last; any applicable suffix; and any other name used previously.

(2) Current and previous mailing address, current residential address if it differs from the current mailing address, and email address.

(3) Date of birth.

(4) Social security number. Providing the social security number is voluntary; however, failure to provide it will delay and may prevent completion of the threat assessment.

(5) Gender.

(6) Height, weight, hair color, and eye color.

(7) City, state, and country of birth.

(8) Immigration status and, if the applicant is a naturalized citizen of the United States, the date of naturalization.

(9) Alien registration number, if applicable.

(10) The State of application, CDL number, and type of HME(s) held.

(11) Name, telephone number, facsimile number, and address of the applicant's current employer(s), if the applicant's work for the employer(s) requires an HME.

(b) The applicant must provide a statement, signature, and date of signature that he or she—

(1) Was not convicted, or found not guilty by reason of insanity, of a disqualifying crime listed in § 1572.103(b), in a civilian or military jurisdiction, during the seven years before the date of the application;

(2) Was not released from incarceration, in a civilian or military jurisdiction, for committing a disqualifying crime listed in § 1572.103(b), during the five years before the date of the application;

(3) Is not wanted, or under indictment, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in § 1572.103;

(4) Was not convicted, or found not guilty by reason of insanity, of a disqualifying criminal offense identified in § 1572.103(a), in a civilian or military jurisdiction;

(5) Has not been adjudicated as lacking mental capacity or committed to a mental health facility involuntarily;

(6) Meets the immigration status requirements described in § 1572.105;

(7) Has or has not served in the military, and if so, the branch in which he or she served, the date of discharge, and the type of discharge; and

(8) Has been informed that Federal regulations, under § 1572.11, impose a continuing obligation on the HME holder to disclose to the State if he or she is convicted, or found not guilty by reason of insanity, of a disqualifying crime, adjudicated as lacking mental capacity, or committed to a mental health facility.

(c) The applicant must certify and date receipt the following statement:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 5103a. Purpose: This information is needed to verify your identity and to conduct a security threat assessment to evaluate your suitability for a hazardous materials endorsement for a commercial driver's license. Furnishing this information, including your SSN or alien registration number, is voluntary; however, failure to provide it will delay and may prevent completion of your security threat assessment. Routine Uses: Routine uses of this information include disclosure to the FBI to retrieve your criminal history record; to TSA contractors or other agents who are providing services relating to the security threat assessments; to appropriate governmental agencies for licensing, law enforcement, or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement.

(d) The applicant must certify and date receipt the following statement, immediately before the signature line:

The information I have provided on this application is true, complete, and correct, to the best of my knowledge and belief, and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact on this application can be punished by fine or imprisonment or both (*See* section 1001 of Title 18 United States Code), and may be grounds for denial of a hazardous materials endorsement.

(e) The applicant must certify the following statement in writing:

I acknowledge that if the Transportation Security Administration determines that I pose a security threat, my employer, as listed on this application, may be notified.

**§ 1572.11 Applicant responsibilities for HME security threat assessment.**

(a) *Surrender of HME.* If an individual is disqualified from holding an HME under § 1572.5(c), he or she must surrender the HME to the licensing State. Failure to surrender the HME to the State may result in immediate revocation under § 1572.13(a) and/or civil penalties.

(b) *Continuing responsibilities.* An individual who holds an HME must surrender the HME as required in paragraph (a) of this section within 24 hours, if the individual—

(1) Is convicted of, wanted, under indictment or complaint, or found not guilty by reason of insanity, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in § 1572.103; or

(2) Is adjudicated as lacking mental capacity, or committed to a mental health facility, as described in § 1572.109; or

(3) Renounces or loses U.S. citizenship or status as a lawful permanent resident; or

(4) Violates his or her immigration status, and/or is ordered removed from the United States.

(c) *Submission of fingerprints and information.* (1) An HME applicant must submit fingerprints and the information required in § 1572.9, in a form acceptable to TSA, when so notified by the State, or when the applicant applies to obtain or renew an HME. The procedures outlined in § 1572.13(e) apply to HME transfers.

(2) When submitting fingerprints and the information required in § 1572.9, the fee described in § 1572.503 must be remitted to TSA.

**§ 1572.13 State responsibilities for issuance of hazardous materials endorsement.**

Each State must revoke an individual's HME immediately, if TSA informs the State that the individual does not meet the standards for security threat assessment in § 1572.5 and issues an Initial Determination of Threat Assessment and Immediate Revocation.

(a) No State may issue or renew an HME for a CDL, unless the State receives a Determination of No Security Threat from TSA.

(b) Each State must notify each individual holding an HME issued by that State that he or she will be subject to the security threat assessment described in this part as part of an application for renewal of the HME, at least 60 days prior to the expiration date of the individual's HME. The notice must inform the individual that he or she may initiate the security threat assessment required by this section at any time after receiving the notice, but no later than 60 days before the expiration date of the individual's HME.

(c) The State that issued an HME may extend the expiration date of the HME for 90 days, if TSA has not provided a Determination of No Security Threat or a Final Determination of Threat Assessment before the expiration date. Any additional extension must be approved in advance by TSA.

(d) Within 15 days of receipt of a Determination of No Security Threat or Final Determination of Threat Assessment from TSA, the State must—

(1) Update the applicant's permanent record to reflect:

(i) The results of the security threat assessment;

(ii) The issuance or denial of an HME; and

(iii) The new expiration date of the HME.

(2) Notify the Commercial Drivers License Information System operator of the results of the security threat assessment.

(3) Revoke or deny the applicant's HME if TSA serves the State with a Final Determination of Threat Assessment.

(e) For applicants who apply to transfer an existing HME from one State to another, the second State will not require the applicant to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing State, not to exceed five years, expires.

(f) Each State must retain the application and information required in § 1572.9, for at least one year, in paper or electronic form.

**§ 1572.15 Procedures for HME security threat assessment.**

(a) *Contents of security threat assessment.* The security threat assessment TSA completes includes a fingerprint-based criminal history records check, an intelligence-related background check, and a final disposition.

(b) *Fingerprint-based check.* In order to conduct a fingerprint-based criminal history records check, the following procedures must be completed:

(1) The State notifies the applicant that he or she will be subject to the security threat assessment at least 60 days prior to the expiration of the applicant's HME, and that the applicant must begin the security threat assessment no later than 30 days before the date of the expiration of the HME.

(2) Where the State elects to collect fingerprints and applicant information, the State—

(i) Collects fingerprints and applicant information required in § 1572.9;

(ii) Provides the applicant information to TSA electronically, unless otherwise authorized by TSA;

(iii) Transmits the fingerprints to the FBI/Criminal Justice Information Services (CJIS), in accordance with the FBI/CJIS fingerprint submission standards; and

(iv) Retains the signed application, in paper or electronic form, for one year and provides it to TSA, if requested.

(3) Where the State elects to have a TSA agent collect fingerprints and applicant information—

(i) TSA provides a copy of the signed application to the State;

(ii) The State retains the signed application, in paper or electronic form, for one year and provides it to TSA, if requested; and

(iii) TSA transmits the fingerprints to the FBI/CJIS, in accordance with the FBI/CJIS fingerprint submission standards.

(4) TSA receives the results from the FBI/CJIS and adjudicates the results of the check, in accordance with § 1572.103 and, if applicable, § 1572.107.

(c) *Intelligence-related check.* To conduct an intelligence-related check, TSA completes the following procedures:

(1) Reviews the applicant information required in § 1572.9.

(2) Searches domestic and international Government databases described in §§ 1572.105, 1572.107, and 1572.109.

(3) Adjudicates the results of the check in accordance with §§ 1572.103, 1572.105, 1572.107, and 1572.109.

(d) *Final disposition.* Following completion of the procedures described in paragraphs (b) and/or (c) of this section, the following procedures apply, as appropriate:

(1) TSA serves a Determination of No Security Threat on the State in which the applicant is authorized to hold an HME, if TSA determines that an applicant meets the security threat assessment standards described in § 1572.5.

(2) TSA serves an Initial Determination of Threat Assessment on the applicant, if TSA determines that the applicant does not meet the security threat assessment standards described in § 1572.5. The Initial Determination of Threat Assessment includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting denial of the HME;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of receipt of the Initial Determination in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(3) TSA serves an Initial Determination of Threat Assessment and Immediate Revocation on the applicant, the applicant's employer where appropriate, and the State, if TSA determines that the applicant does not meet the security threat assessment standards described in § 1572.5 and may pose an imminent threat to transportation or national security, or of terrorism. The Initial Determination of Threat Assessment and Immediate Revocation includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting immediate revocation of an HME;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5(h); and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination and Immediate Revocation, the Initial Determination and Immediate Revocation becomes a Final Determination of Threat Assessment.

(4) TSA serves a Final Determination of Threat Assessment on the State in which the applicant applied for the HME, the applicant's employer where appropriate, and on the applicant, if the appeal of the Initial Determination results in a finding that the applicant poses a security threat.

(5) TSA serves a Withdrawal of the Initial Determination of Threat Assessment or a Withdrawal of Final Determination of Threat Assessment on the applicant, and a Determination of No Security Threat on the State and the employer if appropriate, if the appeal results in a finding that the applicant does not pose a security threat, or if TSA grants the applicant a waiver pursuant to 49 CFR 1515.7.

**§ 1572.17 Applicant information required for TWIC security threat assessment.**

An applicant must supply the information required in this section, in a form acceptable to TSA, when applying to obtain or renew a TWIC.

(a) The applicant must provide the following identifying information:

(1) Legal name, including first, middle, and last; any applicable suffix; and any other name used previously.

(2) Current and previous mailing address, current residential address if it differs from the current mailing address, and email address if available.

(3) Date of birth.

(4) Social security number. Providing the social security number is voluntary; however, failure to provide it will delay and may prevent completion of the threat assessment.

(5) Gender.

(6) Height, weight, hair color, and eye color.

(7) City, state, and country of birth.

(8) Immigration status and, if the applicant is a naturalized citizen of the United States, the date of naturalization.

(9) Alien registration number, if applicable.

(10) The reason that the applicant requires a TWIC, including the applicant's job description and the primary facility, vessel, or port location(s) where the applicant will most likely require unescorted access, if known. This statement does not limit access to other facilities, vessels, or ports, but establishes eligibility for a TWIC.

(11) The name, telephone number, and address of the applicant's current employer(s), if working for the employer requires a TWIC. An applicant whose current employer does not require possession of a TWIC, does not have a single employer, or is self-employed, must provide the primary vessel or port location(s) where the applicant requires unescorted access, if known. This statement does not limit access to other facilities, vessels, or ports, but establishes eligibility for a TWIC.

(b) The applicant must provide a statement, signature, and date of signature that he or she—

(1) Was not convicted, or found not guilty by reason of insanity, of a disqualifying crime listed in § 1572.103(b), in a civilian or military jurisdiction, during the seven years before the date of the application;

(2) Was not released from incarceration, in a civilian or military jurisdiction, for committing a disqualifying crime listed in § 1572.103(b), during the five years before the date of the application;

(3) Is not wanted, or under indictment, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in § 1572.103;

(4) Was not convicted, or found not guilty by reason of insanity, of a disqualifying criminal offense identified in § 1572.103(a), in a civilian or military jurisdiction;

(5) Has not been adjudicated as lacking mental capacity, or committed to a mental health facility involuntarily;

(6) Meets the immigration status requirements described in § 1572.105;

(7) Has, or has not, served in the military, and if so, the branch in which he or she served, the date of discharge, and the type of discharge; and

(8) Has been informed that Federal regulations under § 1572.19 impose a continuing obligation on the TWIC holder to disclose to TSA if he or she is convicted, or found not guilty by reason of insanity, of a disqualifying crime, adjudicated as lacking mental capacity, or committed to a mental health facility.

(c) Applicants, applying to obtain or renew a TWIC, must submit biometric information to be used for identity verification purposes. If an individual cannot provide the selected biometric, TSA will collect an alternative biometric identifier.

(d) The applicant must certify and date receipt the following statement:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 5103a. Purpose: This information is needed to verify your identity and to conduct a security threat assessment to evaluate your suitability for a Transportation Worker Identification Credential. Furnishing this information, including your SSN or alien registration number, is voluntary; however, failure to provide it will delay and may prevent completion of your security threat assessment. Routine Uses: Routine uses of this information include disclosure to the FBI to retrieve your criminal history record; to TSA contractors or other agents who are providing services relating to the security threat assessments; to appropriate governmental agencies for licensing, law enforcement, or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement.

(e) The applicant must certify the following statement in writing:

As part of my employment duties, I am required to have unescorted access to secure areas of maritime facilities or vessels in which a Transportation Worker Identification Credential is required; or I am now, or I am applying to be, a credentialed merchant mariner.

(f) The applicant must certify and date receipt the following statement, immediately before the signature line:

The information I have provided on this application is true, complete, and correct, to the best of my knowledge and belief, and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact on this application, can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code), and may be grounds for denial of a Transportation Worker Identification Credential.

(g) The applicant must certify the following statement in writing:

I acknowledge that if the Transportation Security Administration determines that I pose a security threat, my employer, as listed on this application, may be notified.

**§ 1572.19 Applicant responsibilities for a TWIC security threat assessment.**

(a) *Implementation schedule.* Except as provided in paragraph (b) of this section, applicants must provide the information required in § 1572.17, when so directed by the owner/operator and consistent with table 1 to this paragraph. The Group Numbers are listed in table 1.

TABLE 1 TO PARAGRAPH (A)—IMPLEMENTATION SCHEDULE

| | Start date | End date |
|---|---|---|
| Group 1 | Effective Date of rule ..... | Not later than 10 months after effective date of rule, unless otherwise authorized by TSA. |
| Group 2 | After Group 1 ..... | Not later than 15 months after effective date of rule, unless otherwise authorized by TSA. |
| Group 3 | After Group 2 ..... | Not later than 18 months after effective date of rule, unless otherwise authorized by TSA. |

(b) *Implementation schedule for certain mariners.* An applicant, who holds a Merchant Mariner Document (MMD) issued after February 3, 2003, and before [the effective date of this rule], or a Merchant Marine License (License) issued after January 13, 2006, and before [the effective date of this rule], must submit the information required in this section, but is not required to undergo the security threat assessment described in this part.

(c) *Surrender of TWIC.* If an individual is disqualified from holding a TWIC under § 1572.5, he or she must surrender the TWIC to TSA. Failure to surrender the TWIC to TSA may result in immediate revocation under § 1572.5(b) and/or civil penalties.

(d) *Continuing responsibilities.* An individual who holds a TWIC must surrender the TWIC, as required in paragraph (a) of this section, within 24 hours if the individual—

(1) Is convicted of, wanted, under indictment or complaint, or found not guilty by reason of insanity, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in § 1572.103; or

(2) Is adjudicated as lacking mental capacity or committed to a mental health facility, as described in § 1572.109; or

(3) Renounces or loses U.S. citizenship or status as a lawful permanent resident; or

(4) Violates his or her immigration status and/or is ordered removed from the United States.

(e) *Submission of fingerprints and information.* (1) TWIC applicants must submit fingerprints and the information required in § 1572.17, in a form acceptable to TSA, to obtain or renew a TWIC.

(2) When submitting fingerprints and the information required in § 1572.17, the fee required in § 1572.503 must be remitted to TSA.

(f) *Lost or stolen credentials.* If a TWIC holder loses possession of the credential, he or she must notify TSA immediately.

**§ 1572.21 Procedures for TWIC security threat assessment.**

(a) *Contents of security threat assessment.* The security threat assessment TSA conducts includes a fingerprint-based criminal history records check, an intelligence-related check, and a final disposition.

(b) *Fingerprint-based check.* The following procedures must be completed to conduct a fingerprint-based criminal history records check:

(1) Consistent with the implementation schedule described in § 1572.19(a) and (b), and as required in 33 CFR 104.200, 105.200, or 106.200, applicants are notified

(2) During enrollment, TSA—

(i) Collects fingerprints, applicant information, and the fee required in § 1572.17;

(ii) Transmits the fingerprints to the FBI/CJIS in accordance with the FBI/CJIS fingerprint submission standards.

(iii) Receives and adjudicates the results of the check from FBI/CJIS, in accordance with § 1572.103 and, if applicable, § 1572.107.

(c) *Intelligence-related check.* To conduct an intelligence-related check, TSA completes the following procedures:

(1) Reviews the applicant information required in § 1572.17;

(2) Searches domestic and international Government databases required to determine if the applicant

meets the requirements of §§ 1572.105, 1572.107, and 1572.109;

(3) Adjudicates the results of the check in accordance with §§ 1572.103, 1572.105, 1572.107, and 1572.109.

(d) *Final disposition.* Following completion of the procedures described in paragraphs (b) and/or (c) of this section, the following procedures apply, as appropriate:

(1) TSA serves a Determination of No Security Threat on the applicant if TSA determines that the applicant meets the security threat assessment standards described in § 1572.5. In the case of a mariner, TSA also serves a Determination of No Security Threat on the Coast Guard.

(2) TSA serves an Initial Determination of Threat Assessment on the applicant if TSA determines that the applicant does not meet the security threat assessment standards described in § 1572.5. The Initial Determination of Threat Assessment includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting denial of the TWIC;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of receipt of the Initial Determination in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(3) TSA serves an Initial Determination of Threat Assessment and Immediate Revocation on the applicant, the applicant's employer where appropriate, the FMSC, and in the case of a mariner applying for a TWIC, on the Coast Guard, if TSA determines that the applicant does not meet the security threat assessment standards described in § 1572.5 and may pose an imminent security threat. The Initial Determination of Threat Assessment and Immediate Revocation includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting immediate revocation of a TWIC and unescorted access to secure areas;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5(h); and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination and Immediate Revocation, the Initial Determination and Immediate Revocation becomes a Final Determination of Threat Assessment.

(4) TSA serves a Final Determination of Threat Assessment on the applicant, the applicant's employer where appropriate, the FMSC, and in the case of a mariner applying for a TWIC, on the Coast Guard, if the appeal of the Initial Determination results in a finding that the applicant poses a security threat.

(5) TSA serves a Withdrawal of the Initial Determination of Threat Assessment on the applicant. TSA serves a Withdrawal of Final Determination of Threat Assessment or a Determination of No Security Threat on the applicant, the applicant's employer where appropriate, and in the case of a mariner applying for a TWIC, the Coast Guard, if the appeal results in a finding that the applicant does not pose a security threat, or if TSA grants the applicant a waiver pursuant to 49 CFR 1515.7.

(e) *Expiration date for a TWIC.* A TWIC expires five years after it was issued, at the end of the month in which it was issued.

**§ 1572.23 Conforming equipment; Incorporation by reference.**

Each owner/operator required to have access control systems and equipment, including card readers, in conjunction with TWIC, must meet TSA-approved standards. The standards are set forth in FIPS–201–1 Personal Identity Verification (PIV) of Federal Employees and Contractors, March, 2006, by the National Institute of Standards and Technology, U.S. Department of Commerce; Technical Implementation Guidance: Smart Card Enabled Physical Access Control Systems, Version 2.3, 2006, by the Physical Access Interagency Interoperability Working Group, approved by the Government Smart Card Interagency Advisory Board; and the TWIC Smart Card Reader Specification, Version 0.6, August 25, 2005. TSA plans to incorporate these standards by reference in the final rule. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the Credentialing Program Office (Attn: TWIC Program), TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; e-mail: *credentialing@dhs.gov.* You may inspect or make copies at: TSA's Docket No. TSA–2006–24191, at *http://dms.dot.gov,* or by visiting the Docket Management Facility, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001; accessing the ''Industry Standards of TWIC'' portion of the Industry Partners/TSA Pilots & Programs section of TSA's Web site at *http://www.tsa.gov/public/;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**§ 1572.24–1572.40 [Reserved]**

**§ 1572.41 Compliance, inspection, and enforcement.**

(a) Each owner/operator must allow TSA, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an owner/operator with—

(1) This subchapter and part 1520 of this chapter; and

(2) 46 U.S.C. 70105 and 49 U.S.C. 114.

(b) At the request of TSA, each owner/operator must provide evidence of compliance with this part, including copies of records.

## Subpart B—Qualification Standards for Security Threat Assessments

**§ 1572.101 Scope.**

This subpart applies to applicants who hold or are applying to obtain, renew, or transfer an HME or TWIC. Applicants for an HME are subject to safety requirements issued by the Federal Motor Carrier Safety Administration under 49 CFR part 383 and by the State issuing the HME, including additional immigration status and criminal history standards.

**§ 1572.103 Disqualifying criminal offenses.**

(a) *Permanent disqualifying criminal offenses.* An applicant has a permanent disqualifying offense, if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of any of the following felonies:

(1) Espionage or conspiracy to commit espionage.

(2) Sedition, or conspiracy to commit sedition.

(3) Treason, or conspiracy to commit treason.

(4) A crime listed in 18 U.S.C. Chapter 113B—Terrorism, or a State law that is comparable, or conspiracy to commit such crime.

(5) A crime involving a transportation security incident. A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation

system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101. A work stoppage, or other nonviolent employee-related action, resulting from an employer-employee dispute is not a transportation security incident.

(6) Improper transportation of a hazardous material under 49 U.S.C. 5124, or a State law that is comparable.

(7) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device. An explosive or explosive device includes, but is not limited to, an explosive or explosive material as defined in 18 U.S.C. 232(5), 841(c) through 841(f), and 844(j); and a destructive device, as defined in 18 U.S.C. 921(a)(4) and 26 U.S.C. 5845(f).

(8) Murder.

(9) Conspiracy or attempt to commit the crimes in paragraphs (a)(5) through (a)(8).

(10) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq., or a State law that is comparable, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the offenses listed in paragraphs (a)(4) or (a)(8) of this section.

(b) *Interim disqualifying criminal offenses.* The felonies listed in paragraphs (b)(1) through (b)(14) of this section are disqualifying, if either the applicant was convicted, or found not guilty by reason of insanity, of the crime in a civilian or military jurisdiction, within the seven years preceding the date of application; or the applicant was released from incarceration for the crime, within the five years preceding the date of application.

(1) Assault with intent to murder.

(2) Kidnapping or hostage taking.

(3) Rape or aggravated sexual abuse.

(4) Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms as defined in 18 U.S.C. 921(a)(3) or 26 U.S.C.5 845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21.

(5) Extortion.

(6) Dishonesty, fraud, or misrepresentation, including identity fraud.

(7) Bribery.

(8) Smuggling.

(9) Immigration violations.

(10) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, *et seq.*, or a State law that is comparable, other than the violations listed in paragraph (a)(10) of this section.

(11) Robbery.

(12) Distribution of, possession with intent to distribute, or importation of a controlled substance.

(13) Arson.

(14) Conspiracy or attempt to commit the crimes in this paragraph (b).

(c) *Under want or warrant.* An applicant who is wanted, or under indictment in any civilian or military jurisdiction for a felony listed in this section, is disqualified until the want or warrant is released.

(d) *Determination of arrest status.* (1) When a fingerprint-based check discloses an arrest for a disqualifying crime listed in this section without indicating a disposition, TSA will so notify the applicant and provide instructions on how the applicant must clear the disposition, in accordance with paragraph (d)(2) of this section.

(2) The applicant must provide TSA with written proof that the arrest did not result in a disqualifying criminal offense, within 60 days after the service date of the notification in paragraph (d)(1) of this section. If TSA does not receive proof in that time, TSA will notify the applicant that he or she is disqualified. In the case of an HME, TSA will notify the State that the applicant is disqualified, and in the case of a mariner applying for TWIC, TSA will notify the Coast Guard that the applicant is disqualified.

**§ 1572.105 Immigration status.**

(a) An applicant applying for a security threat assessment for a TWIC or HME must be—

(1) A citizen of the United States who has not renounced or lost his or her U.S. citizenship;

(2) A lawful permanent resident of the United States, as defined in § 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101); or

(3) An individual who is—

(i) In lawful nonimmigrant status, and possesses valid evidence of unrestricted employment authorization;

(ii) A refugee admitted under 8 U.S.C. 1157, and possessing valid evidence of unrestricted employment authorization;

(iii) An alien granted asylum under 8 U.S.C. 1158, and possessing valid evidence of unrestricted employment authorization; or

(iv) A commercial driver licensed by Canada or Mexico, who is admitted to the United States, under 8 CFR 214.2(b)(4)(i)(E), to conduct business in the United States.

(b) To determine an applicant's immigration status, TSA checks relevant Federal databases and may perform other checks, including verifying the validity of the applicant's social security number or alien registration number.

**§ 1572.107 Other analyses.**

(a) TSA checks the following databases, and analyzes the resulting information, to determine whether applicant poses a security threat:

(1) Interpol and other international databases, as appropriate.

(2) Terrorist watchlists and related databases.

(3) Any other databases relevant to determining whether an applicant poses, or is suspected of posing, a security threat, or that confirm an applicant's identity.

(b) TSA may determine that an applicant poses a security threat, if the search conducted under this part reveals extensive foreign or domestic criminal convictions, a conviction for a serious crime not listed in § 1572.103, or a period of foreign or domestic imprisonment that exceeds 365 consecutive days.

**§ 1572.109 Mental incapacity.**

(a) An applicant has mental incapacity, if he or she has been—

(1) Adjudicated as lacking mental capacity; or

(2) Committed to a mental health facility.

(b) An applicant is adjudicated as lacking mental capacity, if—

(1) A court, board, commission, or other lawful authority has determined that the applicant, as a result of marked subnormal intelligence, mental illness, incompetence, condition, or disease, is a danger to him- or herself or others, or lacks the mental capacity to conduct or manage his or her own affairs.

(2) This includes a finding of insanity by a court in a criminal case and a finding of incompetence to stand trial; or a finding of not guilty by reason of lack of mental responsibility, by any court, or pursuant to articles 50a and 76b of the Uniform Code of Military Justice (10 U.S.C. 850a and 876b).

(c) An applicant is committed to a mental health facility, if he or she is formally committed to a mental health facility by a court, board, commission, or other lawful authority, including involuntary commitment and commitment for lacking mental capacity, mental illness, and drug use. This does not include commitment to a mental health facility for observation or voluntary admission to a mental health facility.

**§§ 1572.111–1572.139 [Reserved]**

## Subpart C—Transportation of Explosives From Canada to the United States

**§ 1572.201 Via commercial motor vehicle.**

(a) *Applicability.* This section applies to carriers that carry explosives from Canada to the United States, using a driver who is not a U.S. citizen or lawful permanent resident alien of the United States.

(b) *Terms used in this section.* For purposes of this section:

*Carrier* means any ''motor carrier'' or ''motor private carrier'', as defined in 49 U.S.C. 13102(12) and (13), respectively.

*Customs Service* means the U.S. Customs Service.

*Explosive* means a material that has been examined by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, in accordance with 49 CFR 173.56, and determined to meet the definition for a Class 1 material in 49 CFR 173.50.

*Known carrier* means a person that has been determined by the Governments of Canada and the United States to be a legitimate business, operating in accordance with all applicable laws and regulations governing the transportation of explosives.

*Known driver* means a driver of a motor vehicle who has been determined by the Governments of Canada and the United States to present no known security concern.

*Known offeror* means an offeror that has been determined by the Governments of Canada and the United States to be a legitimate business, operating in accordance with all applicable laws and regulations governing the transportation of explosives.

*Lawful permanent resident alien* means a lawful permanent resident alien of the United States, as defined by 8 U.S.C. 1101(a)(2).

*Offeror* means the person offering a shipment to the carrier for transportation from Canada to the United States, and may also be known as the ''consignor'' in Canada.

(c) *Prior approval of carrier, offeror, and driver.* (1) No carrier may transport in commerce any explosive into the United States from Canada via motor vehicle, if the driver of the vehicle is a not a U. S. citizen or lawful permanent resident alien, unless the carrier, offeror, and driver are identified on a TSA list as a known carrier, known offeror, and known driver, respectively.

(2) The carrier must ensure that it, its offeror, and its driver have been determined to be a known carrier, known offeror, and known driver, respectively. If any has not been so determined, the carrier must submit the following information to Transport Canada:

(i) The carrier must provide its—

(A) Official name;

(B) Business number;

(C) Any trade names; and

(D) Address.

(ii) The following information about any offeror of explosives whose shipments it will carry:

(A) Official name.

(B) Business number.

(C) Address.

(iii) The following information about any driver the carrier may use to transport explosives into the United States from Canada, who is neither a U.S. citizen nor lawful permanent resident alien of the United States:

(A) Full name.

(B) Canada Commercial Driver's License number.

(C) Both current and most recent prior residential addresses.

(3) Transport Canada will determine that the carrier and offeror are legitimately doing business in Canada, and will also determine that the drivers are properly licensed and present no known problems for purposes of this section. Transport Canada will notify TSA of these determinations by forwarding to TSA lists of known carriers, offerors, and drivers and their identifying information.

(4) TSA will update and maintain the list of known carriers, offerors, and drivers and forward the list to the Customs Service.

(5) Once included on the list, the carriers, offerors, and drivers need not obtain prior approval for future transport of explosives under this section.

(d) *TSA checks.* TSA may periodically check the data on the carriers, offerors, and drivers to confirm their continued eligibility, and may remove from the list any that TSA determines is not known or is a threat to security.

(e) *At the border*—(1) *Driver who is not a U.S. citizen or lawful permanent resident alien.* Upon arrival at the border, and prior to entry into the United States, the driver must provide a valid Canadian commercial driver's license to the Customs Service.

(2) *Driver who is a U.S. citizen or lawful permanent resident alien.* If the Customs Service cannot verify that the driver is on the list, and if the driver is a U.S. citizen or lawful permanent resident alien, the driver may be cleared by the Customs Service upon providing—

(i) A valid U.S. passport; or

(ii) One or more other document(s), including a form of U.S. Federal or State Government-issued identification with photograph, acceptable to the Customs Service.

(3) *Compliance.* If a carrier attempts to enter the United States without having complied with this section, the Customs Service will deny entry of the explosives and may take other appropriate action.

**§ 1572.203 Via railroad carrier.**

(a) *Applicability.* This section applies to railroad carriers that carry explosives from Canada to the United States, using a train crew member who is not a U.S. citizen or lawful permanent resident alien of the United States.

(b) *Terms under this section.* For purposes of this section:

*Customs Service* means the U.S. Customs Service.

*Explosive* means a material that has been examined by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, in accordance with 49 CFR 173.56, and determined to meet the definition for a Class 1 material in 49 CFR 173.50.

*Known railroad carrier* means a person that has been determined by the Governments of Canada and the United States to be a legitimate business, operating in accordance with all applicable laws and regulations governing the transportation of explosives.

*Known offeror* means an offeror that has been determined by the Governments of Canada and the United States to be a legitimate business, operating in accordance with all applicable laws and regulations governing the transportation of explosives.

*Known train crew member* means an individual used to transport explosives from Canada to the United States, who has been determined by the Governments of Canada and the United States to present no known security concern.

*Lawful permanent resident alien* means a lawful permanent resident alien of the United States, as defined by 8 U.S.C. 1101(a)(2).

*Offeror* means the person offering a shipment to the railroad carrier for transportation from Canada to the United States, and may also be known as the ''consignor'' in Canada.

*Railroad carrier* means ''railroad carrier'', as defined in 49 U.S.C. 20102.

(c) *Prior approval of railroad carrier, offeror, and train crew member.* (1) No railroad carrier may transport in

commerce any explosive into the United States from Canada, via a train operated by a crew member who is not a U.S. citizen or lawful permanent resident alien, unless the railroad carrier, offeror, and train crew member are identified on a TSA list as a known railroad carrier, known offeror, and known train crew member, respectively.

(2) The railroad carrier must ensure that it, its offeror, and each of its crew members have been determined to be a known railroad carrier, known offeror, and known train crew member, respectively. If any has not been so determined, the railroad carrier must submit the following information to Transport Canada:

(i) The railroad carrier must provide its—

(A) Official name;

(B) Business number;

(C) Any trade names; and

(D) Address.

(ii) The following information about any offeror of explosives whose shipments it will carry:

(A) Official name.

(B) Business number.

(C) Address.

(iii) The following information about any train crew member the railroad carrier may use to transport explosives into the United States from Canada, who is neither a U.S. citizen nor lawful permanent resident alien:

(A) Full name.

(B) Both current and most recent prior residential addresses.

(3) Transport Canada will determine that the railroad carrier and offeror are legitimately doing business in Canada and will also determine that the train crew members present no known problems for purposes of this section. Transport Canada will notify TSA of these determinations by forwarding to TSA lists of known railroad carriers, offerors, and train crew members and their identifying information.

(4) TSA will update and maintain the list of known railroad carriers, offerors, and train crew members and forward the list to the Customs Service.

(5) Once included on the list, the railroad carriers, offerors, and train crew members need not obtain prior approval for future transport of explosives under this section.

(d) *TSA checks.* TSA may periodically check the data on the railroad carriers, offerors, and train crew members to confirm their continued eligibility, and may remove from the list any that TSA determines is not known or is a threat to security.

(e) *At the border*—(1) *Train crew members who are not U.S. citizens or lawful permanent resident aliens.* Upon arrival at a point designated by the Customs Service for inspection of trains crossing into the United States, the train crew members of a train transporting explosives must provide sufficient identification to the Customs Service to enable that agency to determine if each crew member is on the list of known train crew members maintained by TSA.

(2) *Train crew members who are U.S. citizens or lawful permanent resident aliens.* If the Customs Service cannot verify that the crew member is on the list and the crew member is a U.S. citizen or lawful permanent resident alien, the crew member may be cleared by the Customs Service upon providing—

(i) A valid U.S. passport; or

(ii) One or more other document(s), including a form of U.S. Federal or state Government-issued identification with photograph, acceptable to the Customs Service.

(3) *Compliance.* If a carrier attempts to enter the U.S. without having complied with this section, the Customs Service will deny entry of the explosives and may take other appropriate action.

## Subpart D—[Reserved]

## Subpart E—Fees for Security Threat Assessments for Hazmat Drivers

### § 1572.400 Scope and definitions.

(a) *Scope.* This part applies to—

(1) States that issue an HME for a commercial driver's license;

(2) Individuals who apply to obtain or renew an HME for a commercial driver's license and must undergo a security threat assessment under 49 CFR part 1572; and

(3) Entities who collect fees from such individuals on behalf of TSA.

(b) *Terms.* As used in this part:

*Commercial driver's license (CDL)* is used as defined in 49 CFR 383.5.

*Day* means calendar day.

*FBI Fee* means the fee required for the cost of the Federal Bureau of Investigation (FBI) to process fingerprint identification records and name checks.

*Information Collection Fee* means the fee required, in this part, for the cost of collecting and transmitting fingerprints and other applicant information under 49 CFR part 1572.

*Threat Assessment Fee* means the fee required, in this part, for the cost of TSA adjudicating security threat assessments, appeals, and waivers under 49 CFR part 1572.

*TSA agent* means an entity approved by TSA to collect and transmit fingerprints and applicant information, in accordance with 49 CFR part 1572, and fees in accordance with this part.

### § 1572.401 Fee collection options.

(a) *State collection and transmission.* If a State collects fingerprints and applicant information under 49 CFR part 1572, the State must collect and transmit to TSA the Threat Assessment Fee, in accordance with the requirements of § 1572.403. The State also must collect and remit the FBI Fee, in accordance with established procedures.

(b) *TSA agent collection and transmission.* If a TSA agent collects fingerprints and applicant information under 49 CFR part 1572, the agent must—

(1) Collect the Information Collection Fee, Threat Assessment Fee, and FBI Fee, in accordance with procedures approved by TSA;

(2) Transmit to TSA the Threat Assessment Fee, in accordance with procedures approved by TSA; and

(3) Transmit to TSA the FBI Fee, in accordance with procedures approved by TSA and the FBI.

### § 1572.403 Procedures for collection by States.

This section describes the procedures that a State, which collects fingerprints and applicant information under 49 CFR part 1572; and the procedures an individual who applies to obtain or renew an HME, for a CDL in that State, must follow for collection and transmission of the Threat Assessment Fee and the FBI Fee.

(a) *Imposition of fees.* (1) The following Threat Assessment Fee is required for TSA to conduct a security threat assessment, under 49 CFR part 1572, for an individual who applies to obtain or renew an HME: $34.

(2) The following FBI Fee is required for the FBI to process fingerprint identification records and name checks required under 49 CFR part 1572: the fee collected by the FBI under 28 U.S.C. 534.

(3) An individual who applies to obtain or renew an HME, or the individual's employer, must remit to the State the Threat Assessment Fee and the FBI Fee, in a form and manner approved by TSA and the State, when the individual submits the application for the HME to the State.

(b) *Collection of fees.* (1) A State must collect the Threat Assessment Fee and FBI Fee, when an individual submits an application to the State to obtain or renew an HME.

(2) Once TSA receives an application from a State for a security threat assessment under 49 CFR part 1572, the State is liable for the Threat Assessment Fee.

(3) Nothing in this subpart prevents a State from collecting any other fees that a State may impose on an individual who applies to obtain or renew an HME.

(c) *Handling of fees.* (1) A State must safeguard all Threat Assessment Fees, from the time of collection until remittance to TSA.

(2) All Threat Assessment Fees are held in trust by a State for the beneficial interest of the United States in paying for the costs of conducting the security threat assessment, required by 49 U.S.C. 5103a and 49 CFR part 1572. A State holds neither legal nor equitable interest in the Threat Assessment Fees, except for the right to retain any accrued interest on the principal amounts collected pursuant to this section.

(3) A State must account for Threat Assessment Fees separately, but may commingle such fees with other sources of revenue.

(d) *Remittance of fees.* (1) TSA will generate and provide an invoice to a State on a monthly basis. The invoice will indicate the total fee dollars (number of applicants times the Threat Assessment Fee) that are due for the month.

(2) A State must remit to TSA full payment for the invoice, within 30 days after TSA sends the invoice.

(3) TSA accepts Threat Assessment Fees only from a State, not from an individual applicant for an HME.

(4) A State may retain any interest that accrues on the principal amounts collected between the date of collection and the date the Threat Assessment Fee is remitted to TSA, in accordance with paragraph (d)(2) of this section.

(5) A State may not retain any portion of the Threat Assessment Fee to offset the costs of collecting, handling, or remitting Threat Assessment Fees.

(6) Threat Assessment Fees, remitted to TSA by a State, must be in U.S. currency and made payable to the ''Transportation Security Administration.''

(7) Threat Assessment Fees must be remitted by check, money order, wire, or any other payment method acceptable to TSA.

(8) TSA will not issue any refunds of Threat Assessment Fees.

(9) If a State does not remit the Threat Assessment Fees for any month, TSA may decline to process any HME applications from that State.

### § 1572.405 Procedures for collection by TSA.

This section describes the procedures that an individual, who applies to obtain or renew an HME for a CDL, must follow if a TSA agent collects and transmits the Information Collection Fee, Threat Assessment Fee, and FBI Fee.

(a) *Imposition of fees.* (1) The following Information Collection Fee is required for a TSA agent to collect and transmit fingerprints and applicant information, in accordance with 49 CFR part 1572: $38.

(2) The following Threat Assessment Fee is required for TSA to conduct a security threat assessment, under 49 CFR part 1572, for an individual who applies to obtain or renew an HME: $34.

(3) The following FBI Fee is required for the FBI to process fingerprint identification records and name checks required under 49 CFR part 1572: The fee collected by the FBI under 28 U.S.C. 534.

(4) An individual who applies to obtain or renew an HME, or the individual's employer, must remit to the TSA agent the Information Collection Fee, Threat Assessment Fee, and FBI Fee, in a form and manner approved by TSA, when the individual submits the application required under 49 CFR part 1572.

(b) *Collection of fees.* A TSA agent will collect the fees required under this section, when an individual submits an application to the TSA agent, in accordance with 49 CFR part 1572.

(c) *Remittance of fees.* (1) Fees required under this section, which are remitted to a TSA agent, must be made in U.S. currency and made payable to the ''Transportation Security Administration.''

(2) Fees required under this section must be remitted by check, money order, wire, or any other payment method acceptable to TSA.

(3) TSA will not issue any refunds of fees required under this section.

(4) Applications, submitted in accordance with 49 CFR part 1572, will be processed only upon receipt of all applicable fees under this section.

## Subpart F—Fees for Security Threat Assessments for Transportation Worker Identification Credential (TWIC)

### § 1572.500 Scope.

This subpart applies to individuals who apply for, or renew, a Transportation Worker Identification Credential and must undergo a security threat assessment under 49 CFR part 1572.

### § 1572.501 Fee collection.

When TSA collects fingerprints and applicant information under 49 CFR 1572.17, TSA will collect the Information Collection Fee, Threat Assessment Fee, and FBI Fee, in accordance with procedures approved by TSA.

### § 1572.503 Fee procedures for collection by TSA or its agent.

(a) When an individual submits the application, required under 49 CFR 1572.17, to obtain or renew a TWIC, the fee must be remitted to TSA or its approved agent in a form and manner approved by TSA.

(1) The fee to obtain or renew a TWIC, other than for those identified in paragraph (a)(2) of this section, is $95–149, depending on the services provided to the regulated party, plus any increase in the FBI Fee that may be made. This fee is made up of the total of the following component fees:

(i) The Information Collection/Credential Issuance Fee covers the cost for TSA or its agent to enroll applicants and is $45–$65.

(ii) The Threat Assessment/Credential Production Fee covers the cost for TSA or its agent to conduct a security threat assessment and is $50–$62.

(iii) The FBI Fee is collected by the FBI under 28 U.S.C. 534 to process fingerprint identification records and name checks, which is $22, plus any increase that the FBI may make.

(2) The fee to obtain a TWIC when the applicant has undergone a comparable threat assessment in connection with an HME, a FAST card, or other threat assessment, as provided in § 1572.5(d); or holds an MMD or License as provided in § 1572.19(b), is $50. This fee is made up of the Information Collection/Credential Issuance Fee and a reduced fee for the Threat Assessment/Credential Production Fee. Such applicants are not charged the FBI Fee.

(3) The fee to replace a credential that has been lost, stolen, or damaged is $36.

(b) *Form of fees.* (1) Fees, required under this section, must be made in U.S. currency, and made payable to the ''Transportation Security Administration.''

(2) Fees, required under this section, must be remitted by check, money order, wire, or any other payment method acceptable to TSA.

(c) TSA will not issue any refunds of fees required under this section.

(d) Applications, submitted in accordance with 49 CFR 1572.17, will be processed only upon receipt of all applicable fees.

(e) The fees prescribed in paragraphs (a)(1)(i) and (a)(1)(ii) of this section may be adjusted annually on or after October 1, 2007, by publication of an inflation adjustment. A final rule in the **Federal Register** will announce the inflation adjustment. The adjustment shall be a composite of the Federal civilian pay raise assumption and non-pay inflation factor for that fiscal year issued by the

Office of Management and Budget for agency use in implementing OMB Circular A–76, weighted by the pay and non-pay proportions of total funding for that fiscal year. If Congress enacts a different Federal civilian pay raise percentage than the percentage issued by OMB for Circular A–76, the Department of Homeland Security may adjust the fees to reflect the enacted level. The required fee shall be the amount prescribed in paragraphs (a)(1)(i) and (a)(1)(ii), plus the latest inflation adjustment.

(f) Any FBI Fee amendment that increases or decreases its fees to process fingerprint identification records and name checks will apply to the FBI fees identified in this regulation effective on the date of the FBI increase or decrease.

Dated: May 10, 2006.

**Thomas H. Collins,**

*Commandant, United States Coast Guard.*

**Kip Hawley,**

*Assistant Secretary, Transportation Security Administration.*

[FR Doc. 06–4508 Filed 5–12–06; 12:25 pm]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Parts 1, 20, 70, 95, 101, 110, 125, 141, 155, 156, 160, 162, 163, 164, and 165

## 46 CFR Parts 1, 4, 5, 10, 11, 12, 13, 14, 15, 16, 26, 28, 30, 31, 35, 42, 58, 61, 78, 97, 98, 105, 114, 115, 122, 125, 131, 151, 166, 169, 175, 176, 185, 196, 199, 401 and 402

**[Docket No. USCG–2006–24371]**

**RIN 1625–AB02**

## Consolidation of Merchant Mariner Qualification Credentials

**AGENCY:** United States Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to streamline the existing merchant mariner credentialing process to minimize redundant requirements and simplify the credentialing program. This proposed rule works in tandem with the joint Notice of Proposed Rulemaking published by the Coast Guard and the Transportation Security Administration (TSA) entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' published elsewhere in the **Federal Register** today. It proposes to combine the individual Merchant Mariner's Document, License, Certificate of Registry, and STCW Endorsement into a single certificate termed the Merchant Mariner Credential (MMC), which will be endorsed to reflect a mariner's qualifications. The Coast Guard also proposes to streamline the application process for the MMC by removing the requirement that all mariners appear at least once at one of 17 Regional Exam Centers (RECs). Instead, the information previously submitted by the applicant at the REC would be submitted to TSA through the TWIC enrollment process and shared with the Coast Guard by TSA.

**DATES:** Comments and related material must reach the Docket Management Facility on or before July 6, 2006. We will hold public meetings on Wednesday, May 31, 2006 in Newark, NJ; Thursday, June 1 in Tampa, FL; Wednesday, June 6 in St. Louis, MO; and Thursday, June 7 in Long Beach, CA.

**ADDRESSES:** You may submit comments identified by USCG docket number USCG–2006–24371 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this proposed rule, call Mr. Luke Harden (G–PSO–1), United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593; telephone 1–877–687–2243.

For questions concerning viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001; telephone (202) 493–0402.

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2006–24371), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like the Coast Guard to acknowledge receipt, 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.

*Viewing comments and documents:* To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

*Public Meetings:* TSA and the Coast Guard will hold four public meetings as follows: Wednesday, May 31, 2006 in Newark, NJ; Thursday, June 1 in Tampa,

FL; Wednesday, June 6 in St. Louis, MO; and Thursday, June 7 in Long Beach, CA. These meetings will be held to take comments regarding both the Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License rule (Docket Nos. TSA–2006–24191; USCG–2006–24196) and the Consolidation of Merchant Mariner Qualification Credential rule (Docket No. USCG–2006–24371), both found in today's **Federal Register**. Specific times, locations and additional information for the public meetings will be announced in a subsequent notice in the **Federal Register**.

## II. Background and Purpose

Under the current regulatory scheme, the Coast Guard may issue to a mariner any combination of four credentials: the Merchant Mariner's Document (MMD), Merchant Mariner's License (License), Certificate of Registry (COR), or the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Endorsement. An MMD serves as a mariner's identification credential, indicates a mariner's qualifications, and is issued to mariners who are employed on merchant vessels of 100 gross register tons or more, except for those vessels employed exclusively in trade on the navigable waters of the U.S. Licenses are qualification certificates that are issued to officers. CORs are qualification certificates that are issued to medical personnel and pursers. STCW Endorsements are qualification certificates that are issued to mariners who meet international standards and serve aboard vessels to which STCW applies. The License, COR, and STCW Endorsement are qualification credentials only.

Elsewhere in this edition of the **Federal Register**, the Department of Homeland Security (DHS) published a joint notice of proposed rulemaking by the Coast Guard and the Transportation Security Administration (TSA), which proposes to implement the Transportation Worker Identification Credential (TWIC) in the maritime sector. A TWIC is a biometric transportation security card as contemplated under the Maritime Transportation Security Act of 2002, 46 U.S.C. 70105 (MTSA). Under the TWIC rule, workers who require unescorted access to secure areas of MTSA-regulated maritime facilities and vessels, and all merchant mariners credentialed under 46 U.S.C. part E must undergo a security threat assessment from TSA. This population includes all mariners holding active MMDs, Licenses, CORs, or STCW Endorsements. If TSA determines that the applicant does not pose a security risk, TSA will issue a TWIC to that individual. Once the DHS rule is implemented, persons without TWICs will not be granted unescorted access to secure areas at affected maritime facilities or vessels, and all merchant mariners will be required to hold a valid TWIC.

The MTSA requires DHS to issue biometric transportation security cards to, among others, merchant mariners. Because only the MMD is an identity document, and none of the Coast Guard-issued credentials contain biometric information or otherwise meet the MTSA requirements, a new credential is necessary to implement this statutory mandate. In addition, it was determined that national security would be increased by requiring all maritime workers to show the same credential to gain unescorted access to secure areas of vessels and facilities, rather than allowing a different card for each segment of the marine population.

If the TWIC rule is fully implemented, merchant mariners would be required to obtain a TWIC in addition to the mariner credentials currently required and thus would be required to obtain a total of five credentialing documents. To minimize redundant credentialing requirements and ease the burden on merchant mariners, the Coast Guard, through this rule, proposes to streamline its mariner regulations and consolidate the four current merchant mariner credentialing documents into one Merchant Mariner Credential (MMC). The proposed amendments to the mariner regulations will reduce, ultimately, the number of Federal identification/qualification cards that a mariner needs to carry to two (the MMC and a TWIC), as well as remove all duplicative public burdens and governmental processes.

The Coast Guard recently issued regulations aimed at increasing the security of the vetting process for mariner credentials. In an interim rule published January 6, 2004 for MMD applicants (68 FR 526), and an interim rule published January 13, 2006 for License applicants (71 FR 2154), the Coast Guard implemented a mandatory appearance requirement in the application process. Currently, all applicants must appear at one of 17 Coast Guard Regional Examination Centers (RECs) at least once in the application process to be fingerprinted by and show proof of identification to an REC employee. This appearance requirement was added as an additional security measure to ensure that MMDs and Licenses are issued only to people whose identities have been verified.

Under the TWIC proposed joint rulemaking published simultaneously with this rule, TSA would conduct security vetting and verify an applicant's identity prior to issuing the TWIC which would serve as an identity document. Without the streamlined process and combined credential suggested in this MMC rulemaking, mariners would be required to submit identity information and biometrics personally to two Federal agencies, and those Federal agencies would subject the applicant to the same security vetting process. This proposed rule is necessary to reduce cost and redundancy for both the public and the Federal government.

Because this proposed rule is closely related to, and relies on the proposed TWIC rule, it will follow the same timeline as the TWIC rule. This rule will not become a Final Rule unless the TWIC rule also becomes a Final Rule. In addition, the TWIC rule proposes an 18 month enrollment period, after which all merchant mariners must hold a TWIC. To allow enough time for all mariners to obtain TWICs before this rule will make possession of a valid TWIC a mandatory requirement for the issuance of an MMC, this rule will not go into effect until 18 months after the TWIC rule goes into effect.

## III. Proposed Rule

The following discussion highlights the changes being made to the Coast Guard regulations. Through this proposed rulemaking, the Coast Guard proposes to consolidate the MMD, License, COR, and STCW Endorsement into a single document, called the Merchant Mariner Credential (MMC). The MMC would be a certificate that would contain endorsements for each of a mariner's job qualifications. It is expected to contain security enhancements that will deter duplication and manipulation. One of the security features is that the photograph on the MMC will match the photograph on the mariner's TWIC. Although the actual format of the MMC is not final at this stage, it is expected to appear in the form of a certificate suitable for framing that is modeled after the current STCW Endorsement. The current STCW Endorsement was recently updated to create a more professional appearance and to include increased security features such as watermarks and microprinting. A brochure showing the current STCW Endorsement and highlighting some of

its security features can be viewed online in the docket for this rulemaking, which may be found by doing a search for docket USCG–2006–24371 at *http://dms.dot.gov.*

The Coast Guard is taking personal privacy considerations into effect in the development of the MMC. We are aware of the posting requirement for Licenses under 46 U.S.C. 7110, and the notation requirements for MMDs under 46 U.S.C. 7303, both of which will apply to the MMC. The Coast Guard is conscious of the fact that mariners may not wish to publicly display some of the biographical information currently on the face of an MMD and we therefore strive to design an MMC that will hide some of the information related to personal privacy when placed on display.

In the proposed credentialing system, instead of carrying up to five credentials, a mariner would hold only two. The MMC would serve as the mariner's qualification credential, while the TWIC would serve as the mariner's identification credential. To further benefit the mariner population, and reduce the burden created by the mandatory TWIC requirement, arrangements have been made with TSA to share information necessary for the MMC application process. Since all mariners would be required to appear at a TSA TWIC-enrollment center to provide proof of identity and citizenship and be photographed and fingerprinted, TSA has agreed to share with the Coast Guard information necessary to conduct our background check for safety and suitability related offenses and ensure that the mariner satisfies the appropriate citizenship requirements for the particular endorsement that they seek. This rule proposes to change the merchant mariner credentialing process into a process that potentially could be completed entirely by mail. To aid TSA in flagging those individuals whose information would need to be shared with the Coast Guard, it is envisioned that the mariner would advise TSA of their intent to apply for an MMC by checking a box that would appear on their TWIC application form. The cost savings from removing this travel burden is expected to be one of the financial benefits to the mariner proposed by this rule as TWIC-enrollment centers are expected to be established at every major port in the country. Should this regulation go into effect, instead of traveling great distances to visit one of the 17 RECs, mariners would have many more locations to choose from and would be much more likely to find one close to home.

To reflect the proposed creation of the MMC, many nomenclature changes were made throughout titles 33 and 46 CFR. Although there are many of these changes and they account for the bulk of the regulatory text later in this document, they are non-substantive in nature and reflect only a change in terminology so that the terms used throughout the Coast Guard regulations reflect the new credential. Specifically, the term ''credential'' was used to reference the License, MMD, COR, STCW Endorsement, and MMC. This term is used to reflect all possible credentials a mariner could hold after the effective date of this proposed rule to account for the five-year phase-in period when mariners could either hold a License, MMD, COR and or STCW Endorsement, or could have renewed those documents and received the proposed MMC. The terms ''officer'' and ''officer endorsement'' are used to reference those qualifications currently reflected on a License or COR. The terms ''rating'' and ''rating endorsement'' are used to reference those qualifications currently reflected on an MMD. Finally, the term ''endorsement'' is used to reference the actual annotation on the MMC reflecting the mariner's job qualification.

Although a reorganization of the regulations is necessary to accomplish this consolidation, the qualifications, experience, examinations, classes, and other requirements needed to serve as a merchant mariner are not changed by this proposed rule. To the extent possible, the Coast Guard proposes to change only the application procedures and form in which the qualifications are presented. To aid the reader, we have presented the proposed substantive changes to these regulations in table form. It is presented in six pieces: Changes that occurred throughout subchapter B; the changes that occurred in the current sections 10.100 through 10.223; changes that occurred in the current sections 12.01 through 12.02–29; the changes that would be made in the new regulatory text inserted into part 10; and finally those substantive changes that exist in sections 11.301 to end, sections 12.03–1 to end and part 15. For organizational purposes, the current regulations in 46 CFR part 10 (which are specific to officers) would be moved in their entirety to create a new part 11. A new part 10 would then be created, which would include only the application procedures and information pertinent to the MMC that applies to all mariners. The substance of the regulations proposed for the new Part 10 have been taken from the current regulations in sections 10.100 through 10.223 and 12.01 through 12.02. With the exception of the section on the changes in the new part 10 below, all citations in the left column reference the current regulations in 46 CFR.

| Location | Proposed change | Reason for proposed change |
|---|---|---|
| **THESE CHANGES WOULD OCCUR THROUGHOUT SUBCHAPTER B** | | |
| §§ 10.103, 12.01–6, 13.103, 15.301. | All definitions in subchapter B would be combined into one section located in § 10.107, with the exception of part 16, and the definitions in § 15.1101. A new paragraph in § 10.107(a) would be added to state that if the definitions for the subpart provided in part 10 differ from those defined in part 16, or § 15.1101, then the part 16 or § 15.1101 definition applies as appropriate. | Change made for clarity. Combining all of the terms in one introductory section for the entire subpart would allow the mariner to go to one place to find definitions for all terms and reduces the length of the regulations by omitting duplicative definitions.<br>The definitions for 46 CFR part 16 have been excluded from the consolidation of definitions in this rulemaking process except for minor word changes to reflect the proposed changes in this NPRM. Part 16 is a standalone rule that relies heavily on 49 CFR part 40. In addition, the subject matter of part 16 deals with the narrow issue of chemical testing. It was determined that combining the definitions for this part with the other definitions of Subchapter B would lead to unnecessary confusion.<br>The definitions in § 15.1101 have been excluded from the consolidation of definitions as they apply only to subpart J of part 15 and are narrowly tailored. |

| Location | Proposed change | Reason for proposed change |
|---|---|---|
| Titles 33 and 46 CFR | References to the terms ''Merchant Mariner Credential'', ''MMC'', ''credential'', ''endorsement'', ''officer endorsement'' or ''rating endorsement'' as appropriate, were inserted throughout Titles 33 and 46, when the text referred to a mariner's ''License'', ''Merchant Mariner Document'', ''MMD'', ''STCW Certificate'', and or ''Certificate of Registry''. | One of the main goals of this rulemaking is to combine the License, MMD, COR, and STCW Endorsement to create the MMC with endorsements thereon that indicate that the mariner is qualified to perform specific job functions. This new credential would be phased in over a five-year period, as the mariner's previous credentials expire. For that reason, during that initial five-year period, mariners could hold either an MMC or one of the current credentials. As a result, the regulations would be amended to reflect the inclusion of this new credential and its terms of art. After the close of the five-year integration period when all mariners would hold MMCs, a technical amendment to the regulations is expected to be published that would remove references to the credentials that the Coast Guard will no longer be issuing (the License, MMD, etc.). |
| Parts 10–16 ..... | References to ''Certificates of Identification'', ''Certificates of Service'', ''Certificates of Efficiency'', and ''Continuous Discharge Books'' were removed. | These documents are no longer issued by the Coast Guard. The Coast Guard discontinued this practice before the publication of this proposed rule. Continued reference to these certificates and books creates undue confusion. This rule would update the regulations to conform with practice and reduce confusion. |
| Parts 10–16 ..... | Miscellaneous linguistic edits ..... | Many non-substantive edits are proposed throughout subchapter B to improve clarity and support the government's plain language initiative. Because of their large volume, only substantive changes are specifically identified in this table. |
| Parts 10 and 12 ..... | A reorganization of 46 CFR subchapter B is proposed as follows: The regulations specific to officer endorsements that are currently contained in 46 CFR part 10 would be moved to create a new part 11 (there is no part 11 in the current regulations). The elements of part 12 specific to rating endorsements would stay in part 12. Those elements regarding application processes currently contained in parts 10 and 12 would be combined to create a new part 10 that would contain the application process for the MMC. | The application requirements, appeals processes, etc. for MMDs and Licenses (formerly §§ 10.100 to 10.223 and 12.01–1 to 12.02–29) that are not distinct to either officers or ratings would be combined and located at the beginning of the subchapter. Those elements of the current regulations, parts 10 and 12, that are specific to either officers or ratings would be kept separate, and retained in either part 11 (for officers) or part 12 (for ratings). In order to avoid confusion, the requirements for officers would be moved to create a new part 11, and the new general requirements for all MMCs would be inserted into the beginning of part 10. |
| **THESE CHANGES WOULD OCCUR IN THE CURRENT PART 10 SECTIONS 10.100—10.223** (Unless otherwise stated, the current part 10 would move to create a new part 11.) | | |
| § 10.105 (now § 11.105). | (a) Moved to § 10.217. The requirements of (b) and (c) were replaced with language in § 10.209(c)(3) reflecting the agreement between TSA and Coast Guard to share this information. | Paragraph (a): moved for organizational purposes. Paragraphs (b) and (c): Since the Coast Guard would no longer issue Licenses after this rule becomes effective, the application procedures for Licenses and MMDs would be combined into the procedures for the application for MMCs. Throughout this proposed regulation, to the extent possible, application requirements, training, and any other qualifications required to obtain the current credentials would not change. The fingerprint, proof of ID and appearance requirements have been removed due to agreements made by TSA and the Coast Guard. This change is discussed in greater detail below in the discussion of new section 10.209. |
| §§ 10.109, 10.110, 10.111 and 10.112. | Tables and text moved to § 10.219. ..... | The fee charts for the issuance of Licenses, MMDs, CORs, and STCW Certificates would be merged. The fee structures were retained and the only changes that were made were linguistic and organizational changes to reflect the new credential and remove any duplicative charges. The only substantive change to the fees charged is that mariners will only be charged one $45 issuance fee as there is only one credential now instead of four. No new costs have been added. |

| Location | Proposed change | Reason for proposed change |
|---|---|---|
| § 10.201 | (b) Moved to §§ 10.211 and 10.213. First part moved to ''Criminal Record Review'', second part moved to ''National Driver Register''.<br>(e) Moved to § 10.221.<br>(h) Moved to § 10.211, except:<br>In (h)(1), the first sentence would be deleted, and the fourth and fifth sentences would be moved to 10.209.<br>(i) Moved to § 10.213.<br>(j) Moved to §§ 10.211 and 10.213.<br>All other paragraphs retained in § 11.201, but relettered. New § 11.201 also includes some sections from the former § 10.202, which are discussed below.<br>New paragraph (e) added language that the required evidence of age may be established using the applicant's proof of citizenship.<br>Newly redesignated (f) added '', hearing, and general physical condition'' to the listing of physical checks.<br>Newly redesignated (g) added ''from the date the application is approved''. NEW (h) taken from § 10.201(e). | Since the Coast Guard would no longer be issuing Licenses after these proposed changes take effect, the application procedures for Licenses and MMDs would be combined to create the application procedures for the MMC. The paragraphs in this section would be relettered to fill the gaps of the sections removed. Unless otherwise stated below, even though the organization changed, the application requirements would not be substantively changed.<br>Current (h)(1): The discussion of fingerprints was moved to 10.211. As discussed elsewhere in this table, a mariner would no longer be required to appear at an REC to provide fingerprints. This data will be shared with the Coast Guard by TSA.<br>New paragraph (e): Added for clarity. Proofs of citizenship are used to establish age. This is already done in practice. The proof of citizenship will be submitted by the applicant to TSA in the TWIC enrollment process and electronically shared with the Coast Guard by TSA.<br>Newly redesignated (f): Listed the remaining medical and physical evaluations that the Coast Guard recommends be performed at the earliest opportunity to ascertain the applicants ability to perform their duties. These early evaluations are not a requirement, but are recommended to save the applicant an investment of time and money when an unknown medical or physical condition may prevent the issuance of the credential sought. This change combines the elements of the MMD and License.<br>Newly redesignated (g): Change proposed for clarity. Formerly said valid for 12 months, but did not say 12 months from when. |
| § 10.202 | § 11.202—renamed<br>(a) Moved to § 11.201(g) above.<br>(b) and (c) Moved to § 10.205.<br>(d) Moved to § 10.225.<br>(e) Combined in § 11.201(b) above to remove duplicative language.<br>(f) Moved to § 10.215.<br>(g) Moved to § 10.237.<br>(h) Moved to § 11.201(i) above.<br>(i) Moved to § 10.209.<br>(m) Moved to § 10.211.<br>(j–l) These paragraphs were retained in § 11.202, but were renumbered to account for the sections that were taken from this section and moved to part 10. | Section 11.202 would be renamed to discuss only those elements of the former § 10.202 that were specific to STCW Endorsements. All other paragraphs would be retained, but moved into other sections in part 10 for organizational purposes. |
| § 10.204 | Moved to § 10.237 | The rights of appeal for a License are the same as those for an MMC. Reorganization change only. |
| § 10.205 | (b) Deleted<br>(c) Deleted.<br>(d) Moved to § 10.215.<br>(f)(2) Moved to § 10.211.<br>(j) Moved to § 10.209.<br>(k) Moved to § 10.213.<br>(l–o) Moved to § 11.202 above. (Combined the STCW endorsement information into one place). All other info here was renumbered. NEW (e)(1): Changed ''within the past 12 months'' to ''not more than one year before the date of application''. | Reorganized. Combined the application elements for Licenses that now apply to the MMC, and moved those application elements that apply only to officers into new part 11. Many of the elements of § 10.205 would be moved, but unless stated otherwise below, the substantive elements of the section would be retained.<br>(b) Removed because it is duplicative, the substance is contained in § 11.201(e) above.<br>(c) Removed because under this proposed rule, applicants will no longer be required to submit proof of citizenship to the Coast Guard. Applicants would provide their proof of citizenship to TSA in the TWIC application process. TSA would then share an electronic scan of the applicant's proof of citizenship with the Coast Guard if the applicant is given a TWIC. Authenticity will be determined by TSA.<br>New (e)(1): Change made for clarity. |
| § 10.207 | The requirements for all credentials (ex: citizenship, chemical testing, criminal record review, National Driver Register (NDR) and medical/physical requirements) were moved to 10.209. The remaining paragraphs were moved to the raises of grade regulations at the new § 10.231. | The material in this section involved the application procedures to obtain raises in grade of endorsement. The substance of the section would be retained, but moved for organizational purposes to be in the more general MMC section of the regulations. The intent was to place as many of the application requirements as possible within the same part (part 10) to make the regulations more organized and clear. |

| Location | Proposed change | Reason for proposed change |
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| § 10.209 | All paragraphs currently contained in section 10.209 were moved to section 10.227 with the exception of paragraphs (a)(2), (e)(2), (e)(3), (e)(3)(F)(iii) and (e)(4).<br>(a)(2)—The requirement to appear in person to be fingerprinted and provide evidence of identity would be removed.<br>(e)(2) Renewal in advance. Currently, Licenses can only be renewed within 12 months of expiration. This limitation would be removed.<br>(e)(3) The requirement to appear in person to be fingerprinted and provide evidence of identity would be removed.<br>(e)(3)(F)(iii) Moved to § 10.205.<br>(e)(4) Concurrent renewal of licenses, certificates of registry, and merchant mariner documents would be deleted. | General: The merging of the License with the other mariner qualification documents requires a merger of the renewal requirements. All elements of this section would be retained with the exception of those sections discussed below:<br>(a)(2) Now that the identity portion of the application process would be conducted by TSA, the TWIC would be the mariner's primary identity document. The MMC is only intended to be a qualification document, which will have identity information on it to comply with the STCW convention. When a mariner is approved for a TWIC, TSA will electronically send to the Coast Guard the individual's photograph, fingerprints, and proof of citizenship/alien status. The mariner must provide TSA with a fingerprint and appear at a TSA-enrollment station twice—once to apply and present proofs of identity, citizenship and fingerprints, and once to pick up the credential and provide a one-to-one match of their fingerprint with the chip on the TWIC. Requiring the mariner to submit the same information to the Coast Guard would be needlessly duplicative, so the requirement would be removed. The same line of reasoning applies to proof of legal residency for aliens as discussed below.<br>(e)(2) Removing the limitation on renewal periods would ease the burden on merchant mariners by allowing them the flexibility to come in and renew their credentials at their leisure. All of a mariner's endorsements (officer and rating) will expire on the date that the MMC expires. This is intended to aid the mariner by reducing the number of expiration dates they must remember and will allow for more flexibility to serve a population of individuals who frequently find themselves off at sea for extended periods of time. If the mariner comes in and gets a raise in grade with 2 years left on their MMC, they could now renew the MMC at the same time they apply for the new endorsement. The current 12 month limitation was imposed to prevent constant renewals which would overwhelm the RECs and lead to backlogs. Since this limitation was imposed, user fees have been created, which should prevent unnecessary renewal requests.<br>(e)(3) See (a)(2) above.<br>(e)(3)(F)(iii) An MMC, like a License, would not be valid until signed.<br>(e)(4) This paragraph would be deleted because there would no longer be multiple credentials that could be renewed concurrently. The requirement to supply any supplementary materials to show that the mariner meets the mandatory requirements for the specific endorsement sought would be contained in the new § 10.227(g). |
| § 10.210 | Deleted | The provisions for the conversion of a towing License would be removed because they will only apply until May 21, 2006. By the time this rule could become final, all towing Licenses issued before May 21, 2001 should already have been renewed. |
| § 10.215 | Moved to § 10.223 | The merging of the License with the other mariner-qualification documents requires a merger of the renewal requirements. The substance of the section would be retained unless otherwise mentioned below. |
| § 10.219 | First sentence of (a) moved to § 10.233, the remainder was moved to § 10.229. | The merging of the License with the other mariner-qualification documents requires a merger of the requirements for holders and the issuance of duplicates. The substance of the section would be retained unless otherwise mentioned below. |
| § 10.221 | Moved to § 10.233 | The merging of the License with the other mariner-qualification documents requires a merger of the obligation requirements. The substance of the section would be retained unless otherwise mentioned below. |
| § 10.223 | Moved to § 10.235 | The merging of the License with the other mariner-qualification documents requires a merger of the suspension and revocation requirements. The substance of the section would be retained unless otherwise mentioned below. |

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| **THESE CHANGES WOULD OCCUR IN §§ 12.01 THROUGH 12.02–29** | | |
| § 12.01–1 | Paragraphs (a)(3) and (c) would be moved to § 10.101. The remainder would be retained in 12.01–1. | Paragraph (a)(3) involves the review of an applicant's background to determine whether they pose a security or safety risk. Now, TSA will be reviewing the applicant's security background. The safety review would be addressed in the review of the applicant's criminal record and NDR record, contained in part 10. The Coast Guard would no longer evaluate applicants for security risk. Paragraph (c) references credentials that are no longer issued by the Coast Guard. |
| § 12.01–7 | The list of RECs was moved to § 10.217 | The REC locations have not been changed in this rule, but instead of listing them in both parts 10 (now 11) and 12, they are now listed only in part 10. |
| § 12.02–3 | (a) Deleted<br>(b) Moved to § 10.217. | (a) The Coast Guard no longer issues the documents in this part.<br>(b) The Coast Guard currently does not conduct exams abroad, but part 10 retains the agency's right to do so. |
| § 12.02–4 | Moved to part 10<br>(a) and (c) Moved to § 10.211.<br>(b) Moved to § 10.209.<br>(d) and (e) Moved to § 10.213. | (a) and (c) Would be moved to part 10, and incorporated into the general application procedures. The requirements would not be changed, other than that the security check portion of the process will already have been completed by TSA when the mariner goes through the TWIC vetting. To remove duplicative processes, the Coast Guard would no longer conduct a background check to evaluate whether an applicant is a security risk. The Coast Guard would, however, continue to evaluate the applicants to determine that they would not pose a safety risk and that they are qualified for the MMC and endorsement sought. Furthermore, as discussed elsewhere in this table, the fingerprints now required to be submitted by the mariner at an REC could be transmitted electronically by TSA from the applicant's TWIC application.<br>(b) This requirement would be retained, but moved for organizational purposes.<br>(d) and (e) The requirements in these paragraphs would be retained but moved for organizational purposes. |
| § 12.02–5 | Deleted | Continuous discharge books, and certificates of service, efficiency, or identification are no longer issued by the USCG. This section was outdated and unnecessary. |
| § 12.02–7 | (d) Formerly read "* * * of 500 gross ton", now reads "* * * of 500 gross tonnage (200 gross register tons)". | (d) Change would be made to correct typographical error. |
| § 12.02–9 | (a) Parts added to § 10.209, the rest was deleted<br>(b) Deleted.<br>(c) Moved to § 10.209.<br>(d) and (f) Moved to § 10.209.<br>(e) Moved to § 10.225.<br>(g) Moved to § 10.211.<br>(h) Moved to § 10.213. | (a) The general requirements of this paragraph would be retained and moved to part 10. The only change is that references to continuous discharge books and certificates of identification would be removed as these are no longer issued by the USCG.<br>(b) These paragraphs would be deleted because photographs will now be sent to the USCG by TSA once an applicant is cleared for a TWIC. For added security, the photograph on the TWIC will match the photograph on the MMC.<br>(c), (d), (f), (g), and (h) Requirements would be retained but moved to part 10 for organizational purposes.<br>(e) Requirement would be retained but moved to part 10 for organizational purposes. Also, clarified that the 12 months begins from date of application approval. |
| § 12.02–10 | Moved to § 10.221 | Requirement retained, but moved to part 10 for organizational purposes. Also, a non-significant technical change was made to remove references to obsolete credentials. |

| Location | Proposed change | Reason for proposed change |
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| § 12.02–11 | (a) and (c) Moved to § 10.201<br>(b) Deleted.<br>(c) Moved to § 10.205(g).<br>(d)(1) [now (a)(1)] Removed reference to the fact that an MMD endorsed for ''any unlicensed rating in the deck department, except able seaman'' would not have to show his license to serve in any unlicensed capacity in the deck department except able seaman.<br>(d)(3) Deleted.<br>(e)(1) Deleted.<br>(g) Deleted.<br>(d)(2), (e)(2), (f), (h), and (i) All retained in § 12.02–11, and re-lettered to account for the paragraphs that were removed. | (a) The regulation would continue to reference the Coast Guard form number that the credential would be issued on, but would reference a new form number to reflect the new credential. The application form would have to be revised to incorporate the changes reflected in this rule.<br>(b) This paragraph is no longer relevant as there should no longer be valid certificates of service, certificates of efficiency, or certificates of identification. Also, all qualifications would appear on one document, so there would be no need to cross reference anything.<br>(c) This paragraph refers to the fact that an MMD also serves as a certificate of service. As the new regulation would be removing the MMD, this provision is unnecessary. The remaining provisions would be moved to § 10.205(g) for organizational purposes.<br>(d)(1) Once all endorsements are combined on the same document, there would be no second document to show—this language would be irrelevant, so it would be removed.<br>(d)(3) This paragraph would no longer be relevant since all endorsements would be on one document. There would no longer be a need for one document to reference another, or determine what will be on which credential.<br>(e)(1) The process of combining credentials would make this requirement unnecessary.<br>(g) This paragraph is no longer applicable. Continuous discharge books are no longer issued, and no document issued before November 1, 1945 would still be valid. |
| § 12.02–12 | Deleted | All merchant mariners would be required to hold a valid TWIC pursuant to the joint rulemaking published by DHS entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' and 46 U.S.C. 70105. TSA would conduct a full identity check before issuing the TWIC, and the TWIC would serve as the mariner's primary identity credential. In the TWIC rulemaking, proposed language was inserted into parts 10, 12, and 15 to require the possession of a valid TWIC. This rulemaking would retain that requirement, and use the TWIC as the mariner's proof of identity. Before issuing an MMC, the RECs would run the TWIC number against the Transportation Security Administration's Identification Management System (IDMS) to make sure the TWIC is still valid. Appearance at an REC would not be required. |
| § 12.02–13 | (c) Deleted entirely<br>The remainder moved to § 10.209. | (c) This paragraph would be deleted to conform to changes made in the Interim Rule published January 13, 2006, at 71 FR 2154.<br>The remainder of the section would be retained, but moved to part 10 for organizational purposes. |
| § 12.02–14 | Moved to § 10.221 | Requirements retained, but would be moved to part 10 for organizational purposes. |
| § 12.02–15 | Moved to § 10.225 | Requirements retained, but would be moved to part 10 for organizational purposes. |

| Location | Proposed change | Reason for proposed change |
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| § 12.02–17 | (b) Moved to § 10.205<br>(c) Moved to § 10.209.<br>(d) Moved to § 10.207.<br>(e) Modified and moved to § 10.209.<br>(h) Deleted.<br>The remaining paragraphs have been retained in this section. Also, the title of the section was renamed to ''Examination procedures and denial of rating endorsements.'' | (b), (c), (d) and (h) The requirements were retained, but moved to part 10 for organizational purposes.<br>(e) An individual who applies for an MMD under the current regulations, must pass a medical examination, but conflicts exist between the terms used in the licensing regulations from those used in the MMD regulations with respect to who can perform those examinations. Section 12.15–5(a) said that Qualified Members of the Engine Department (QMEDS) could have their eyes, hearing, and physical condition checked by a medical officer of the United States Public Health service or any other reputable physician. The same was said for able seaman for their physical requirements in § 12.05–5(a). But all mariners seeking MMDs had to have their medical fitness evaluated by a ''qualified medical practitioner''. Similarly all applicants for licenses were required to have a physical exam conducted by a ''licensed physician or licensed physician assistant'' in § 10.205(d). Due to the contradictory terms currently used, and the fact that it is common practice for individuals to seek these services from licensed medical doctors, licensed physician assistants, and licensed nurse practitioners, the proposed regulation reflects the titles of the specific professionals who may provide this service.<br>The title of the section would change to reflect its new content.<br>(h) The MMC shows only a mariner's qualifications and would not be a proof of their identity or allow them access to secure areas of vessels or facilities. As the MMC is not an identity document, as was the MMD, a mariner may retain the MMC after its expiration. This is a continuation of the procedures that are currently in place with respect to the License, which also is not an identity credential. More strict control of identity credentials is necessary than for qualification documents. This change is reflected in §§ 10.225(d) and 10.231(b) in the proposed text. |
| § 12.02–18 | Moved to § 10.219 | The requirements from this section would be retained, but moved to part 10 for organizational purposes. |
| § 12.02–19 | Moved to § 10.235 | The requirements from this section would be retained, but moved to part 10 for organizational purposes. |
| § 12.02–21 | Moved to § 10.235 | The requirements from this section would be retained, but moved to part 10 for organizational purposes. |
| § 12.02–23 | Moved to § 10.229 | The requirements from this section would be retained, but moved to part 10 for organizational purposes. |
| § 12.02–24 | Moved to § 10.233 | The requirements from this section would be retained, but moved to part 10 for organizational purposes. |
| § 12.02–25 | Moved to § 10.237 | The requirements from this section would be retained, but moved to part 10 for organizational purposes. |
| § 12.02–27 | Moved to § 10.227 except:<br>(a)(2) Deleted.<br>(c)(2) Deleted.<br>(d) Modified and moved to 10.215.<br>(e)(2) Deleted.<br>(e)(4) Deleted.<br>(e)(5) Deleted. | The requirements from this section would be retained, but moved to part 10 for organizational purposes with the following exceptions:<br>The reference number for the Coast Guard application form will be changed once the application form is finalized and cleared through the Office of Management and Budget (OMB).<br>Paragraph (a)(2) would be removed as personal appearance at an REC would no longer be necessary once TSA shares the applicant's information with the Coast Guard.<br>Paragraph (c)(2) would be removed because there will no longer be a time when a mariner will hold a credential that does not reflect an endorsement on it.<br>In paragraph (d), the individuals who may conduct medical and physical exams would be extended to include a licensed medical doctor (including a Doctor of Osteopathy), licensed physician assistant, or licensed nurse practitioner.<br>Paragraph (e)(2) would be removed to allow mariners to renew their credential at any time they choose. There would no longer be a limitation that MMDs could not be renewed more than 12 months in advance. |

| Location | Proposed change | Reason for proposed change |
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| | | Paragraph (e)(4) would be removed because after the promulgation of this regulation, there will only be one credential issued to mariners, so procedures for concurrent renewal would be unnecessary.<br>Paragraph (e)(5) would be removed because, as otherwise discussed in this table, applicants would no longer be required to appear in person at an REC to show proof of identity and be fingerprinted. |
| **THESE CHANGES WOULD OCCUR IN THE NEW PART 10** | | |
| § 10.107 Subchapter B Definitions. | Added definitions for the following terms: .....<br>Apprentice mate (steersman) of towing vessels (existing definition amended)<br>Credential<br>Day (Added ''When computing service required for Mobile Offshore Drilling Unit (MODU) endorsements a day is a minimum of four hours, and no additional credit is received for periods served over eight hours.'' to the existing definition.)<br>Endorsement (Existing definition modified)<br>Fails a chemical test for dangerous drugs (Existing definition modified to match part 16)<br>Great Lakes<br>Invalid credential<br>Merchant Mariner Credential (MMC)<br>MMC Application<br>Officer Endorsement<br>Officer in Charge of Marine Inspection (OCMI)<br>Rating Endorsement<br>Readily Available<br>Criminal Record Check<br>Staff officer<br>STCW Endorsement<br>Transportation Worker Identification Credential (TWIC)<br>The creation of the new paragraph (b) is discussed above in the section discussing changes that occurred throughout subchapter B and the combination of definitions. | *Apprentice mate (steersman) of towing vessels:* This definition was amended to include the words ''and in the presence of'' due to the definition of the term ''directly supervised''. The Coast Guard wants to make it clear that apprentice mates of towing vessels must be supervised in the presence of a master or mate and arrangements such as the use of two-way radios are not acceptable.<br>*Credential:* Because mariners would be allowed to receive their MMCs over a period of up to six years (as their license, MMD, etc. expires plus the one-year administrative grace period), for those six-years some mariners may hold an MMC and others may hold any number of the current credentials. The term ''credential'' is used to reference any and all of the potential documents held by the mariner. At the close of this six-year period, a technical amendment is expected which will remove all remaining references to documents, licenses, and certificates as well as remove the term ''credential'' and insert ''MMC''.<br>*Endorsement:* Would be modified to reflect that endorsements would be notations of qualifications that appear on a person's MMC.<br>*Day:* Would combine the definitions of Day and Service from § 10.103.<br>*Fails a chemical test for dangerous drugs.* There are differences between the definitions for 10, 12, and 16. The definition used in part 16 had the most clear and inclusive wording, so it would be retained.<br>*Great Lakes:* This definition is contained in the current regulation text for part 10 (now 11), but not in part 12. Since we previously maintained two different standards for Great Lakes, a sentence would be added to the definition currently in part 10 to clarify a distinction for rating endorsements.<br>*Invalid credential:* Definition added for clarity to encompass all reasons a credential could be invalid.<br>*Merchant Mariner Credential (MMC):* A definition for the new credential created by this rule would be added for clarity.<br>*MMC Application:* A definition would be added for clarity, so that it is understood that an application for an MMC includes the application for any endorsements sought and vice versa.<br>*Officer Endorsement, Rating Endorsement, Staff officer, STCW Endorsement:* This rule proposes these new endorsements on the MMC. A definition is proposed for clarity, and in § 10.109, the particular endorsements or job functions encompassed by those terms are set out.<br>*Officer in Charge, Marine Inspection, or OCMI* was amended to add ''or any person designated as such by the Commandant'' to allow for potential CG reorganization of National Maritime Center.<br>*Criminal Record Check:* The Coast Guard currently performs a safety and security check before issuing documents. After DHS' TWIC rule and this rule, TSA would be conducting the security check portion of the review and the Coast Guard would be reviewing a mariner's background, including the applicant's criminal record, to determine whether he or she is a safety risk and otherwise qualified to hold the MMC and any particular endorsements sought. A definition for this term would provide further clarity. |

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| | | *Transportation Worker Identification Credential (TWIC):* This is a new credential required by statute and implemented by a proposed regulation published simultaneously with this rule entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License''. A definition is provided here for clarity. |
| § 10.109 Classification of Endorsements. | NEW | This section was created for clarity. Since the new MMC system would involve endorsements for all of the classifications previously contained on separate documents, this list provides an easy method of determining under what classification a particular endorsement falls. |
| § 10.201 General Characteristics of the Merchant Mariner Credential. | Advises that qualifications will now appear as endorsements on an MMC and that the mariner's TWIC will serve as their primary identification document..<br>Advises that the Coast Guard will no longer issue MMDs, Licenses, STCW Endorsements, or Certificates of Registry. | Because the requirement to hold a TWIC would require mariners to potentially carry up to five credentials, in the interest of reducing the burden on the mariner and the Coast Guard, we propose in this NPRM to combine the credentials. TSA will verify the applicant's identity and conduct all security vetting. The TWIC would therefore serve as the mariner's identification document. The remaining elements of the License, MMD, COR, and STCW Endorsement would be combined on one document: the MMC. The MMC would look much like the current STCW Endorsement, and would contain endorsements setting forth those positions for which the mariner is qualified.<br>After the rule becomes effective, MMDs, Licenses, STCW Endorsements, and CORs will no longer be issued, and instead, the Coast Guard will issue MMCs with endorsements. When a mariner applies to renew his or her MMD, License, COR, or STCW Endorsement, they will instead be issued an MMC, which will reflect their qualifications in the form of endorsements. |
| § 10.203 Requirement to Hold a TWIC and a Merchant Mariner Credential. | Retains the obligation that all merchant mariners must hold a TWIC (this requirement would be imposed in the proposed rule published by DHS simultaneously with this rule entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'').<br>Creates the five-year phase-in period for the MMC by requiring the MMC but allowing mariners to serve under their License, MMD, COR and/or STCW Endorsement for five years after the effective date of the final rule, or until it expires.<br>Requires the MMC to be produced to verify qualifications and the TWIC to be produced to verify identity when required by an authorized official. | In DHS' TWIC rule implementing the requirements of 46 U.S.C. 70105, any individual issued a License, Certificate of Registry, or MMD under part E of subtitle II of title 46 U.S.C. must hold a TWIC. This proposed regulation would retain that requirement which would be created by the DHS TWIC rule. The requirement to hold a TWIC is not new with this rule.<br>This section proposed the obligation for mariners to hold an MMC, but allows for a grace period. Over a five-year period, mariners will be required to get an MMC. Mariners will be issued the new MMC at the time that they choose to renew their current credentials. This means that during the first five-year period after this proposed rule becomes effective, when a mariner's License, MMD, COR, or STCW Endorsement expires, when they renew they would receive an MMC instead of another License, MMD, COR or STCW Endorsement. Mariners are also, of course, welcome (and encouraged) to come to the REC and apply for their MMC at any time before their previous credential expires. This allows mariners to come in over a longer period of time and would not create an additional burden by requiring mariners to obtain the new MMC during the validity of their current credential. Since all currently issued credentials are valid for five-year periods, all mariners should have had to renew their credentials by the close of the five-year grace period.<br>As the MMC would be the qualifications credential and the TWIC would be the identity credential, these credentials would have to be produced when requested by an authorized official to verify the mariner's identity or qualifications. This could occur, for example, when the mariner seeks unescorted access to the secure areas of a MTSA-regulated vessel or facility or when the vessel is inspected by Coast Guard or other law enforcement personnel. |

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| § 10.205 Validity of a Merchant Mariner Credential. | Added: .....<br>(b) All endorsements are valid until the expiration date of the MMC on which they appear.<br>(f) An STCW Endorsement is valid only when the related officer or rating endorsement is valid.<br>(h) If a mariner holds more than one credential, and they choose to renew and receive their first MMC, the Coast Guard may also renew all other credentials for which the mariner is qualified. | (b) Since the proposed MMC would be a single credential with multiple endorsements, creating an MMC that would expire on one date, listing endorsements that could expire on multiple dates could be confusing to the mariner, Coast Guard inspection personnel, employers, and/or domestic or foreign port officials. This rule proposes that any endorsement on the MMC is valid for the period of the MMC on which it is written. This retains the five-year validity period established by statute in 46 CFR part E. Any underlying certificates or other qualifications would still have to be obtained and kept valid, but their expiration dates would not be reflected on the MMC (*i.e.* Radar Certificates).<br>(f) If an officer or rating endorsement is suspended or revoked, the related STCW endorsement is no longer valid. The current statute authorizes only suspension and revocation of the credential on which the endorsement appears (currently the License or MMD), but does not clearly authorize suspension and revocation of the STCW Endorsement. This language is necessary to tie the STCW endorsement to the related endorsement that we have the authority to suspend or revoke (this tie exists in the current regulations).<br>(h) The Coast Guard has long encouraged merchant mariners to synchronize their credential expiration dates foreseeing a consolidation such as the one proposed by this proposed rule. Of the total current merchant mariner population, 13,843 (34%) mariners hold more than one credential whose expiration dates do not match. The Coast Guard proposes to issue credentials with one expiration date for all endorsements to avoid the confusion of several different expiration dates appearing on the face of the credential. 46 U.S.C. 7106, 7107 and 7302 provide that Licenses, CORs and MMDs are valid for five years and may be renewed for additional five-year periods. Like the License, COR and MMD, the MMC, would be valid for five years and would be renewed for additional five-year periods. The endorsements thereon, however, could potentially be valid for less than five-year periods unless the mariner voluntarily aligns their expiration at the initial issuance of their MMC. |
| § 10.207 Identification Number. | Added: ''However, a unique serial number, and not the social security number will appear on the credential''. | This would be added for clarity to make it as clear as possible that although an individual's social security number will be used as the individual's MMC identification number, the Coast Guard is aware of the individual's privacy interest in that information and will not place the social security number on the credential. The mariner's social security number has been used as an identification number throughout the history of the mariner-credentialing process. |

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| § 10.209 Application Procedures. | (a) All general requirements for MMC applications are contained in this section. Any additional requirements above and beyond those set out in this section for duplicates, renewals, or raises in grade are contained elsewhere in this part.<br>(b) Coast Guard is given the option to process incomplete applications, although policy will remain that only complete applications will be processed.<br>(c) All of the application requirements were combined into one place.<br>(2) The mariner must show proof of a valid TWIC to show proof of identity.<br>(3) A complete application includes fingerprints, photograph, FBI number and criminal record (if applicable), proofs of citizenship and proof of alien status (if applicable). This information will be shared with the Coast Guard by TSA. The information will be submitted by the applicant to TSA in the TWIC enrollment process.<br>(4) References were made to the specific requirements that must be met for the particular endorsement sought.<br>(10) The current language from § § 10.205(e)(1) and 12.02–9(c) differed with respect to this pre-existing requirement. The chosen language reads: "* * * name, tonnage, and horsepower of the vessels, dates of service, capacity in which the applicant served, and on what waters.".<br>(d) A list of items that may be submitted by mail has been retained even though a mariner could now potentially conduct the entire application process by mail. | (a) For purposes of organization, all application requirements that apply in the pre-existing regulations to MMDs, Licenses, CORs, STCW Endorsements, renewals, duplicates and raises in grade would all be included in section 10.209. The goal is to put as many of the requirements as possible in one place to make the process as simple and clear as possible. Those additional requirements for duplicates, renewals, or raises in grade would be contained in sections placed later in this part so that all application requirements (to the extent possible) would *all* be contained within the same part.<br>(b) Currently, the regulations state that the Coast Guard is prohibited from processing incomplete applications, with no exception. The proposed rule says that the Coast Guard "may" refuse to process incomplete applications. While it will remain Coast Guard policy to refuse to process incomplete applications, to allow for better customer service the proposed regulations were edited to allow for some leniency with extenuating circumstances.<br>(c) Whereas all of the application requirements for Licenses and MMDs are currently spread throughout parts 10 and 12, this regulation proposes to list them in a manner that is as clear and succinct as possible. All requirements in this paragraph exist prior to the promulgation of this rule and have been merely moved from pre-existing text unless stated below:<br>(2) The requirement that a mariner hold a valid TWIC is proposed in the DHS rulemaking entitled "Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License" which is published simultaneously with this proposed rule. This rule proposes to accept a valid TWIC as proof of identification in lieu of the identification requirements currently existing in § § 12.02–12 and 10.105.<br>(3) Currently, all applicants must appear at an REC to be fingerprinted and show proof of identity and citizenship to an REC employee. This proposed regulation would remove the appearance requirement since the applicant's photograph, fingerprints and proof of citizenship/alien status will be provided to the Coast Guard by the Transportation Security Administration (TSA). We propose removing the appearance requirement to relieve a burden on the mariner, and prevent against unnecessary duplication in submission efforts. TSA would conduct a full security-and-background screening of the applicant before issuing the TWIC and has agreed to share with USCG the necessary information to conduct our background check for safety-related offenses and ensure that the mariner satisfies the appropriate citizenship requirements for the particular endorsement sought. Since all mariners would be required to appear at a TSA TWIC enrollment center to provide proof of identity and citizenship, and be photographed and fingerprinted, there should be no need for them to appear at a Coast Guard REC to submit this information again. To aid TSA in flagging those individuals whose information would need to be shared with the Coast Guard, it is envisioned that the mariner would advise TSA of their intent to apply for an MMC by checking a box that would appear on their TWIC application form.<br>(4) Because each officer, rating, or STCW Endorsement may require different training or qualifications than the others, combining all of the individual requirements in part 10 would be too complex and confusing. Applicants must also satisfy the requirements for the particular endorsement that they seek. |

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| | | (10) The phrase ''amount and character of their experience'' used in § 10.205(e)(1) would be clarified in the new language to conform with the language used in § 12.02–9(c) to specify that the applicant should submit their dates of service, capacity in which the applicant served, and on what waters. This is meant as more of a clarification, than a substantive change.<br>(d) Although a mariner could now potentially conduct the entire application process through the mail, this list of items was retained for clarity. The information listed here regarding what documents may be submitted by mail was taken from existing text regarding renewals. Its inclusion in the original application section as well as the renewal section was done to add uniformity and clarity. |
| § 10.211 ..... | (b) TSA will share with the Coast Guard fingerprints submitted by the applicant in the TWIC process.<br>TABLE:<br>Taken directly from Table 10.201(h) and 12.02–4(c) except that crimes against national security have been removed entirely. | (b) This supports the change in § 10.209(d) for the same reasons discussed above.<br>TABLE: The crimes against national security would be removed in their entirety because TSA will screen against these crimes when determining eligibility for the TWIC. If an applicant has any of these crimes listed on their record they would be denied a TWIC and a valid TWIC would be a requirement for an MMC. The Coast Guard would not duplicate this review. |
| § 10.213 National Driver Register. | Removed information regarding how to request an NDR file check for personal use. | In the current regulations, § § 10.201(i)(3)(i) and (ii) and 12.02–4(d)(4) advise that an applicant can request an NDR file check for personal use and how they can do so. Although an applicant would still be permitted to request an NDR file check, because the NDR and the Coast Guard are no longer part of the same department (DOT) as we were when these regulations were originally drafted, and the NDR may change their procedures at any time, regulations containing such definite terms such as the working hours of the NDR are inappropriate for Coast Guard regulations. |

| Location | Proposed change | Reason for proposed change |
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| § 10.215 Medical and Physical Requirements. | The medical requirements for all endorsements were combined into one section, and a reference table was added for clarity.<br>(a) Came from §§ 12.02–27(d), 10.205(d)(1) and 10.202(a). Any required exam must have been performed by a licensed medical doctor (including a Doctor of Osteopathy), or licensed physician assistant. Physicals for Great Lakes Pilots must be conducted by a licensed medical doctor in accordance with 46 CFR 402. Added licensed nurse practitioners to the list of individuals who may perform exams.<br>(i) Came from §§ 10.709(b), 10.7107(d)(3) and 10.402.210.<br>(ii) Came from 46 CFR 402.210.<br>(b)(1) Came from § 10.205(d)(2).<br>The statement regarding the loss of vision in one eye was derived from §§ 10.205(d)(4), 10.209(d)(3) and 10.207(e)(3). The 6 month limitation was derived from a medical directive. The waiver for compensation of abilities is also required by STCW B–I/9.7.<br>(2) Came from § 10.205(d)(3).<br>(3) Came from § 10.202(f).<br>(c) Came from §§ 10–209(d), 12.05–5, 12–02–27(d) and 12.15–5 and new language was inserted setting particular hearing thresholds to meet.<br>(d) Came from §§ 10.205(d)(1), 10.202(d), 10.207(e), 10.209Id)(1) and (2), 12.02–27(d), 12.05–5, and 12.15–5. The food handler requirement came from § 12.25–20.<br>(e) Came from §§ 15.1107(a), 12.05–5, and 12.02–17(e).<br>(f) Came from §§ 10.202(a) and 12.02–27(d).<br>(g) Came from §§ 10.205(d)(4), 10.207(e)(3), 12.05–5(3) and 12.15–5(3).<br>Changes within Table and corresponding paragraphs (b) through (g):<br>*The table was added, but contains no new substantive requirements than those that exist elsewhere in the section.<br>*The table differentiates between vision test, hearing test, general medical exam and physical exam.<br>*Staff officers are required to obtain a physical exam. | (a) Those who may perform exams differ for officers and ratings in the Coast Guard's current regulations. Section 12.15–5(a) now says that QMEDs can have their eyes, hearing, and physical condition checked by a medical officer of the United States Public Health service or any other reputable physician. The same is said for able seaman for their physical requirements in § 12.05–5(a). But all mariners seeking MMDs have to have their medical fitness evaluated by a ''qualified medical practitioner''. Similarly all applicants for Licenses are required to have a physical exam conducted by a ''licensed physician or licensed physician assistant'' in § 10.205(d). Due to the contradictory terms used, and that it is common practice for individuals to seek these services from licensed medical doctors (including Doctors of Osteopathy), licensed physician assistants, and licensed nurse practitioners, this language was chosen.<br>We propose to add licensed nurse practitioners to the list of individuals allowed to conduct exams because RECs have been accepting exams conducted by these individuals as a matter of policy.<br>The criterion for assessing medical and physical competence are published by the Coast Guard in a Navigation and Vessel Inspection Circular available on the Coast Guard Homeport Internet website.<br>(c) Hearing exams are already required in the current regulations, but no particular standards are provided. Since specific standards are provided for visual acuity and color sense, and specific standards for hearing are contained in a Coast Guard policy document, it was determined that these particular hearing requirements should be codified so that clear standards would be set.<br>TABLE:<br>*The elements contained in the table all exist within the regulatory text. The table would be added to provide the public with a simple, quick reference to determine those elements that apply to each particular endorsement sought.<br>*Although both medical exams (currently referred to as medical fitness) and demonstrations of physical ability are both technically required under the current regulations, this is not clearly expressed. The demonstration of physical ability requirement is contained in the STCW Code which is incorporated by reference instead of restated in the regulations. In the interest of clarity the Coast Guard proposes to add a chart and the specific language of the STCW requirement for physical ability.<br>*The proposed requirement for staff officers to receive a physical exam is based upon the incorporation by reference of STCW for § 10.205. The § 10.205(d) exception for staff officers in the current regulations refers to the general medical, vision, and hearing exams. The current § 12.02–17 makes this requirement applicable for staff officers (staff officers must hold an MMD). |
| § 10.217 MMC Application and Examination Locations. | (b) Created the ability for the Coast Guard to designate other facilities, in addition to RECs, to provide MMC services to applicants. | In the interest of providing better customer service, the Coast Guard has been investigating the feasibility of offering additional locations for credentialing services. Some of the options considered have been establishing collection/issuance services at other Coast Guard facilities, or purchasing mobile live scan and any other technology necessary to allow for Coast Guard representatives to visit more remote locations or otherwise travel. This concept is expected to grow with the reduced reliance on RECs through the removal of the appearance requirement proposed by this rule. This concept is, however, still in development and only the legal authority is created here in this regulation. At this time, only the RECs will offer credentialing services. |

| Location | Proposed change | Reason for proposed change |
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| § 10.219 Fees. ..... | Minor edits made to table .....<br>(e)(2) One examination fee will be charged for each exam or series of exams for an original, raise in grade, or renewal of an endorsement on an MMC taken within one year from the date of the application approval. An examination fee will also be charged to process an open book exercise used to renew an MMC.<br>(e)(3) Only one issuance fee will be charged for each MMC application.<br>(g) A $5,000 civil penalty will be imposed against anyone who fails to pay a fee or charge established under this subpart. | Minor edits are proposed for the tables in §§ 12.08–18 and 10.109. The fee structure was essentially retained, with the only changes being the renaming of the various endorsements that may be obtained vice references to MMD, License, COR, or STCW Endorsement. The overall user fees would remain the same except for the reduction in issuance fees that would occur since under the current regulations, a $45 issuance fee is charged for each of the three credentials issued (no fee is charged for the STCW Endorsement), and the proposed regulations will only charge the $45 issuance fee once as there is only one credential that would be issued.<br>(e)(2) These two sentences were added for clarification. Currently there is an inconsistency in how the RECs charge examination fees. This clarification is intended to create uniformity, and uses the interpretation that has always been applied by the National Maritime Center. One fee covers a series of exams.<br>(e)(3) Now that there would only be one credential issued instead of 4 ((1) the MMD; (2) the License; (3) the COR; and (4) the STCW Certificate), there would no longer need to be an issuance fee for multiple credentials. The issuance fee would only be charged each time that a new MMC is issued. That means that it would be charged upon the issuance of the original MMC, whenever a new MMC must be issued with new endorsements, and any other time that a new MMC must be printed unless an exemption appears elsewhere in the regulations.<br>(g) This $5,000 civil penalty already exists for officers under the current § 10.111, however, there is no corresponding penalty for ratings in the fee structure under part 12. Since the statute setting forth the penalty in 46 U.S.C. 2110(e) does not limit the penalty to officers, and now that ratings and officers would be all covered on the same credential, for uniformity of application, and to underscore the importance of paying the fee for the credential the civil penalty would now apply to all mariners. |
| § 10.221 Applications submitted by aliens. | With the exception of OUPVs, only U.S. citizens may receive officer endorsements, and only legal resident aliens may receive MMCs. | The Coast Guard will no longer be in the business of collecting proofs of nationality and alien status. All of this information will be collected by TSA and shared electronically with the Coast Guard. By statute (46 U.S.C. 7102) only U.S. citizens may qualify for officer endorsements (Licenses or Certificates of Registry). The requirement that aliens must have legal resident status is also not a new change to the regulations. The citizenship exemption for OUPVs, as well, is a carry over from the current regulations. |
| § 10.223 Modification or Removal of Limitations. | Taken from § 10.215, expanded from limitations on licenses to all endorsements. | Substance transferred from the current § 10.215. References to limitations on a license were expanded to ''endorsements'' to include officer endorsements as well as STCW Endorsements. |

| Location | Proposed change | Reason for proposed change |
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| § 10.225 Issuance of Merchant Mariner Credentials. | (b) The oath requirements for officers and ratings would be combined and they could be taken before a notary public, rather than in front of an REC employee.<br>(d) An exception for lost or stolen credentials was added to the requirement to return the previously issued credential when a new one is issued. | (b) The elements of the oath requirements currently set out in parts 10 and 12 would be combined to create a single oath to be taken by all mariners. This combined oath meets the requirements of 46 U.S.C. 7105 and 46 U.S.C. 7305. The oath may now be taken before a notary public, not by an REC employee. The applicant would be able to be sworn in by any notary public and have his or her written, verified oath mailed to the REC. This change would meet the requirements stated in the U.S.C., as well as create conformity in the RECs. Prior to this rulemaking, some RECs required applicants to take the oath at RECs and others allowed the oath to be taken before a notary public. In addition, removal of the appearance requirement for the oath removes the need for an applicant to make another appearance at the RECs to receive their MMC after their application is approved.<br>As long as the mariner's identity and citizenship can be established from either information submitted by TSA or information submitted by the applicant by a visit to the REC at the time of application, an additional visit to an REC at the time of MMC issuance is unnecessary. The MMC is a qualification document; it would not serve as an identification credential. TSA will fully vet TWIC applicants to verify identity and national security risk. An MMC would not be valid without a valid TWIC. The mariner's fingerprints, photograph, and citizenship/alien documents would be provided to the Coast Guard by TSA. Under the current regulations, as long as an individual has already taken the oath, they are not required to return to an REC to receive their credential. Credentials for renewals, raises in grade, and duplicates are currently issued to the mariner through the mail.<br>(d) Change made for clarity and to remove impossible requirement. |

| Location | Proposed change | Reason for proposed change |
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| § 10.227 Requirements for Renewal. | (a) Applicants for renewal must meet the requirements of this section in addition to the requirements in § 10.209.<br>(c) Approved applications are valid for 12 months from the date of approval.<br>(h) The reference to § 10.202 and (l)(m)(n)and (o) of § 10.205 was removed and replaced with a reference to § 11.202.<br>(i) Mariners seeking to renew their credentials for continuity purposes only will now receive a Certificate of Continuity in lieu of a notation for inactive renewal. | (a) Because § 10.209 includes application requirements for renewal, duplicate, and raises in grade as well as originals, those requirements contained in 10.209 need not be restated here.<br>(c) Added for clarity. The current regulations state that approved applications are valid for 12 months, but does not state when that 12 month period begins.<br>(h) The reference to § 11.202 was made to update the citation to reflect the change to part 11 and the consolidation of the STCW portions of the pre-existing § § 10.202 and 10.205 into § 11.202. Only the reference would be changed, the actual requirement would remain the same.<br>(i) It is recognized that some mariners maintain their credentials and/or qualifications for continuity purposes only. This was permitted under the previous regulatory scheme for both Licenses and MMDs under 46 CFR 10.209(g) and 12.02–27(g) respectively. The new requirement in 46 U.S.C. 70105 states that all mariners issued a License, Certificate of Registry, or Merchant Mariner's Document under 46 U.S.C. Subitle II part E must be issued a valid TWIC if they pass the mandatory security screening.<br>This regulation proposes to retain the existing option for mariners to renew for continuity purposes only. As proposed in this regulation, mariners who renew their credentials for continuity only would obtain a certificate of continuity. A certificate of continuity would serve as a receipt acknowledging that the mariner has performed some of the application requirements, and would not allow the holder to serve in a credentialed capacity. This certificate is not a License, Certificate of Registry, or Merchant Mariner' Document for purposes of part E of subtitle II of 46 USC, and would not grant its holder the right to serve as a mariner holding one of those credentials. As such, mariners who maintain their qualifications solely for purposes of continuity, will not be subject to 46 U.S.C. 70105, and not be required to obtain a TWIC.<br>Mariners holding a certificate of continuity who wish to renew their credentials must obtain a valid TWIC in addition to satisfying the basic renewal requirements applicable to all mariners. |

| Location | Proposed change | Reason for proposed change |
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| § 10.229 Issuance of Duplicate Merchant Mariner Credentials. | (a) Proposes to add a requirement that the Coast Guard confirm that the mariner holds a valid TWIC before issuing a duplicate credential.<br>(b):<br>Instead of setting forth specific language that must appear on a duplicate MMC, the regulation sets out information about the replaced credential that must appear on the duplicate.<br>After the effective date of this rule, all duplicate credentials issued will be in the form of MMCs.<br>It establishes how the RECs are to determine expiration date if the mariner seeks duplicates of more than one credential within the 5 year transition period.<br>(f) Criminal record reviews are required for all applicants seeking duplicate credentials. | (a) Since the proposed DHS TWIC rule and 46 U.S.C. § 70105 require that all credentialed mariners must hold a valid TWIC, the Coast Guard proposes to make the validity of the MMC dependent upon whether the holder also holds a valid TWIC. With this new language, no MMC would be valid without a valid TWIC. Therefore, the Coast Guard would confirm that the applicant holds a valid TWIC before issuing an MMC.<br>(b):<br>The current regulations state that the duplicate will state "This Merchant Mariner Document (or License, etc.) replaces Merchant Mariner Document Number—issued at—on the above date." Since the Coast Guard would no longer be issuing MMDs or Licenses, specific language that would appear on the credential is unnecessary so long as the credential references the serial number, type, place of issue, and date of issue of the replaced credential(s).<br>On the effective date of this rule, mariners will be holding valid MMDs, Licenses, CORs, and STCW Endorsements for up to five years. The Coast Guard will phase in the new MMC over that five-year period. The Coast Guard will no longer be issuing those other credentials after the effective date of this rule, the duplicate credential issued will be in the form of an MMC.<br>In the five years following the effective date of this rule, mariners will continue to hold their multiple credentials until their date of expiration. These credentials may not have matching expiration periods. If, before a mariner receives his or her first MMC, he or she requests a duplicate of more than one MMD, License, COR or STCW Certificate, unless the mariner renews all credentials, the duplicate MMC will reflect the earliest expiration date of the credentials combined on the MMC. This will prevent mariners from obtaining an extension of their expiration dates through the application for duplicates.<br>(f) In the current regulations, criminal record reviews are required for duplicate Licenses, but not MMDs. A resolution of this difference in requirements is necessary to consolidate the credentials. We propose to conduct criminal record reviews prior to the issuance of any duplicate credential, to protect the integrity of the mariner credentialing process. It has been deemed important for the Coast Guard to be able to re-review the criminal record of individuals who seek duplicate credentials to identify those who may be seeking additional credentials for an improper use. |
| § 10.231 Requirements for raises of grade for officer endorsements. | (c)(2) Included "or other Coast Guard-designated facility" to the requirement that the application be submitted to the REC.<br>This section contains only those application requirements that are required in addition to those in § 10.209 for raises of grade. | This is to allow for the Coast Guard to enroll mariners at locations other than RECs should this alternate option be exercised by the Coast Guard in the future.<br>The requirements that would be removed from this section are still required for all applicants, including raises in grade. The way that this part has been written, however, sets forth the application requirements for all applicants (original, renewal, duplicate, and raise in grade) in § 10.209 and this section contains only those ADDITIONAL requirements for raises in grade. Applicants for raises in grade must also satisfy the requirements of § 10.209. To repeat these requirements here would have been duplicative. |
| § 10.233 Obligations of the Holder of a Merchant Mariner Credential. | (b) Lost credentials may be reported to any Coast Guard office, not necessarily to an Officer in Charge, Marine Inspection (OCMI).<br>(c) Invalid credentials must be returned to the Coast Guard upon request. | (b) This change is proposed for the convenience of the mariner to allow them to report the loss at a larger number of locations.<br>(c) To support suspension-and-revocation actions, when a credential is invalid the mariner must return it to the Coast Guard upon request. |

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| § 10.235 Suspension or Revocation of Merchant Mariner Credentials. | (b) The requirements in this paragraph are essentially the same as the current regulatory text except that the following was added: ''When an officer endorsement is revoked, the Coast Guard will issue an MMC containing any rating endorsement for which the holder is qualified.''<br>(g) Added: ''If the Coast Guard is advised by the Transportation Security Administration that a mariner's TWIC has been revoked, the mariner's credential will immediately become invalid. If a credential is invalidated in this manner, the Coast Guard will notify the applicant in writing of the invalidation, the reason for the invalidation, and their right of appeal.'' | (b) This sentence was proposed to account for the fact that a mariner could hold one document that contains both officer and rating endorsements, and a mariner could have their officer endorsement revoked for reasons that would not result in the revocation of a rating endorsement. To protect against an inadvertent revocation of all endorsements for acts that would otherwise only result in the revocation of an officer endorsement, a provision was proposed that the Coast Guard will issue an MMC containing those rating endorsements for which the holder remains qualified.<br>(g) An MMC would be invalid unless the mariner also holds a valid TWIC. In its proposed TWIC rule, TSA establishes a TWIC appeals process. All appeals regarding the revocation of a TWIC would be handled by TSA under that appeals process. After the completion of their appeals process, TSA would notify the Coast Guard that a mariner's TWIC has been revoked. No action would be taken against a mariner's MMC by the Coast Guard until the TSA appeals process has been completed. Mariners would already have been through an appeals process for the reason the TWIC was revoked, so those issues would not be considered by the Coast Guard. The issuance of the TWIC is purely a TSA function. If there is some other basis on which the mariner seeks appeal of the resultant revocation of their MMC, they could exercise their right of appeal pursuant to subpart 1.03 of title 46. |
| **THE FOLLOWING WOULD OCCUR IN § 12.03–1 TO END, § 10.301 TO END, OR PART 15** | | |
| §§ 10.464(g), 10.465(f), 10.476, 10.603(b), 10.805(b), 12.02–3(a), 12.02–5(a) and (b), 12.02–11, 12.05–7(c) and (d), 15.610(b) and (c). | (Section references do not reflect the movement of part 10 to part 11.) Deleted. | These sections would be removed in their entirety because they have been overcome by time or previous changes in regulation and either no longer need to be retained or contain references to documents no longer issued by the Coast Guard. |
| § 12.05–3 ..... | (a) (2) Added a reference to both physical and medical examinations. | Change made to conform to the changes proposed in the new § 10.215. |

## IV. Regulatory Evaluation

### *A. Executive Order 12866 (Regulatory Planning and Review)*

Executive Order 12866, ''Regulatory Planning and Review'', 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This proposed rule is not significant under Executive Order 12866 and has not been reviewed by OMB.

This proposed rule makes substantive changes to the requirements in 46 CFR parts 10, 12, 13, 14, and 15 for the form on which the mariner's qualifications appear and the credential that would serve as the mariner's primary identification credential, and makes many non-substantive nomenclature changes throughout Titles 33 and 46 of the Code of Federal Regulations. Title 46 lays out the standards for merchant mariners, including eligibility and training requirements to obtain credentials needed to serve in one of the many roles in the merchant marine; this rulemaking would not change these qualification requirements. This rulemaking would combine the elements of the Merchant Mariner's License (License), Merchant Mariner's Document (MMD), Standards of Training, Certification and Watchkeeping (STCW) Endorsement, and Certificate of Registry (COR) into one document, called the Merchant Mariner Credential (MMC). The MMC would serve as the mariner's qualification document. Simultaneous with this Notice of Proposed Rulemaking, a joint Notice of Proposed Rulemaking was published by the Coast Guard and the Transportation Security Administration entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' (the ''TWIC rule''). The TWIC rule implements requirements required by the Maritime Transportation Security Act of 2002 (MTSA) and would require all merchant mariners holding an active License, MMD, COR or STCW Endorsement to hold a TWIC. The TWIC is a biometric identification card.

With this consolidation, the TWIC would replace the MMD as the mariner's identity document, and the MMD, License, COR, and STCW Endorsement would consolidate into the MMC, which would serve as the mariner's qualification document. All current qualification and suitability requirements associated with Licenses, MMDs, STCW Endorsements, and CORs would remain the same with only minor exceptions.

All four credentials (MMD, License, COR, and STCW Endorsement) are currently issued at one of 17 Regional Examination Centers (RECs). For first time applicants, the process of obtaining an MMD, License, COR, or STCW Endorsement requires at least two visits to an REC. During the first visit, an

applicant must be fingerprinted by and establish his or her identity and legal presence in the U.S. to an REC employee.

At the successful completion of a safety-and-security review, verification of an applicant's identity, and verification that the applicant has satisfied all other requirements for the particular credential sought, an REC will issue the credential to the applicant. All first time applicants must then return to the REC a second time to receive their credential and take an oath to faithfully perform all duties required of them by law.

Individuals renewing credentials do not need to restate the oath and may receive their renewed credentials by mail. However, applicants seeking to renew their credentials must travel to an REC once to be fingerprinted by, and show proof of identification to an REC employee.

The proposed requirements to receive a TWIC are similar to the requirements to receive an MMD. In order for an applicant to receive a TWIC, the applicant would be required to travel to a designated TWIC enrollment center to submit fingerprints, proofs of identity, citizenship and alien status (if applicable). A background check would then be conducted to determine that the applicant is not a security risk. Once the applicant has been approved they must return to the TWIC-enrollment center to pick up the TWIC and prove their identity by a one to one match of their fingerprint against the electronic fingerprint stored on the card. If, during this process the applicant notifies the TWIC center of their intent to apply for an MMC. Then TSA will submit to the Coast Guard the applicant's fingerprints, photograph, proof of citizenship, proof of alien status (if applicable), and FBI number and criminal record (if applicable). This information will also be made available to the Coast Guard should the applicant decide to become a merchant mariner after the TWIC process has been completed.

Since the applicant's information and identity will have been verified by TSA, this proposed rulemaking would no longer require the merchant mariner to travel to an REC to submit identity information. In addition to allowing the merchant mariner to mail in their application, they may also mail in their notarized oath, which would be a nominal cost to the applicant. This would remove the requirement for a second trip to the REC center to pick up their card and take the oath. This rulemaking proposes to create the possibility for a mariner to receive his or her MMC entirely through the mail. Written examinations would still occur at RECs, and the RECs would remain accessible to mariners should they choose to seek their services in person.

The following sections discuss the baseline population of applicants that will be affected by this rulemaking and provides an assessment of the impacts to merchant mariners by this proposed rulemaking.

Baseline Population

The Coast Guard data for the number of affected merchant mariners came from the National Maritime Center (NMC), which provides credentialing, training, and certification services to all merchant mariners. There are approximately 205,000 credentialed merchant mariners. In addition to the current population of merchant mariners there are a number of new applicants every year.

Assessment

Under the current rule, applicants pay a $45 issuance fee for each credential that they apply for. Under the proposed rulemaking the applicants would only apply for an MMC and as a result would only be required to pay one $45 issuance fee regardless of the number of endorsements that they carry. This change represents not a reduction in any fee that a mariner must pay, but a reduction in the number of fees that the mariner must pay. Any mariner that would, under the current rules, solicit multiple mariner qualifying documents, would benefit from this change in the fee structure.

If the merchant mariner has not synchronized the expiration dates of his or her current credentials then they may currently be traveling to an REC multiple times. The issuance of the MMC would require mariners to track and update only one document and would potentially eliminate the need to travel to an REC. This would provide greater flexibility to the mariner. Currently, approximately 13,843 mariners have more than one credential and have not aligned their expiration dates. These mariners would not only receive a benefit from reduced application fees but also from fewer, if any, trips to an REC.

In order to reduce the burden of traveling and having to apply for a new MMC before the mariner's current credentials expire, this proposed rulemaking would allow mariners to apply for an MMC at the time that their current credentials expire, which would essentially phase in the MMC over a five-year period. Since all currently issued credentials are valid for five-year periods, all mariners would have to renew their credentials by the close of the five-year grace period. When a mariner applies to renew his or her MMD, License, COR, or STCW Endorsement, they would instead be issued an MMC, which would reflect all of their qualifications in the form of endorsements on the MMC. This would allow mariners to apply over a longer period of time and would not create an additional burden by requiring mariners to make an extra trip to the RECs. Mariners whose credentials do not expire simultaneously may choose to wait to renew the credentials that have yet to expire, but if the applicant later chooses to renew that credential, the expiration date of the MMC on which the endorsement would be added would not change unless the mariner also renews all other endorsements on the MMC.

Currently, mariners may only renew their credentials within 12 months of their expiration date. This proposed rulemaking would allow mariners to apply for renewal anytime before their current credentials expire, and up to one year after the expiration date. As a result, this rulemaking would provide greater flexibility to mariners by allowing them to apply for an MMC at the time they choose.

In the Licensing rule, published on January 13, 2006 (71 FR 2154), it was estimated that approximately 60 percent of current mariners live within one-day roundtrip travel to an REC, 30 percent live within overnight roundtrip travel (one night and two days) to an REC, and 10 percent live at a distance greater than overnight roundtrip travel (greater than one night and two days) to an REC. This was derived from national percentages for all mariners who have addresses on file with the NMC. In the TWIC rule, TSA and the Coast Guard foresee that there would be more TWIC centers than Coast Guard RECs. By allowing mariners to visit TWIC enrollment centers instead of RECs, this proposed rule would provide a potential benefit to mariners by reducing their current travel costs and time currently required to receive a credential.

In the Licensing rule, the cost for mariners to travel to and from one of 17 RECs was estimated. The travel cost to mariners for a one-day roundtrip travel to and from an REC is $387. The estimated cost to mariners for overnight roundtrip travel is $911. Applicants who live distances greater than 200 miles and must travel for more than one night would incur the maximum cost of $1,185.

The proposed TWIC rule will have the effect of transferring the cost of travel from an REC to the cost of travel to a

TWIC enrollment center, but that cost is associated with the TWIC rule, not with this rule. The overall cost for mariners associated with this rulemaking would decrease or remain the same and would serve to provide more flexibility to mariners since there would be more TWIC enrollment centers than RECs, so the distance required and the amount of time spent traveling would be reduced. Based on the percentages above, 60 percent of the mariners that live within one-day roundtrip travel would potentially receive the economic benefits of having a TWIC enrollment center located closer to them than one of the current RECs. The remaining 30 percent of mariners that live within an overnight round-trip travel and the 10 percent of mariners that live a distance greater than an overnight roundtrip travel have an increased likelihood of having a TWIC enrollment center located closer to them than one of the current RECs and would potentially receive an even greater benefit in travel cost savings from this proposed rule.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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.

We do not expect this proposed rule to have a significant impact on a large number of small entities. This rulemaking consolidates the number of credentials merchant mariners must carry and streamlines the application process in a way that would help prevent abuse, reduce cost and assist the Coast Guard in its effort to help secure U.S. marine infrastructure, commercial activities, and the free flow of trade.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of U.S. small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think your business qualifies and how and to what degree this rulemaking would economically affect it.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If this 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 individuals listed in above in the section titled **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

*D. Collection of Information*

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995, Title 44, United States Code (44 U.S.C.) sections 3501–3520. This rulemaking would require modifying the burden in the collection currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1625–0040.

This proposed rulemaking changes certain requirements in Title 46, Code of Federal Regulations (46 CFR) parts 10, 12, 13, 14, and 15 for the form on which the mariner's qualifications appear and the credential that would serve as the mariner's primary identification credential.

This proposed rulemaking would consolidate the following four credentials: The Merchant Mariner's Document (MMD), the Merchant Mariner's License (License), the Certificate of Registry (COR), and the Standards of Training, Certification and Watchkeeping (STCW) Endorsement, into a single document termed the Merchant Mariner Credential (MMC). This MMC would contain endorsements on it setting forth those positions for which the mariner is qualified as well as biographic information about the mariner.

This rulemaking would also allow the merchant mariner to mail in their application as well as their notarized oath, and receive their MMC in the mail. Mariners would no longer be required to travel to an REC to apply for and receive any credentials. See the Assessment discussion in the ''Regulatory Evaluation'' section for more information about the potential impacts to merchant mariners from this rulemaking.

This rulemaking would require an MMC application form, similar to the application forms for Licenses and STCWs. The Coast Guard is in the process of developing this form and will revise the collection prior to issuance.

As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and similar actions. The title and description of the collection of information, a description of those who must collect the information, and an estimate of the proposed changes to annual burden follow.

*Title:* Continuous Discharge Book, Merchant Mariner Application, Physical Examination Report, Sea Service Report, Chemical Testing, and Entry Level Physical Report.

*OMB Control Number:* 1625–0040.

*Agency Form Numbers:* CG–719A, CG–719B, CG–719K, CG–719S, CG–719P, and CG–719K/E.

*Summary of the Currently Approved Collection of Information:* In accordance with 46 U.S.C. and 46 CFR, this collection of information is necessary to determine competency, character, and physical qualifications for the issuance of Coast Guard licenses, CORs, and merchant mariner documents.

*Summary of the Modification to the Currently Approved Collection of Information:* This proposed rulemaking would reduce the collection of information requirements in 46 CFR parts 10, 12, 13, 14, and 15 for License, MMD, STCW Endorsement, and COR applicants. These new provisions would no longer require applicants to spend time traveling to and from an REC, nor to spend time waiting at an REC.

*Need for Information:* The Coast Guard will be receiving the information required to process applications and verify the applicant's identity from TSA. It was determined that to require applicants to travel to an REC to submit this information again would be duplicative and burdensome for those applicants.

*Description of Respondents:* The current OMB-approved collection requires certain applicants for original and subsequent issue credentials to have their fingerprints taken and their IDs checked at an REC. However, this proposed rulemaking removes this

travel requirement. Instead those applicants will be able to mail in their application and receive their MMC through the mail.

*Number of Respondents:* The current OMB-approved number of respondents is 200,000. This number would be increased to 205,000 based on the most recent application data available from the National Maritime Center. This increase is not a result of the proposed rule. It is a change to reflect recent growth in the merchant mariner industry.

*Frequency of Response:* The current OMB-approved number of responses is 73,294 each year. This proposed rulemaking would decrease the annual number by 23,294, to 50,000.

*Burden of Response Time from Revision of Collection:* The burden of response time from this rule on certain applicants for MMCs will be reduced to include only the time spent filling out and mailing the application. Previously, the burden of response included the travel time to and from an REC and the time spent at an REC in order to have their fingerprints taken and IDs checked. The time for one day of travel was estimated to be eight hours and the time spent at an REC center was estimated at two hours. All of the time that applicants currently spend traveling to and from and waiting at an REC would be removed with this proposed rulemaking.

*Estimate of Total Annual Burden Hours:* OMB recently approved an emergency temporary extension of the collection of information for the Licensing rulemaking, which increased the annual burden hours to 329,356. This proposed rulemaking would reduce that number by 307,481 annual hours. This is due to the removal of the travel requirements and the REC waiting and processing time. The total number of annual hours would be reduced to 21,875.

*Estimate of Total Annual Burden Cost:* Recent revisions from the Licensing rule changed the total annual operations & maintenance (O&M) burden cost reported in the current OMB-approved collection to approximately $16 million. Since this rule would no longer require certain applicants to travel to and from an REC and to wait at an REC while processing fingerprints and IDs, there would be a reduction in the associated reporting cost burden. This proposed rulemaking will decrease the annual cost burden by approximately $16 million. There would not be a total annual O&M burden cost reported for the revised OMB-approved collection.

We request public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the collection burden.

If you submit comments on the collection of information, submit them to both OMB and the Docket Management Facility where indicated under **ADDRESSES,** by the date under **DATES.**

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

*E. Executive Order 13132 (Federalism)*

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, the Coast Guard certifies that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

The law is well settled that States may not regulate in categories expressly reserved for regulation by the Coast Guard. The law also is well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. See *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S. Ct. 1135 (March 6, 2000). Since this proposed rule involves the credentialing of merchant mariners, it relates to personnel qualifications and is foreclosed from regulation by the States. Because the States may not regulate within this category, this rule does not present new preemption issues under Executive Order 13132.

*F. Unfunded Mandates Reform Act*

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

*G. Executive Order 12630 (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.

*H. Executive Order 12988 (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.

*I. Executive Order 13045 (Protection of Children)*

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

*J. Executive Order 13175 (Indian Tribal Governments)*

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

*K. Executive Order 13211 (Energy Effects)*

The Coast Guard has 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. This rule would affect only the issuance of credentials to merchant mariners and

therefore is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The Administrator of the Office of Information and Regulatory Affairs for the Office of Management and Budget has not designated this proposed rule as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*L. Technical Standards*

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

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

*M. National Environmental Policy Act*

The Coast Guard has analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe this rule should be categorically excluded from further environmental documentation under Figure 2–1, paragraph (34)(c) of the Instruction. This rule involves matters of procedure only; it consolidates the credentials issued to merchant mariners and revises the application process for issuing those credentials. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

**List of Subjects**

*33 CFR Part 1*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

*33 CFR Part 20*

Administrative practice and procedure, Hazardous substances, Oil pollution, Penalties, Water pollution control.

*33 CFR Part 70*

Navigation (water) and Penalties.

*33 CFR Part 95*

Alcohol abuse, Drug abuse, Marine safety, and Penalties.

*33 CFR Part 101*

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

*33 CFR Part 110*

Anchorage grounds.

*33 CFR Part 125*

Administrative practice and procedure, Harbors, Reporting and recordkeeping requirements, Security measures, Vessels.

*33 CFR Part 141*

Citizenship and naturalization, Continental shelf, Employment, Reporting and recordkeeping requirements.

*33 CFR Part 155*

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 156*

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

*33 CFR Part 160*

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

*33 CFR Part 162*

Navigation (water) and Waterways.

*33 CFR Part 163*

Cargo vessels, Harbors, Navigation (water), Waterways.

*33 CFR Part 164*

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

*33 CFR Part 165*

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

*46 CFR Part 1*

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

*46 CFR Part 4*

Administrative practice and procedure, Drug testing, Investigations, Marine safety, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

*46 CFR Part 5*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

*46 CFR Part 10*

Penalties, Reporting and recordkeeping requirements, Seamen, Transportation Worker Identification Card.

*46 CFR Part 11*

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

*46 CFR Part 12*

Penalties, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 13*

Cargo vessels, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 14*

Oceanographic research vessels, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 15*

Reporting and recordkeeping requirements, Seamen, Vessels.

*46 CFR Part 16*

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

*46 CFR Part 26*

Marine safety, Penalties, Reporting and recordkeeping requirements.

*46 CFR Part 28*

Alaska, Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 30*

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 31*

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 35*

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 42*

Penalties, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 58*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 61*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 78*

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

*46 CFR Part 97*

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

*46 CFR Part 98*

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

*46 CFR Part 105*

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum, Seamen.

*46 CFR Part 114*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 115*

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 122*

Marine safety, Passenger vessels, Penalties, Reporting and recordkeeping requirements.

*46 CFR Part 125*

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Seamen.

*46 CFR Part 131*

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements.

*46 CFR Part 151*

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

*46 CFR Part 166*

Schools, Seamen, Vessels.

*46 CFR Part 169*

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

*46 CFR Part 175*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 176*

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 185*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 196*

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

*46 CFR Part 199*

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 401*

Administrative practice and procedure, Great lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 402*

Great Lakes, Navigation (water), Seamen.

**The Amendments**

For the reasons listed in the preamble, the Coast Guard proposes to amend 33 CFR parts 1, 20, 70, 95, 101, 110, 125, 141, 155, 156, 160, 162, 163, 164, and 165; 46 CFR parts 1, 4, 5, 10, 12, 13, 14, 15, 16, 26, 28, 30, 31, 35, 42, 58, 61, 78, 97, 98, 105, 114, 115, 122, 125, 131, 151, 166, 169, 175, 176, 185, 196, 199, 401 and 402; and in 46 CFR, add a new part 11 as follows:

**33 CFR Chapter I**

## PART 1—GENERAL PROVISIONS

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

**Authority:** 14 U.S.C. 633; 33 U.S.C. 401, 491, 525, 1321, 2716, and 2716a; 42 U.S.C. 9615; 49 U.S.C. 322; 49 CFR 1.45(b), 1.46; section 1.01–70 also issued under the authority of E.O. 12580, 3 CFR, 1987 Comp., p. 193; and sections 1.01–80 and 1.01–85 also issued under the authority of E.O. 12777, 3 CFR, 1991 Comp., p. 351.

**§ 1.08–5 [Amended]**

2. In § 1.08–5(b)(1), after the word ''licensed'', add the words ''or credentialed''.

**§ 1.25–1 [Amended]**

3. In § 1.25–1(a), remove the words ''documents, certificates, or licenses'' and add, in their place, the words ''merchant mariner credentials, merchant mariner documents, licenses or certificates''.

## PART 20—RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR FORMAL ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD

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

**Authority:** 33 U.S.C. 1321; 42 U.S.C. 9609; 46 U.S.C. 7701, 7702; 49 CFR 1.46.

5. In § 20.102—

a. In the definition for ''Complaint'', after the word ''merchant'', add the words '' mariner credential,'';

b. In the definition for ''Suspension and revocation proceeding or S&R proceeding'', after the words ''merchant mariner's'', add the word ''credential,''; and

c. Add definitions for the terms ''credential'' and ''Merchant Mariner Credential or MMC'', in alphabetical order, to read as follows:

**§ 20.102 Definitions.**

* * * * *

*Credential* means any or all of the following:

(1) Merchant mariner's document.

(2) License.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

* * * * *

*Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, Part E and STCW endorsements into a single certificate

which will be endorsed to reflect a mariner's level of qualification.

* * * * *

**§ 20.904 [Amended]**

6. In § 20.904—

a. In paragraph (e)(1) introductory text, after the words ''certificate of registry'' remove the word ''or''; and, after the word ''document'', add the words '', credential, or endorsement'';

b. In paragraph (e)(1)(i)(B), after the word ''certificate'' remove the word ''or''; and, after the word ''document'', add the words '', credential, or endorsement'';

c. In paragraph (f) introductory text, after the words ''revocation of a'', add the words ''credential, endorsement,''; and

d. In paragraph (f)(1), after the words ''issuance of a new'' remove the words ''license, certificate, or document'' and add, in their place the words ''merchant mariner credential with appropriate endorsement''.

**§ 20.1201 [Amended]**

7. In § 20.1201—

a. In paragraph (a), remove the word ''merchant mariner's license, certificate of registry, or document'' and add, in their place, the words ''mariner's credential'';

b. In paragraph (b) introductory text, before the words ''license, certificate, or document'' wherever they appear, add the words ''merchant mariner credential,''; and

c. In paragraph (b)(2)(ii), after the words ''renewal of the'', add the words ''merchant mariner credential,''.

**§ 20.1202 [Amended]**

8. In § 20.1202(a), before the words ''license, certificate of registry, or document'', add the word ''credential,''.

**§ 20.1205 [Amended]**

9. In § 20.1205—

a. In the section heading, before the words ''license, certificate of registry, or document'', add the words ''merchant mariner credential,'';

b. In paragraph (a), after the words ''move that his or her'', add the words ''merchant mariner credential,''; and

c. In paragraph (b), after the words ''return of the suspended'', add the word ''credential,''.

**§ 20.1307 [Amended]**

10. In § 20.1307 paragraph (c)(2), after words ''merchant mariner's license'', add the words '', merchant mariner credential,''.

## PART 70—INTERFERENCE WITH OR DAMAGE TO AIDS TO NAVIGATION

11. The authority citation for part 70 continues to read as follows:

**Authority:** Secs. 14, 16, 30 Stat. 1152, 1153; secs. 84, 86, 92, 633, 642, 63 Stat. 500, 501, 503, 545, 547 (33 U.S.C. 408, 411, 412; 14 U.S.C. 84, 86, 92, 633, 642).

**§ 70.05–10 [Amended]**

12. In § 70.05–10—

a. In the section heading, after the words ''Revocation of'', add the words ''merchant mariner credential officer endorsement or''; and

b. In the text of the section, after the words ''shall also have his'', add the words ''merchant mariner credential officer endorsement or''.

## PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG

13. Revise the authority citation for part 95 to read as follows:

**Authority:** 33 U.S.C. 2071; 46 U.S.C. 2302; Department of Homeland Security Delegation No. 0170.1.

**§ 95.015 [Amended]**

14. In § 95.015(b), remove the words ''a licensed individual'' and add, in their place, the words ''an officer''.

**§ 95.045 [Amended]**

15. In § 95.045 introductory text, remove the words ''a licensed individual'' and add, in their place, the words ''an officer''.

## PART 101—MARITIME SECURITY: GENERAL

16. The authority citation for part 101 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.057–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

17. In § 101.105—

a. In the definitions for ''Master'' and ''Operator, Uninspected Towing Vessel'', before the word ''license'' wherever it appears, add the words ''merchant mariner credential or''; and

b. Add a definition for the term ''Merchant Mariner Credential or MMC'' to read as follows:

**§ 101.105 Definitions.**

* * * * *

*Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, Part E and STCW endorsements into a single certificate which will be endorsed to reflect a mariner's level of qualification.

* * * * *

## PART 110—ANCHORAGE REGULATIONS

18. The authority citation for part 110 is revised to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

**§ 110.186 [Amended]**

19. In § 110.186(b)(3), after the words ''English speaking licensed'', add the words ''or credentialed''.

**§ 110.188 [Amended]**

20. In § 110.188(b)(10), after the word ''licensed'', add the words ''or credentialed''.

**§ 110.214 [Amended]**

21. In § 110.214(a)(3)(i), after the word ''licensed'' add the words ''or credentialed''.

## PART 125—IDENTIFICATION CREDENTIALS FOR PERSONS REQUIRING ACCESS TO WATERFRONT FACILITIES OR VESSELS

22. The authority citation for part 125 is revised to read as follows:

**Authority:** R.S. 4517, 4518, secs. 19, 2, 23 Stat. 58, 118, sec. 7, 49 Stat. 1936, sec. 1, 40 Stat. 220; 46 U.S.C. 570–572, 2, 689, and 70105; 50 U.S.C. 191, EO 10173, EO 10277, EO 10352, 3 CFR, 1949–1953 Comp. pp. 356, 778, 873.

23. In § 125.09, revise paragraph (f) and add paragraph (g) to read as follows:

**§ 125.09 Identification credentials.**

* * * * *

(f) Transportation Worker Identification Credential.

(g) Such other identification as may be approved by the Commandant from time to time.

## PART 141—PERSONNEL

24. The authority citation for part 141 is revised to read as follows:

**Authority:** 43 U.S.C. 1356; 46 U.S.C. 70105; 49 CFR 1.46(z) .

**§ 141.5 [Amended]**

25. In § 141.5(b)(1) remove the words ''licensed officers, and unlicensed crew'' and add, in their place, the words ''crew, and officers holding a valid license or MMC with officer endorsement''.

**§ 141.10 [Amended]**

26. In § 141.10, add a definition for the term ''Transportation Worker Identification Credential'' to read as follows:

**§ 141.10 Definitions.**

* * * * *

*Transportation Worker Identification Credential or TWIC* means an identification credential issued by the Transportation Security Administration according to 49 CFR part 1572.

**§ 141.25 [Amended]**

27. In § 141.25—

a. In paragraph (a) introductory text, remove the word ''The'' and add, in its place, the words ''For the purposes of this part, the''; and

b. In paragraph (a)(1), before the words ''merchant mariner's document'', add the word ''valid'', and remove the words ''under 46 CFR Part 12''.

28. In § 141.30—

a. In the introductory text, remove the first appearance of the word ''The'' and add, in its place, the words ''For the purposes of this part, the'';

b. In paragraph (a), before the words ''merchant mariner's document'', add the word ''valid'', and remove the words ''under 46 CFR Part 12''; and

c. In paragraph (b), remove the words ''Immigration and Naturalization Service'' and add, in their place, the words ''Immigration and Customs Enforcement Agency''; and

d. Add a new paragraph (d) to read as follows:

**§ 141.30 Evidence of status as a resident alien.**

* * * * *

(d) A valid Transportation Worker Identification Credential.

**§ 141.35 [Amended]**

29. In § 141.35(a)(1), after the words ''merchant mariner's document'', add the words '', Transportation Worker Identification Credential,''.

## PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

30. The authority citation for part 155 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 also issued under section 4110(b) of Pub. L. 101–380.

**§ 155.110 [Amended]**

31. Revise § 155.110 to read as follows:

**§ 155.110 Definitions.**

Except as specifically stated in a section, the definitions in part 151 of this chapter, except for the word ''oil'', and in part 154 of this chapter, apply to this part. The following definition also applies to this part:

*Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, Part E and STCW endorsements into a single certificate which will be endorsed to reflect a mariner's level of qualification.

**§ 155.710 [Amended]**

32. In § 155.710—

a. In paragraph (a)(2), after the word ''license'', add the words ''or officer endorsement'';

b. In paragraph (e)(1), remove the words ''a licensed person'' and add, in their place, the words ''an officer''; after the words ''holds a valid license'', add the words ''or merchant mariner credential''; remove the words ''part 10'' and add, in their place, the words ''chapter I, subchapter B,''; and after the words ''merchant mariner's document'', add the words ''or merchant mariner credential'';

c. In paragraph (f), after the word ''MMD'', add the words '' or merchant mariner credential''; and after the words ''either a license'', add the words '', officer endorsement,''; and

d. In paragraph (g), after the words ''need not hold any of the'', add the words ''merchant mariner credentials,''.

**§ 155.815 [Amended]**

33. In § 155.815(b), after the word ''licensed'' add the words ''or credentialed''.

## PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

34. The authority citation for part 156 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703a, 3715; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793. Section 156.120(bb) and (ee) are also issued under 46 U.S.C. 3703.

**§ 156.210 [Amended]**

35. In § 156.210(d), remove the words ''a licensed individual'' and add, in their place, the words ''an officer''.

## PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

36. The authority citation for part 160 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

**§ 160.113 [Amended]**

37. In § 160.113(b)(4), remove the word ''licensed''.

## PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

38. The authority citation for part 162 is revised to read as follows:

**Authority:** 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.1.

39. Add a new § 162.5 to read as follows:

**§ 162.5 Definitions.**

The following definition applies to this part:

*Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR Part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, Part E and STCW endorsements into a single certificate which will be endorsed to reflect a mariner's level of qualification.

**§ 162.130 [Amended]**

40. In § 162.130(c), in the definition for ''Master'', after the words ''means the'', remove the word ''licensed''; and, after the words ''vessel not requiring'', remove the words ''licensed personnel'' and add, in their place, the words ''persons holding licenses or merchant mariner credential officer endorsements''.

## PART 163—TOWING OF BARGES

41. The authority citation for part 163 continues to read as follows:

**Authority:** 33 U.S.C. 152, 2071; 49 CFR 1.46(n).

**§ 163.01 [Amended]**

42. In § 163.01(b), after the word ''license'', add the words ''or merchant mariner credential''.

**§ 163.03 [Added]**

43. Add a new § 163.03 to read as follows:

**§ 163.03 Definitions.**

The following definition applies to this part:

*Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, Part E and STCW endorsements into a single certificate which will be endorsed to reflect a mariner's level of qualification.

## PART 164—NAVIGATION SAFETY REGULATIONS

44. The authority citation for part 164 continues to read as follows:

**Authority:** 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; Department of Homeland Security Delegation No. 0170.1 (75). Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

**§ 164.13 [Amended]**

45. In § 164.13—

a. In paragraph (b), remove the words ''a licensed engineer'' and add, in their place, the words ''an engineer with a properly endorsed license or merchant mariner credential''; and

b. In paragraph (c), after the words ''at least two'', remove the word ''licensed''; after the words ''deck officers'' add the words ''with a properly endorsed license or merchant mariner credential''; and, after the words ''must be an individual'', remove the word ''licensed'' and add, in its place, the words ''holding an appropriately endorsed license or merchant mariner credential''.

46. In § 164.70, in alphabetical order, add a new definition for the term ''Merchant Mariner Credential or MMC'' to read as follows:

**§ 164.70 Definitions.**

* * * * *

*Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, Part E and STCW endorsements into a single certificate which will be endorsed to reflect a mariner's level of qualification.

* * * * *

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

48. Add § 165.3 to read as follows:

**§ 165.3 Definitions.**

The following definitions apply to this part:

*Credential* means any or all of the following:

(1) Merchant mariner's document.

(2) License.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

*Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, Part E and STCW endorsements into a single certificate, which will be endorsed to reflect a mariner's level of qualification.

**§ 165.120 [Amended]**

49. In § 165.120(b)(1), remove the words '' the Licensed Federal Pilot'' and add, in their place, the words ''an individual holding a valid Merchant Mariner's License or Merchant Mariner Credential endorsed as Pilot''.

**§ 165.153 [Amended]**

50. In § 165.153(d)(6) and (d)(7), remove the word ''licensed'' wherever it may appear.

**§ 165.810 [Amended]**

51. In § 165.810(f)(1), remove the words ''licensed engineer'' and add, in their place, the words ''appropriately licensed or credentialed engineer officer''.

**§ 165.1310 [Amended]**

52. In § 165.1310(f)(2), remove the word ''licensed'' and add, in its place, the words ''holding a license or merchant mariner credential issued''.

**46 CFR CHAPTER I**

## PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

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

**Authority:** 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

54. In § 1.01–05, remove the existing paragraph designations, remove the words ''The term'' from the definition of ''Commandant'' and ''District Commander'', and in alphabetical order, add definitions for the terms ''credential'' and ''Merchant Mariner Credential or MMC'' to read as follows:

**§ 1.01–05 Definitions.**

* * * * *

*Credential* means any or all of the following:

(1) Merchant mariner's document.

(2) License.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

* * * * *

*Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, Part E and STCW endorsements into a single certificate which will be endorsed to reflect a mariner's level of qualification.

**§ 1.01–10 [Amended]**

55. In § 1.01–10(b)(1)(ii)(C), remove the words ''licenses, documents or certificates'' and add, in their place, the word '' credentials''.

**§ 1.01–15 [Amended]**

56. In § 1.01–15—

a. In paragraph (a)(1), remove the words ''licenses, certificates, and documents'' and add, in their place, the word ''credentials'' and remove the words ''licensing, certificating'' and add, in their place, the word ''credentialing'';

b. In paragraph (b), remove the words ''licensing, certificating'' and add, in their place, the word ''credentialing'', and after the words ''misbehavior of persons holding'', remove the words ''licenses, certificates, or documents'' and add, in their place, the word ''credentials'', and after the words ''46 U.S.C. chapter 77 of'', remove the words ''licenses, certificates and documents'' and add, in their place, the word ''credential''; and

c. In the Note to paragraph (b), remove the words ''Licensing and Certification'' and add, in their place, the word ''Credentialing''; and, after the words ''parts 10'', add the number '', 11,''.

**§ 1.01–25 [Amended]**

57. In § 1.01–25—

a. In paragraph (b), remove the words ''licenses, certificates, or documents'' and add, in their place, the word ''credentials''; and

b. In paragraphs (c) introductory text and (c)(1) introductory text, remove the words ''license, certificate or document'' wherever they appear and add, in their place, the word ''credential''.

## PART 4—MARINE CASUALTIES AND INVESTIGATIONS

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

**Authority:** 33 U.S.C. 1231, 1321; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; Department of Homeland Security Delegation No. 170.1. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); Department of Homeland Security Delegation No. 0170.1.

59. Add § 4.03–75 to read as follows:

**§ 4.03–75 Merchant mariner credential and Credential.**

The following definitions apply to this part:

*Credential* means any or all of the following:

(1) Merchant mariner's document.

(2) License.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

*Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, Part E and STCW endorsements into a single certificate, which will be endorsed to reflect a mariner's level of qualification.

**§ 4.07–1 [Amended]**

60. § 4.07–1(c)(3), remove the words ''any licensed or certificated person'' and add, in their place, the words ''any person holding a Coast Guard credential''; and remove the words ''license or certificate'' and add, in their place, the word ''credential''.

**§ 4.07–10 [Amended]**

61. In § 4.07–10(a)(3), remove the words ''licenses or certificates'' and add, in their place, the word ''credentials''.

## PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

62. The authority citation for part 5 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 7101, 7301, 7701; Department of Homeland Security Delegation No. 0170.1.

**§ 5.3 [Amended]**

63. In § 5.3, remove the words ''licenses, certificates or documents'' and add, in their place, the words ''credentials or endorsements''.

**§ 5.5 [Amended]**

64. In § 5.5, remove the word ''certification'' and add, in its place, the words ''certificate, merchant mariner credential, endorsement,''.

**§ 5.15 [Amended]**

65. In § 5.15, remove the words ''license, certificate or document'' and add, in their place, the word ''credential''.

**§ 5.19 [Amended]**

66. In § 5.19(b), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

67. Add § 5.40 to Subpart B to read as follows:

**§ 5.40 Credential and merchant mariner credential.**

*Credential* means any or all of the following:

(1) Merchant mariner's document.

(2) License.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

*Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, Part E and STCW endorsements into a single certificate which will be endorsed to reflect a mariner's level of qualification.

**§ 5.55 [Amended]**

68. In § 5.55(a) introductory text, remove the words ''license, certificate or document'' and add, in their place, the word ''credential''.

69. In § 5.57—

a. Revise the section heading to read as set out below;

b. In paragraph (a) introductory text, remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement'';

c. Revise paragraph (b) to read as set out below; and

d. In paragraph (c), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

**§ 5.57 Acting under authority of Coast Guard credential or endorsement.**

* * * * *

(b) A person is considered to be acting under the authority of the credential or endorsement while engaged in official matters regarding the credential or endorsement. This includes, but is not limited to, such acts as applying for renewal, taking examinations for raises in grade, requesting duplicate or replacement credentials, or when appearing at a hearing under this part.

* * * * *

**§ 5.59 [Amended]**

70. In § 5.59—

a. In the section heading, remove the words ''licenses, certificates or documents'' and add, in their place, the words ''credentials or endorsements''; and

b. In the introductory text, remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

**§ 5.61 [Amended]**

71. In § 5.61—

a. In the section heading, remove the words ''licenses, certificates or documents'' and add, in their place, the word ''credentials''; and

b. In paragraphs (a) introductory text and (b), remove the words ''license,

certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsements''.

**§ 5.101 [Amended]**

72. In § 5.101(a) introductory text, (a)(1), and (a)(2), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

**§ 5.105 [Amended]**

73. In § 5.105(b), (c), and (e), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

## Subpart E—[Amended]

74. In the heading to subpart E, remove the words ''License, Certificate or Document'' and add, in their place, the words ''Coast Guard Credential or Endorsement''.

**§ 5.201 [Amended]**

75. In § 5.201(a), (b) introductory text, (b)(4), (c), and (d), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

**§ 5.203 [Amended]**

76. In § 5.203(a), (b) introductory text, (b)(2), and (c), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

**§ 5.205 [Amended]**

77. In § 5.205—

a. In the section heading, remove the words ''license, certificate of registry, or merchant mariners document'' and add, in their place, the words ''credential or endorsement''; and

b. In paragraphs (a), (b) introductory text, (c) introductory text, and (d), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

**§ 5.501 [Amended]**

78. In § 5.501, remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

**§ 5.521 [Amended]**

79. In § 5.521—

a. In the section heading, remove the words ''license, certificate or document'' and add, in their place, the word ''credential'';

b. In paragraph (a), after the words ''all valid'', remove the words ''licenses, certificates, and/or documents'' and add, in their place, the word ''credentials''; and, after the words ''alleges that'', remove the words ''such license, certificate or document'' and add, in their place, the word ''credential''; and

c. In paragraph (b), remove the words ''license, certificate, or document'' and add, in their place, the word ''credential''.

**§ 5.567 [Amended]**

80. In paragraphs (b), (c) introductory text, (d), and (e), remove the words ''licenses, certificates or documents'' wherever they appear and add, in their place, the word ''credentials or endorsements''; and remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

**§ 5.707 [Amended]**

81. In § 5.707—

a. In the section heading, remove the words ''license, certificate, or document'' and add, in their place, the words ''credential or endorsement'';

b. In paragraph (a), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement'';

c. In paragraph (c), remove the words ''document or license'' and add, in their place, the words ''credential or endorsement'';

d. In paragraph (d), after the words ''All temporary'', remove the word ''documents'' and add, in its place, the words ''credentials or endorsements''; and, after the words ''If a temporary'', remove the word ''document'' and add, in its place, the words, ''credential or endorsement'';

e. In paragraph (e), remove the word ''document'' and add, in its place, the words ''credential or endorsement''; and

f. In paragraph (f), remove the word ''documents'' and add, in its place, the word ''credential''.

**§ 5.713 [Amended]**

82. In § 5.713(a), remove the words ''licenses, certificates, or documents'' and add, in their place, the words ''credentials or endorsements''.

**§ 5.715 [Amended]**

83. In § 5.715—

a. In the section heading, remove the words ''document and/or license'' and add, in their place, the words ''credential and/or endorsement'';

b. In paragraph (a), remove the words ''document or license'' and add, in their place, the words ''credential and/or endorsement''; and

c. In paragraph (c), remove the words ''document and/or license'' and add, in their place, the words ''credential and/or endorsement''; and, after the words ''order. This'', remove the word ''document'' and add, in its place, the words ''credential and/or endorsement''.

## Subpart L—[Amended]

84. In the heading to subpart L, remove the words ''Licenses, Certificates or Documents'' and add, in their place, the words ''Credential or Endorsement''.

**§ 5.901 [Amended]**

85. In § 5.901(a), (c), (d) introductory text, and (e), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

**§ 5.903 [Amended]**

86. In § 5.903(a), (c) introductory text, and (c)(2), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

**§ 5.905 [Amended]**

87. In § 5.905(b), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

## PART 10—MERCHANT MARINER OFFICERS AND SEAMEN

88. The authority citation for part 10 is revised to read as follows:

**Authority:** 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906, and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

## PART 10—[REDESIGNATED AS PART 11 AND AMENDED]

89. Redesignate part 10, consisting of § § 10.101 through 10.1105, as part 11, § § 11.101 through 11.1105.

90. Add a new part 10 to subchapter B to read as follows:

## PART 10—MERCHANT MARINER CREDENTIAL

## Subpart A—General

Sec.

10.101 Purpose of rules in this part.
10.103 Incorporation by reference.
10.105 Paperwork approval. [Reserved]
10.107 Definitions in subchapter B.
10.109 Classification of endorsements.

## Subpart B—General Requirements for All Merchant Mariner Credentials

10.201 General characteristics of the Merchant Mariner Credential.
10.203 Requirement to hold a TWIC and a Merchant Mariner Credential.
10.205 Validity of a Merchant Mariner Credential.
10.207 Identification number.
10.209 Application procedures.
10.211 Criminal record review.
10.213 National Driver Register.
10.215 Medical and physical requirements.
10.217 MMC application and examination locations.
10.219 Fees.
10.221 Applications submitted by aliens.
10.223 Modification or removal of limitations.
10.225 Issuance of Merchant Mariner Credentials.
10.227 Additional requirements for renewal.
10.229 Issuance of duplicate Merchant Mariner Credentials.
10.231 Additional requirements for raises of grade for officer endorsements.
10.233 Obligations of the holder of a Merchant Mariner Credential.
10.235 Suspension or revocation of Merchant Mariner Credentials.
10.237 Right of appeal.

**Authority:** 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. chapter 71; 46 U.S.C. chapter 72; 46 U.S.C. chapter 75; 46 U.S.C. 7701, 8906 and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1.

## Subpart A—General

### § 10.101 Purpose of rules in this part.

The regulations in this part provide:

(a) A means of determining and verifying the identity, citizenship, and qualifications an applicant must possess to be eligible for certification to serve on merchant vessels;

(b) A means of determining that an applicant is competent to serve under the authority of their Merchant Mariner Credential (MMC); and

(c) A means, through the requirement to hold a Transportation Worker Identification Credential (TWIC), and a criminal and National Driver Register (NDR) record review to determine the identity of an applicant and determine if the holder of an MMC is a safe and suitable person and is qualified as to character and habits of life.

### § 10.103 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental Standards (G–PSO), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in this section.

(b) *International Maritime Organization (IMO)*, 4 Albert Embankment, London, SE1 7SR, England:

(1) The STCW—International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (the STCW Convention or the STCW), incorporation by reference approved for § § 10.107, 10.109, 10.209, 10.215, and 10.277.

(2) The Seafarers' Training, Certification and Watchkeeping Code, as amended (the STCW Code), incorporation by reference approved for § § 10.107, 10.109, 10.209, 10.215, and 10.277.

### § 10.105 Paperwork approval. [Reserved]

### § 10.107 Definitions in Subchapter B.

(a) With respect to part 16 and § 15.1101 of this title only, if the definitions in paragraph (b) of this section differ from those set forth in either § 16.105 or § 15.1101, the definition set forth in either § 16.105 or § 15.1101, as appropriate, applies.

(b) As used in this subchapter, the following terms apply only to the merchant marine personnel credentialing and manning of vessels subject to the manning provisions in the navigation and shipping laws of the United States:

*Apprentice mate (steersman) of towing vessels* means a mariner qualified to perform watchkeeping on the bridge, while in training onboard a towing vessel under the direct supervision and in the presence of a master or mate (pilot) of towing vessels.

*Approved* means approved by the Coast Guard in according to § 11.302 of this chapter.

*Approved training* means training that is approved by the Coast Guard or meets the requirements of § 11.309 of this chapter.

*Assistance towing* means towing a disabled vessel for consideration.

*Assistant engineer* means a qualified officer in the engine department.

*Authorized official* includes but is not limited to a Federal, State or local law enforcement officer.

*Ballast control operator or BCO* means an officer restricted to service on mobile offshore drilling units (MODUs) whose duties involve the operation of the complex ballast system found on many MODUs. When assigned to a MODU, a ballast control operator is equivalent to a mate on a conventional vessel.

*Barge supervisor or BS* means an officer restricted to service on MODUs whose duties involve support to the offshore installation manager (OIM) in marine related matters including, but not limited to, maintaining watertight integrity, inspecting and maintaining mooring and towing components, and maintaining emergency and other marine-related equipment. A barge supervisor, when assigned to a MODU, is equivalent to a mate on a conventional vessel.

*Boatswain* means the leading seaman and immediate supervisor of deck crew who supervises the maintenance of deck gear.

*Cargo engineer* means a person holding an officer endorsement on a dangerous-liquid tankship or a liquefied-gas tankship whose primary responsibility is maintaining the cargo system and cargo-handling equipment.

*Chief engineer* means any person responsible for the mechanical propulsion of a vessel and who is the holder of a valid officer endorsement as chief engineer.

*Chief mate* means the deck officer next in seniority to the master and upon whom the command of the vessel will fall in the event of incapacity of the master.

*Coast Guard-accepted* means that the Coast Guard has officially acknowledged in writing that the material or process at issue meets the applicable requirements; that the Coast Guard has issued an official policy statement listing or describing the material or process as meeting the applicable requirements; or that an entity acting on behalf of the Coast Guard under a Memorandum of Agreement has determined that the material or process meets the applicable requirements.

*Coastwise seagoing vessel* means a vessel that is authorized by its Certificate of Inspection to proceed beyond the Boundary Line established in part 7 of this chapter.

*Competent person* means a person designated as such under 29 CFR 1915.7.

*Conviction* means that the applicant for a merchant mariner credential has been found guilty, by judgment or plea by a court of record of the United States, the District of Columbia, any State, territory, or possession of the United

States, a foreign country, or any military court, of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304). If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court's conviction, then the Coast Guard will consider the applicant to have received a conviction. A later expungement of the conviction will not negate a conviction unless the Coast Guard is satisfied that the expungement is based upon a showing that the court's earlier conviction was in error.

*Credential* means any or all of the following:

(1) Merchant mariner's document.
(2) License.
(3) STCW endorsement.
(4) Certificate of registry.
(5) Merchant mariner credential.

*Criminal record review* means the process or action taken by the Coast Guard to determine whether an applicant for, or holder of, a credential is a safe and suitable person to be issued such a credential or to be employed on a vessel under the authority of such a credential.

*Dangerous drug* means a narcotic drug, a controlled substance, or a controlled-substance analogue (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)).

*Dangerous liquid or DL* means a liquid listed in 46 CFR 153.40 of this chapter that is not a liquefied gas as defined in this part. Liquid cargoes in bulk listed in 46 CFR part 153, table 2, of this chapter are not dangerous-liquid cargoes when carried by non-oceangoing barges.

*Day* means, for the purpose of complying with the service requirements of this subchapter, eight hours of watchstanding or day-working not to include overtime. On vessels where a 12-hour working day is authorized and practiced, such as on a six-on, six-off watch schedule, each work day may be creditable as one and one-half days of service. On vessels of less than 100 gross tons, a day is considered as eight hours unless the Officer in Charge, Marine Inspection, determines that the vessel's operating schedule makes this criteria inappropriate, in no case will this period be less than four hours. When computing service required for MODU endorsements, a day is a minimum of four hours, and no additional credit is received for periods served over eight hours.

*Deck crew (excluding individuals serving under their officer endorsement)* means, as used in 46 U.S.C. 8702, only the following members of the deck department: able seamen, boatswains, and ordinary seamen.

*Designated areas* means those areas within pilotage waters for which first class pilot's endorsements are issued under part 11, subpart G, of this chapter, by the Officer in Charge, Marine Inspection (OCMI). The areas for which first class pilot's endorsements are issued within a particular Marine Inspection Zone and the specific requirements to obtain them may be obtained from the OCMI concerned.

*Designated duty engineer* means a qualified engineer, who may be the sole engineer on vessels with a periodically unattended engine room.

*Designated examiner* means a person who has been trained or instructed in techniques of training or assessment and is otherwise qualified to evaluate whether an applicant has achieved the level of competence required to hold a Merchant Mariner Credential (MMC) endorsement. This person may be designated by the Coast Guard or by a Coast Guard-approved or accepted program of training or assessment. A faculty member employed or instructing in a navigation or engineering course at the U.S. Merchant Marine Academy or at a State maritime academy operated under 46 CFR part 310 is qualified to serve as a designated examiner in his or her area(s) of specialization without individual evaluation by the Coast Guard.

*Directly supervised* means being in the direct line of sight of the person-in-charge or maintaining direct, two-way communications by a convenient, reliable means, such as a predetermined working frequency over a hand-held radio.

*Disabled vessel* means a vessel that needs assistance, whether docked, moored, anchored, aground, adrift, or underway but does not mean a barge or any other vessel not regularly operated under its own power.

*Drug test* means a chemical test of an individual's urine for evidence of dangerous drug use.

*Employment assigned to* is the total period a person is assigned to work on MODUs, including time spent ashore as part of normal crew rotation.

*Endorsement* is a statement of a mariner's qualifications to include officer, staff officer, ratings, and/or STCW qualifications appearing on an Merchant Mariner Credential.

*Evaluation* means processing an application, from the point of receipt to approval or rejection of the application, including review of all documents and records submitted with an application as well as those obtained from public records and databases.

*Fails a chemical test for dangerous drugs* means that the result of a chemical test conducted under 49 CFR part 40 was reported as ''positive'' by a Medical Review Officer because the chemical test indicated the presence of a dangerous drug at a level equal to or exceeding the levels established in 49 CFR part 40.

*First assistant engineer* means the engineer officer next in seniority to the chief engineer and upon whom the responsibility for the mechanical propulsion of the vessel will fall in the event of the incapacity of the chief engineer.

*Great Lakes* for the purpose of calculating service requirements for an officer endorsement, means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O' Brien Lock and Controlling Works (between mile 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between mile 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock. For purposes of requiring Merchant Mariner Credentials with rating endorsements, the connecting and tributary waters are not part of the Great Lakes.

*Harbor assist* means the use of a towing vessel during maneuvers to dock, undock, moor, or unmoor a vessel, or to escort a vessel with limited maneuverability.

*Horsepower* means, for the purpose of this subchapter, the total maximum continuous shaft horsepower of all the vessel's main propulsion machinery.

*IMO* means the International Maritime Organization.

*Inland waters* means the navigable waters of the United States shoreward of the Boundary Lines as described in part 7 of this chapter, excluding the Great Lakes, and, for towing vessels, excluding the Western Rivers. For establishing credit for sea service, the waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska, are inland waters.

*Invalid credential* means a merchant mariner credential that has expired, been suspended, revoked, or was issued fraudulently.

*Liquefied gas or LG* means a cargo that has a vapor pressure of 172 kPa (25 psia) or more at 37.8 C (100 F).

*Liquid cargo in bulk* means a liquid or liquefied gas listed in § 153.40 of this

chapter and carried as a liquid cargo or liquid-cargo residue in integral, fixed, or portable tanks, except a liquid cargo carried in a portable tank actually loaded and discharged from a vessel with the contents intact.

*Lower level* is used as a category of deck and engineer officer endorsements established for assessment of fees. Lower-level officer endorsements are other than those defined as upper level, for which the requirements are listed in subparts D, E, and G of this part.

*Marine chemist* means a person certificated by the National Fire Protection Association.

*Master* means the officer having command of a vessel.

*Mate* means a qualified officer in the deck department other than the master.

*Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, part E and STCW endorsements into a single certificate which will be endorsed to reflect a mariner's level of qualification.

*Merchant Vessel* means a vessel engaged in commercial activities.

*MMC application* means the application for the Merchant Mariner Credential (MMC), as well as the application for any endorsement on an MMC.

*Mobile offshore drilling unit or MODU* means a vessel capable of engaging in drilling operations for the exploration for or exploitation of subsea resources. MODU designs include the following:

(1) Bottom bearing units which include:

(i) Self-elevating (or jack-up) units with moveable, bottom bearing legs capable of raising the hull above the surface of the sea; and

(ii) Submersible units of ship-shape, barge-type, or novel hull design, other than a self-elevating unit, intended for operating while bottom bearing.

(2) Surface units with a ship-shape or barge-type displacement hull of single or multiple hull construction intended for operating in a floating condition, including semi-submersibles and drillships.

*Month* means 30 days, for the purpose of complying with the service requirements of this subchapter.

*National Driver Register or NDR* means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration under 49 U.S.C. chapter 303.

*NDR-listed convictions* means a conviction of any of the following motor vehicle-related offenses or comparable offenses:

(1) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

(2) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

*Near coastal* means ocean waters not more than 200-miles offshore.

*Oceans* means the waters seaward of the Boundary Lines as described in 46 CFR part 7 of this chapter. For the purposes of establishing sea service credit, the waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska, are not considered oceans.

*Officer endorsement* means an annotation on a Merchant Mariner Credential that allows a mariner to serve in the capacities in § 10.109(a).

*Officer in Charge, Marine Inspection, or OCMI* means, for the purposes of this subchapter, the officer or individual so designated at one of the locations of the regional examination centers listed in § 10.217, or any person designated as such by the Commandant.

*Offshore installation manager or OIM* means an officer restricted to service on MODUs. An assigned offshore installation manager is equivalent to a master on a conventional vessel and is the person designated by the owner or operator to be in complete and ultimate command of the unit.

*On location* means that a mobile offshore drilling unit is bottom bearing or moored with anchors placed in the drilling configuration.

*Operate, operating, or operation*, as applied to vessels, refers to a vessel anytime passengers are embarked whether the vessel is underway, at anchor, made fast to shore, or aground as applied to vessel manning.

*Operator* means an individual qualified to operate certain uninspected vessels.

*Orally assisted examination* means an examination as described in part 11, subpart I of this chapter verbally administered and documented by an examiner.

*Participation*, when used with regard to the service on transfers required for tankerman by §§ 13.120, 13.203, or 13.303 of this chapter, means either actual participation in the transfers or close observation of how the transfers are conducted and supervised.

*Passes a chemical test for dangerous drugs* means that the result of a chemical test conducted according to 49 CFR part 40 is reported as ''negative'' by a Medical Review Officer according to that part.

*PIC* means a person-in-charge.

*Pilot of towing vessels* means a qualified officer of a towing vessel operated only on inland routes.

*Pilotage waters* means the navigable waters of the United States, including all inland waters and offshore waters to a distance of three nautical miles from the baseline from which the Territorial Sea is measured.

*Practical demonstration* means the performance of an activity under the direct observation of a designated examiner for the purpose of establishing that the performer is sufficiently proficient in a practical skill to meet a specified standard of competence or other objective criterion.

*Qualified instructor* means a person who has been trained or instructed in instructional techniques and is otherwise qualified to provide required training to candidates for an Merchant Mariner Credential endorsement. A faculty member employed at a State maritime academy or the U.S. Merchant Marine Academy operated under 46 CFR part 310 and instructing in a navigation or engineering course is qualified to serve as a qualified instructor in his or her area of specialization without individual evaluation by the Coast Guard.

*Qualified rating* means various categories of Able Seaman, Qualified Member of the Engine Department, Lifeboatman, or Tankerman endorsements formerly issued on Merchant Mariner's Documents.

*Raise of grade* means an increase in the level of authority and responsibility associated with an officer or rating endorsement.

*Rating endorsement* is an annotation on a Merchant Mariner Credential that allows a mariner to serve in those capacities set out in § 10.109 (b) and (c).

*Regional Examination Center or REC* means a Coast Guard office that issues Merchant Mariners' Credentials and endorsements.

*Restricted Tankerman endorsement* means a valid tankerman endorsement on an Merchant Mariner Credential restricting its holder as the Officer in Charge, Marine Inspection, (OCMI) deems appropriate. For instance, the endorsement may restrict the holder to one or a combination of the following: A specific cargo or cargoes; a specific vessel or vessels; a specific facility or facilities; a specific employer or employers; a specific activity or

activities (such as loading or unloading in a cargo transfer); or a particular area of water.

*Rivers* means a river, canal, or other similar body of water designated as such by the Officer in Charge, Marine Inspection.

*Safe and suitable person* means a person whose character and habits of life are such as to support the belief that his or her presence on board vessels of the United States is not, or may not be, adverse to the security of the United States.

*Self-propelled* has the same meaning as the terms ''propelled by machinery'' and ''mechanically propelled.'' This term includes vessels fitted with both sails and mechanical propulsion.

*Self-propelled tank vessel* means a self-propelled tank vessel, other than a tankship.

*Senior company official* means the president, vice president, vice president for personnel, personnel director, or similarly titled or responsible individual, or a lower-level employee designated in writing by one of these individuals for the purpose of certifying employment and whose signature is on file at the Regional Examination Center (REC) at which application is made.

*Service as*, as used when computing the required service for MODU endorsements, means the time period, in days, a person is assigned to work on MODUs, excluding time spent ashore as part of crew rotation. A day is a minimum of four hours, and no additional credit is received for periods served over eight hours.

*Simulated transfer* means a transfer practiced in a course meeting the requirements of § 13.121 of this chapter that uses simulation supplying part of the service on transfers required for tankerman by § 13.203 or 13.303 of this chapter.

*Staff officer* means a person who holds an officer endorsement on a Merchant Mariner Credential listed in § 10.109(a)(13).

*Standard of competence* means the level of proficiency to be achieved for the proper performance of duties on board vessels according to national and international criteria.

*STCW* means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (incorporated by reference in § 10.103).

*STCW Code* means the Seafarer's Training, Certification and Watchkeeping Code, as amended (incorporated by reference in § 10.103).

*STCW endorsement* means an annotation on an Merchant Mariner Credential that allows a mariner to serve in those capacities under § 10.109(d).

*Tank barge* means a non-self-propelled tank vessel.

*Tank vessel* means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a vessel of the United States;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

*Tankerman-Assistant* means a person holding a valid ''Tankerman-Assistant'' endorsement to his or her Merchant Mariner Credential.

*Tankerman-Engineer* means a person holding a valid ''Tankerman-Engineer'' endorsement to his or her Merchant Mariner Credential.

*Tankerman-PIC* means a person holding a valid ''Tankerman-PIC'' endorsement to his or her Merchant Mariner Credential.

*Tankerman-PIC (Barge)* means a person holding a valid ''Tankerman-PIC (Barge)'' endorsement to his or her Merchant Mariner Credential.

*Tankship* means any tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or as cargo residue and propelled by power or sail.

*Transfer* means any movement of dangerous liquid or liquefied gas as cargo in bulk or as cargo residue to, from, or within a vessel by means of pumping, gravitation, or displacement. Section 13.127 of this chapter describes what qualifies as participation in a creditable transfer.

*Transportation Worker Identification Credential or TWIC* means an identification credential issued by the Transportation Security Administration under 49 CFR part 1572.

*Underway* means that a vessel is not at anchor, made fast to the shore, or aground. When referring to a mobile offshore drilling unit (MODU), underway means that the MODU is not in an on-location or laid-up status and includes that period of time when the MODU is deploying or recovering its mooring system.

*Undocumented vessel* means a vessel not required to have a document issued under the laws of the United States.

*Upper level* is used as a category of deck and engineer officer endorsements established for assessment of fees. Upper-level endorsements are those for which the requirements are listed in §§ 11.404 to 11.407 of this subchapter and §§ 11.510, 10.512, 10.514, and 11.516 of subpart E of this subchapter.

*Western rivers* means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen-Morgan City Alternate Route, and that part of the Atchafalaya River above its junction with the Port Allen-Morgan City Alternate Route including the Old River and the Red River, and those waters specified in 33 CFR 89.25.

*Year* means 360 days, for the purpose of complying with the service requirements of this subchapter.

**§ 10.109 Classification of endorsements.**

(a) The following officer endorsements are established in part 11 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in part 11 of this subchapter:

(1) Master.

(2) Chief mate.

(3) Second mate.

(4) Third mate.

(5) Mate.

(6) Apprentice mate (Steersman).

(7) Chief engineer.

(8) First assistant engineer.

(9) Second assistant engineer.

(10) Third assistant engineer.

(11) Assistant engineer.

(12) Designated duty engineer.

(13) Staff officers who are registered in the following grades:

(i) Chief purser.

(ii) Purser.

(iii) Senior assistant purser.

(iv) Junior assistant purser.

(v) Medical doctor.

(vi) Professional nurse.

(vii) Marine physician assistant.

(viii) Hospital corpsman.

(b) The following rating endorsements are established in part 12 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in part 12 of this subchapter:

(1) Able seaman.

(2) Ordinary seaman.

(3) Qualified member of the engine department.

(4) Lifeboatman.

(5) Wiper.

(6) Steward's department (F.H.).

(7) Cadet.

(8) Student observer.

(9) Apprentice engineer.

(10) Apprentice mate.

(c) The following ratings are established in part 13 of this subchapter. The endorsements indicate that an

individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in part 13 of this subchapter:

(1) Tankerman-PIC.

(2) Tankerman-PIC (Barge).

(3) Restricted Tankerman-PIC.

(4) Restricted Tankerman-PIC (Barge).

(5) Tankerman-Assistant.

(6) Tankerman-Engineer.

(d) The following STCW endorsements are established by STCW and issued according to the STCW Code and Convention and parts 11 and 12 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in parts 11 or 12 of this subchapter as well as the STCW Convention and Code (incorporated by reference see § 10.103):

(1) Master.

(2) Chief Mate.

(3) Officer in Charge of a Navigational Watch (OICNW).

(4) Chief Engineer.

(5) Second Engineer Officer.

(6) Officer in Charge of an Engineering Watch in a Manned Engineroom or Designated Duty Engineer in a Periodically Unmanned Engineroom (OICEW).

(7) Rating Forming Part of a Navigational Watch (RFPNW).

(8) Rating Forming Part of a Watch in a Manned Engineroom or designated to perform duties in a periodically unmanned engineroom (RFPEW).

(9) Proficiency in Survival Craft and Rescue Boats other than Fast Rescue boats (PSC).

(10) Proficiency in Fast Rescue Boats.

(11) Person in Charge of Medical Care.

(12) Medical First Aid Provider.

(13) GMDSS At-Sea Maintainer.

(14) GMDSS Operator.

## Subpart B—General Requirements for all Merchant Mariner Credentials

### § 10.201 General characteristics of the Merchant Mariner Credential.

(a) A Merchant Mariner Credential (MMC) (Coast Guard Form CG–XXXX), is a credential combining the elements of the Merchant Mariner's Document (MMD), License, and Certificate of Registry (COR) enumerated in 46 U.S.C. subtitle II, part E. MMDs, Licenses, STCW endorsements and CORs will no longer be issued and all qualifications formerly entered on those separate credentials will appear in the form of an endorsement(s) on an MMC.

(b) Although an MMC contains information necessary to identify the mariner to whom it is issued, the Transportation Worker Identification Credential (TWIC) is the primary identification document for mariners.

(c) An MMC authorizes the holder to serve in any capacity endorsed thereon, or in any lower capacity in the same department, or in any capacity covered by a general endorsement.

### § 10.203 Requirement to hold a TWIC and a Merchant Mariner Credential.

(a) Any mariner required to hold a License, MMD, Certificate of Registry, and/or an STCW Endorsement by a regulation in 33 CFR chapter I or 46 CFR chapter I must instead hold an MMC. A mariner may continue to serve under the authority of and within any restriction on their License, MMD, Certificates of Registry, and/or STCW Endorsement, until the first renewal or upgrade of that credential but not later than [date five years after effective date of the final rule].

(b) No MMC, License, MMD, Certificate of Registry, or STCW Endorsement will be valid unless the holder also holds a valid TWIC.

(c) An MMC, License, MMD, Certificate of Registry, or STCW Endorsement must be retained by the mariner to whom it was issued and, while valid, must be produced to verify qualifications when required by an authorized official.

(d) A TWIC must be retained by the mariner to whom it was issued and, while valid, shall serve as the mariner's primary identification document. The TWIC must be produced to verify identity when required by an authorized official.

### § 10.205 Validity of a Merchant Mariner Credential.

(a) An MMC is valid for a term of five years from the date of issuance.

(b) All endorsements are valid until the expiration date of the MMC on which they appear.

(c) A mariner may not serve under the authority of an MMC past its expiration date. An expired MMC may be renewed during an administrative grace period of up to one year beyond its expiration date as per § 10.227 (j) of this part.

(d) When an MMC is renewed or re-issued prior to its expiration date in accordance with § 10.227, the MMC that has been replaced becomes void.

(e) An MMC is not valid until signed by the applicant and the OCMI or the OCMI's designated representative.

(f) A mariner's STCW Endorsement is valid only when the related officer or rating endorsement is valid.

(g) A mariner's endorsements authorize the holder to serve in any capacity endorsed on the MMC, or in any lower capacity in the same department, or in any capacity covered by a general endorsement thereon.

(h) If a mariner chooses to renew their License, MMD, COR, or STCW Certificate and receive their first MMC, the Coast Guard may also renew all other credentials for which the mariner is qualified.

### § 10.207 Identification number.

For recordkeeping purposes only, a mariner's official MMC identification number is the individual's social security number. However, a unique serial number, and not the social security number, will appear on the credential.

### § 10.209 Application procedures.

(a) The applicant for an MMC or endorsement, whether original, renewal, duplicate or raise of grade, must establish to the satisfaction of the Coast Guard that he or she satisfies all the requirements for the MMC and endorsement(s) sought before the Coast Guard will issue the MMC. This section contains the general requirements for all applicants. Additional requirements for duplicates, renewals and raises in grade appear later in this part.

(b) The Coast Guard may refuse to process an incomplete MMC application.

(c) A complete application for an MMC or endorsement, must contain the following:

(1) A signed written application;

(2) Proof that the mariner holds a valid TWIC, except as provided in § 10.227(i);

(3) Information supplied by TSA. Upon issuance of a TWIC by TSA, a mariner's fingerprints, FBI number and criminal record (if applicable), photograph, proof of citizenship and proof of legal resident alien status (if applicable) will be made available, electronically, to the Coast Guard and will be made a part of the mariner's MMC application;

(4) Except as provided in § 10.227(i), all applications must contain all supplementary materials required to show that the mariner meets the mandatory requirements for the specific endorsement sought;

(i) The mandatory requirements for officer endorsements are contained in part 11 of this chapter.

(ii) The mandatory requirements for rating endorsements are contained in part 12 of this chapter.

(iii) For a tankerman rating endorsement, the applicant must also provide those documents or proofs required in part 13 of this chapter.

(iv) The mandatory requirements for STCW Endorsements are contained in parts 11 and 12 of this chapter and in the STCW Convention and Code (Incorporated by reference, see § 10.103).

(5) The appropriate fee as set forth in § 10.219 of this part;

(6) If the applicant holds a continuous discharge book, certificate of identification, MMD, MMC, License, STCW Endorsement or Certificate of Registry, it must be exhibited at the time of application;

(7) *Criminal record review.* No MMC or endorsement will be issued until the applicant has passed a criminal record review as set forth in § 10.211 of this part;

(8) *National Driver Register.* No MMC or endorsement will be issued until the applicant has passed a National Driver Register review as set forth in § 10.121 of this part;

(9) *Drug test.* To obtain an original or renewal MMC, a raise in grade of officer endorsement, or the first endorsement as able seaman, lifeboatman, qualified member of the engine department , or tankerman, an applicant must produce evidence of having passed a chemical test for dangerous drugs or of qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued an MMC. Applicants requesting an inactive MMC renewal under § 10.227(i) of this part are exempt from this requirement;

(10) An applicant for an endorsement where sea service is required must produce with the application, discharges or other documentary evidence of service, indicating the name, tonnage, and horsepower of the vessels, dates of service, capacity in which the applicant served, and on what waters; and

(11) All applicants must comply with the medical and physical standards of § 10.215 of this part.

(d) The written portion of the application may be submitted by mail, fax, or other electronic means. The written portion of the application may include:

(1) A properly completed application on a Coast Guard-furnished form and the evaluation fee required by § 10.219 of this part;

(2) The applicant's continuous discharge book, certificate of identification, MMD, MMC, License, STCW Endorsement, Certificate of Registry or, if it has not expired, a photocopy of the credential, including the back and all attachments;

(3) Proof on a form provided by the Coast Guard that the applicant passed the applicable vision, hearing, medical or physical exam as required by § 10.215 of this part;

(4) If the applicant desires a credential with a radar-observer endorsement, either the radar-observer certificate or a certified copy;

(5) Evidence of, or acceptable substitute for, sea service for an officer's endorsement;

(6) For an endorsement as a medical doctor or professional nurse, evidence that the applicant holds a currently valid, appropriate license as physician, surgeon, or registered nurse, issued under the authority of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. Any MMC issued will retain any limitation associated with the medical License; and

(7) The open-book exercise, if required, may be administered through the mail.

**§ 10.211 Criminal record review.**

(a) The Coast Guard may conduct a criminal record review to determine the safety and suitability of an applicant for an MMC and any endorsements. An applicant conducting simultaneous MMC transactions will undergo a single criminal record review. Each applicant must provide written disclosure of all prior convictions at the time of application.

(b) A criminal record review is required for applicants seeking a duplicate MMC under § 10.229.

(c) *Fingerprints.* The Transportation Security Administration (TSA) will provide to the Coast Guard electronic fingerprint images submitted by the applicant in the TWIC enrollment process. The applicant's fingerprints will be used by the Coast Guard to determine whether the applicant has a record of a criminal conviction.

(d) When a criminal record review leads the Coast Guard to determine that an applicant is not a safe and suitable person or cannot be entrusted with the duties and responsibilities of the MMC or endorsement applied for, the application may be disapproved.

(e) If an application is disapproved, the applicant will be notified in writing of that fact, and, except as provided by this paragraph, the reason or reasons for disapproval and advised that the appeal procedures in subpart 1.03 of part 1 of this chapter apply. No examination will be given pending decision on appeal. The applicant will be notified in writing of the reason or reasons for disapproval, unless the Coast Guard determines that the disclosure of information is prohibited by law, regulation, or agency policy, in which case the reason(s) will not be disclosed.

(f) No person who has been convicted of a violation of the dangerous drug laws of the United States, the District of Columbia, any State, territory, or possession of the United States, or a foreign country, by any military or civilian court, is eligible for an MMC, except that a conviction for a drug offense more than 10 years before the date of application will not alone be grounds for denial.

(g) The Coast Guard will use table 10.211(g) to evaluate applicants who have criminal convictions. The tables list major categories of criminal activity and are not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the Coast Guard will establish an appropriate assessment period using the list as a guide. The assessment period commences when an applicant is no longer incarcerated. The applicant must establish proof of the time incarcerated and periods of probation and parole to the satisfaction of the Coast Guard. The assessment period may include supervised or unsupervised probation or parole.

TABLE 10.211(G).—GUIDELINES FOR EVALUATING APPLICANTS FOR MMCS WHO HAVE CRIMINAL CONVICTIONS

| Crime [1] | Assessment periods | |
|---|---|---|
| | Minimum | Maximum |
| **Crimes Against Persons** | | |
| Homicide (intentional) | 7 years | 20 years. |
| Homicide (unintentional) | 5 years | 10 years. |
| Assault (aggravated) | 5 years | 10 years. |
| Assault (simple) | 1 year | 5 years. |

TABLE 10.211(G).—GUIDELINES FOR EVALUATING APPLICANTS FOR MMCS WHO HAVE CRIMINAL CONVICTIONS—Continued

| Crime [1] | Assessment periods | |
|---|---|---|
| | Minimum | Maximum |
| Sexual Assault (rape, child molestation) | 5 years | 10 years. |
| Robbery | 5 years | 10 years. |
| Other crimes against persons [2] | | |
| **Crimes Against Property** | | |
| Burglary | 3 years | 10 years. |
| Larceny (embezzlement) | 3 years | 5 years. |
| Other crimes against property [2] | | |
| **Vehicular Crimes** | | |
| Conviction involving fatality | 1 year | 5 years. |
| Reckless Driving | 1 year | 2 years. |
| Racing on the Highways | 1 year | 2 years. |
| Other vehicular crimes [2] | | |
| **Crimes Against Public Safety** | | |
| Destruction of Property | 5 years | 10 years. |
| Other crimes against public safety [2] | | |
| **Criminal Violations of Environmental Laws** | | |
| Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials | 1 year | 10 years. |
| **Dangerous Drug Offenses [3,4,5]** | | |
| Trafficking (sale, distribution, transfer) | 5 years | 10 years. |
| Dangerous drugs (Use or possession) | 1 year | 10 years. |
| Other dangerous drug convictions [6] | | |

[1] Conviction of attempts, solicitations, aiding and abetting, accessory after the fact, and conspiracies to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[2] Other crimes are to be reviewed by the OCMI to determine the minimum and maximum assessment periods depending on the nature of the crime.

[3] Applicable to original applications only. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (f) of this section. Note: Applicants for reissue of an MMC with a new expiration date including a renewal or additional endorsement(s), who have been convicted of a dangerous drug offense while holding a License, MMC, MMD, STCW Endorsement or Certificate of Registry, may have their application withheld until appropriate action has been completed by the OCMI under the regulations which appear in 46 CFR part 5 governing the administrative actions against merchant mariner credentials.

[4] The OCMI may consider dangerous drug convictions more than 10 years old only if there has been a dangerous drug conviction within the past 10 years.

[5] Applicants must demonstrate rehabilitation under paragraph (l) of this section, including applicants with dangerous drug use convictions more than ten years old.

[6] Other dangerous drug convictions are to be reviewed by the OCMI on a case by case basis to determine the appropriate assessment period depending on the nature of the offense.

(h) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in table 10.211(g) and table 10.213(d) of § 10.213 based upon the applicant's convictions; the maximum assessment period will be the longest shown in table 10.211(g) and table 10.213(d) of § 10.213 based upon the applicant's convictions.

(i) If a person with a criminal conviction applies before the minimum assessment period shown in table 10.211(g), or established by the Coast Guard under paragraph (g) of this section has elapsed, then the applicant must provide, as part of the application package, evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (l) of this section. The Coast Guard will consider the applicant's evidence submitted with the application and may issue the MMC and/or endorsement in less than the listed minimum assessment period if the Coast Guard is satisfied that the applicant is suitable to hold the MMC and/or endorsement for which he or she has applied. If an application filed before the minimum assessment period has elapsed does not include evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the Coast Guard.

(j) If a person with a criminal conviction submits their MMC application during the time between the minimum and maximum assessment periods shown in table 10.211(g) or established by the Coast Guard under paragraph (g) of this section, then the Coast Guard will consider the conviction and, unless there are offsetting factors, will grant the applicant the MMC and/or endorsement for which he or she has applied. Offsetting factors include such factors as multiple convictions, failure to comply with court orders (*e.g.,* child support orders), previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the Coast Guard considers the applicant unsuitable for service in the merchant marine at the time of application, the

Coast Guard may disapprove the application.

(k) If a person with a criminal conviction submits their MMC application after the maximum assessment period shown in table 10.211(g) or established by the Coast Guard under paragraph (g) of this section, has elapsed, then the Coast Guard will grant the applicant the MMC or endorsement for which he or she has applied unless the Coast Guard considers the applicant still unsuitable for service in the merchant marine. If the Coast Guard disapproves an applicant with a conviction older than the maximum assessment period listed in table 10.211(g), the Coast Guard will notify the applicant in writing of the reason(s) for the disapproval. The Coast Guard will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in subpart 1.03 of this chapter apply.

(l) If an applicant has one or more alcohol or dangerous drug related criminal or NDR listed convictions, if the applicant has ever been the user of, or addicted to the use of, a dangerous drug, or if the applicant applies before the minimum assessment period for his or her conviction has elapsed, the Coast Guard may consider the following factors, as applicable, in assessing the applicant's suitability to hold an MMC. This list is intended as a guide for the Coast Guard. The Coast Guard may consider other factors appropriate to a particular applicant, such as:

(1) Proof of completion of an accredited alcohol or drug abuse rehabilitation program;

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous;

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers;

(4) Steady employment; and

(5) Successful completion of all conditions of parole or probation.

(m) In the event an MMC has already been issued when information about the applicant's criminal record is brought to the attention of the Coast Guard, if such information warrants the belief that the applicant cannot be entrusted with the duties and responsibilities of the MMC or endorsement issued, or if such information indicates that the application for the MMC or endorsement was false or incomplete, the Coast Guard may notify the holder in writing that the MMC is considered null and void, direct the holder to return it to the Coast Guard, and advise the holder that, upon return of the MMC, the appeal procedures of subpart 1.03 of part 1 of this chapter apply.

**§ 10.213 National Driver Register.**

(a) No MMC will be issued as an original or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways).

(b) No person who has ever been convicted of an offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304) because of addiction to or abuse of alcohol is eligible for an MMC, unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (g) of this section.

(c) The Coast Guard will not consider NDR-listed civil convictions that are more than three years old from the date of request unless that information relates to a current suspension or revocation of the applicant's License to operate a motor vehicle. The Coast Guard may determine minimum and maximum assessment periods for NDR listed criminal convictions using table 10.213(d). An applicant conducting simultaneous MMC transactions is subject to only one NDR check.

(d) The guidelines in table 10.213(d) will be used by the Coast Guard in evaluating applicants who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR-listed convictions will be evaluated by the Coast Guard under table 10.211(g) of § 10.211 as applicable.

TABLE 10.213(D).—GUIDELINES FOR EVALUATING APPLICANTS FOR MMCS WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL [1]

| No. of convictions | Date of conviction | Assessment period |
|---|---|---|
| 1 | Less than 1 year | 1 year from date of conviction. |
| 1 | More than 1, less than 3 years | Application will be processed, unless suspension, or revocation [2] is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials. |
| 1 | More than 3 years old | Not necessary unless suspension or revocation is still in effect. |
| 2 or more | Any less than 3 years old | 1 year since last conviction and at least 3 years from 2nd most recent conviction, unless suspension or revocation is still in effect. |
| 2 or more | All more than 3 years old | Application will be processed unless suspension or revocation is still in effect. |

[1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section.

[2] Suspension or revocation, when referred to in table 10.213, means a State suspension or revocation of a motor vehicle operator's license.

(e) Any application may be disapproved if information from the NDR check leads the Coast Guard to determine that the applicant cannot be entrusted with the duties and responsibilities of the MMC or endorsement for which the application is made. If an application is disapproved, the Coast Guard will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in subpart 1.03 of part 1 of this chapter apply. No examination will be given pending decision on appeal.

(f) Before disapproving an application because of information received from the NDR, the Coast Guard will make the information available to the applicant for review and written comment. The applicant may submit records from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will hold an application with NDR-listed convictions pending the completion of the evaluation and delivery by the individual of the underlying State records.

(g) If an applicant has one or more alcohol or dangerous drug related criminal or NDR-listed convictions, if the applicant has ever been the user of, or addicted to the use of, a dangerous drug, or if the applicant applies before

the minimum assessment period for his or her conviction has elapsed, the Coast Guard may consider the following factors, as applicable, in assessing the applicant's suitability to hold an MMC. This list is intended as a guide for the Coast Guard. The Coast Guard may consider other factors, which he or she judges appropriate to a particular applicant, such as:

(1) Proof of completion of an accredited alcohol- or drug-abuse rehabilitation program;

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous;

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers;

(4) Steady employment; and

(5) Successful completion of all conditions of parole or probation.

**§ 10.215 Medical and physical requirements.**

(a) *Medical and Physical Exams.* To qualify for an MMC the applicant must meet the medical and physical standards in this section. Columns 2 through 5 of table 10.215(a) provide the specific exam, test, or demonstrations required to obtain the corresponding credential listed in column 1. The criterion for assessing medical and physical competence are published by the U.S. Coast Guard. Any required test, exam or demonstration must have been performed or witnessed by a licensed medical doctor (including a Doctor of Osteopathy), licensed physician assistant, or licensed nurse practitioner.

(1) First class pilots must complete medical exams every 12 months and submit them to the Coast Guard.

(2) Medical exams for Great Lakes Pilots must be conducted by a licensed medical doctor in accordance with the physical exam requirements in 46 CFR 402.210.

TABLE 10.215(A);

| 1 Credential | 2 Vision test | 3 Hearing test | 4 General medical exam | 5 Demonstration of physical ability |
|---|---|---|---|---|
| (i) Deck Officers, including pilots | 10.215(b)(1)(i) | X | X | X |
| (ii) Engineering Officer | 10.215(b) (1)(ii) | X | X | X |
| (iii) Staff Officer | ..... | ..... | ..... | X |
| (iv) Radio Officer | 10.215(b) (1)(ii) | X | X | X |
| (v) Offshore Installation Manager, Barge Supervisor, or Ballast Control Operator | 10.215(b) (1)(ii) | X | X | X |
| (vi) Able Seaman | 10.215(b) (1)(i) | X | X | X |
| (vii) QMED | 10.215(b) (1)(ii) | X | X | X |
| (viii) RFPNW | 10.215(b) (1)(i) | X | X | X |
| (ix) RFPEW | 10.215(b) (1)(ii) | X | X | X |
| (x) Tankerman | 10.215(b) (1)(ii) | X | X | X |
| (xi) Proficiency in survival craft, rescue boats, and/or fast rescue boats and Lifeboatmen | ..... | ..... | ..... | X |
| (xii) Food handler | ..... | ..... | 10.215(d) | X |
| (xiii) Ratings, including entry-level, other than those listed above | ..... | ..... | ..... | X |

(b) *Vision Test*—(1) *Deck Standard.* An applicant must have vision correctable to at least 20/40 in one eye and uncorrected vision of at least 20/200 in the same eye. An applicant having lost vision in one eye must wait six months before application and provide a statement of demonstrated ability on his or her medical examination. The color sense must be determined to be satisfactory when tested by any of the following methods, without the use of color sensing lenses:

(i) Pseudoisochromatic Plates (Dvorine, 2nd Edition; AOC; revised edition or AOC–HRR; Ishihara 16-, 24-, or 38-plate editions).

(ii) Eldridge—Green Color Perception Lantern.

(iii) Farnsworth Lantern.

(iv) Keystone Orthoscope.

(v) Keystone Telebinocular.

(vi) SAMCTT (School of Aviation Medicine Color Threshold Tester).

(vii) Titmus Optical Vision Tester.

(viii) Williams Lantern.

(2) Engineering, radio operator, tankerman, and MODU standard. An applicant must have correctable vision of at least 20/50 in one eye and uncorrected vision of at least 20/200 in the same eye. And need only have the ability to distinguish the colors red, green, blue and yellow.

(3) Any applicant whose uncorrected vision does not meet the standards listed above may not serve under the authority of the endorsement unless corrective lenses are worn and spare lenses are carried on board a vessel.

(c) *Hearing test.* Hearing thresholds should be checked at 500, 1000, 2000, and 3000 Hertz.

(1) For an original MMC, you should have an average unaided hearing threshold of 70 decibels (db) in each ear and a functional speech discrimination of at least 90% at 55 db for each ear.

(2) For all other credential activity you should have an average hearing threshold of 70 db or less for each ear and functional speech discrimination of at least 80 percent at 55 db for each ear.

(d) *General medical exam.* This exam must be documented and of such scope to ensure that there are no conditions that pose an inordinate risk of sudden incapacitation or debilitating complication. This exam must also document any condition requiring medication that impairs judgment or reaction time. Examples of physical impairment or medical conditions that could lead to disqualification include, but are not limited to, poorly controlled diabetes, myocardial infarctions, psychiatric disorders, and convulsive

disorders. Additionally, food handlers must be free of communicable disease.

(e) *The demonstration of physical ability.* This exam is required for all mariners except entry-level mariners serving on vessels to which the STCW does not apply. It must document that the examiner is satisfied that the applicant:

(1) Has no disturbance in the sense of balance;

(2) Is able, without assistance, to climb up and down vertical ladders and inclined stairs;

(3) Is able, without assistance, to step over a door sill or coaming;

(4) Is able to grasp, lift, and manipulate various common shipboard tools; move hands and arms to open and close valve wheels in vertical and horizontal directions, and rotate wrists to turn handles;

(5) Does not have any impairment or disease that could prevent normal movement and physical activities;

(6) Is able to stand and walk for extended periods;

(7) Does not have any impairment or disease that could prevent response to a visual or audible alarm; and

(8) Is capable of normal conversation.

(f) *Reports of medical and physical exams, demonstrations and tests.* These reports must be submitted within 12 months from the date signed by the licensed medical professional. When submitted with a complete application package under § 10.209(c)(6), these reports remain valid for 12 months from the date of the application approval.

(g) Where an applicant does not possess the vision, hearing, or general physical condition necessary, the Coast Guard, after consultation with the examining physician or physician assistant, may recommend a waiver to the Commandant if extenuating circumstances warrant special consideration. An applicant may submit to the Coast Guard, additional correspondence, records and reports in support of this request. In this regard, recommendations from agencies of the Federal Government operating government vessels, as well as owners and operators of private vessels, made on behalf of their employees, will be given full consideration. Waivers are not normally granted to an applicant whose vision does not meet the requirements in § 10.227(1)(i) and (1)(ii).

**§ 10.217 MMC application and examination locations.**

(a) Applicants may apply for Merchant Mariner Credentials at any of the following Regional Examination Center locations: Alameda, CA., Anchorage, AK., Baltimore, MD., Boston, MA., Charleston, SC., Honolulu, HI., Houston, TX., Juneau, AK., Memphis, TN., Miami, FL., New Orleans, LA., New York, NY., Portland, OR., San Pedro, CA., Seattle, WA., St. Louis, MO., Toledo, OH.

(b) *Coast Guard-designated facilities.* The Coast Guard may designate additional locations to provide services to applicants for MMCs.

(c) *Exam Locations.* (1) Coast Guard Merchant Marine Details may conduct exams at locations other than the Regional Exam Centers, but are not prepared to conduct the physical examination where required. Merchant Marine Details may not issue regular certificates, but temporary permits in lieu thereof. Merchant Marine Details will instruct the recipient of each temporary permit to present it to the Officer in Charge, Marine Inspection, upon arrival in the first port in the United States in which a Sector is located in order to exchange it for a permanent certificate.

(2) The temporary permit must be accepted in a Sector as proof that the bearer has complied with the rules and regulations governing the issuance of certificates, except as noted in the body of the temporary permit. The requirements noted in the exceptions will be complied with as in the case of other applicants.

(3) The written examinations are forwarded to the National Maritime Center by Merchant Marine Details, and any Sector at which an applicant with a temporary permit appears and may request and obtain the examination from the National Maritime Center. Any Sector which doubts the propriety of issuing a permanent certificate instead of a temporary permit which has been issued by a foreign Merchant Marine Detail must inform the National Maritime Center fully as to the circumstances.

**§ 10.219(a) Fees.**

(a) Use table 10.219(a) of this section to calculate the mandatory fees for MMCs and associated endorsements.

TABLE 10.219(A).—FEES

| If you apply for | And you need* * * | | |
|---|---|---|---|
| | Evaluation then the fee is* * * | Examination then the fee is* * * | Issuance then the fee is* * * |
| MMC with Officer Endorsement: | | | |
| Original: | | | |
| Upper level | $100 | $110 | $45 |
| Lower level | 100 | 95 | 45 |
| Raise of grade | 100 | 45 | 45 |
| Modification or removal of limitation or scope | 50 | 45 | 45 |
| Endorsement | 50 | 45 | 45 |
| Renewal | 50 | 45 | 45 |
| Radio Officer Endorsement: | | | |
| Original | 50 | 45 | 45 |
| Renewal | 50 | n/a | 45 |
| Staff Officer Endorsements: | | | |
| Original | 90 | n/a | 45 |
| Renewal | 50 | n/a | 45 |
| MMC with Rating Endorsement: | | | |
| Original endorsement for ratings other than qualified ratings | 95 | n/a | 45 |
| Original endorsement for qualified rating | 95 | 140 | 45 |
| Upgrade or Raise in Grade | 95 | 140 | 45 |
| Renewal endorsement for ratings other than qualified ratings | 50 | n/a | 45 |
| Renewal endorsement for qualified rating | 50 | 45 | 45 |
| STCW Certification: | | | |
| Original | No fee | No fee | No fee |

TABLE 10.219(A).—FEES—Continued

| If you apply for | And you need* * * | | |
|---|---|---|---|
| | Evaluation then the fee is* * * | Examination then the fee is* * * | Issuance then the fee is* * * |
| Renewal | No fee | No fee | No fee |
| Certificate of Continuity | n/a | n/a | 45 |
| Reissue, Replacement, and Duplicate | n/a | n/a | 45 [1] |

[1] Duplicate for MMC lost as result of marine casualty—No Fee.

(b) *Fee payment procedures.* You may pay:

(1) All fees required by this section when you submit your application; or

(2) A fee for each phase at the following times:

(i) An evaluation fee when you submit your application.

(ii) An examination fee before you take the first examination section.

(iii) An issuance fee before you receive your MMC.

(c) If you take your examination someplace other than a Regional Examination Center (REC), you must pay the examination fee to the REC at least one week before your scheduled examination date.

(d) Unless the REC provides additional payment options, your fees must be paid as follows:

(1) Your fee payment must be for the exact amount.

(2) Make your check or money order payable to the U.S. Coast Guard, and write your social security number on the front of each check or money order.

(3) If you pay by mail, you must use either a check or money order.

(4) If you pay in person, you may pay with cash, check, credit card, or money order at Coast Guard units where Regional Examination Centers are located.

(e) Unless otherwise specified in this part, when two or more endorsements are processed on the same application:

(1) *Evaluation fees.* If an applicant simultaneously applies for a rating endorsement and a deck or engineer officer's endorsement, only the evaluation fee for the officer's endorsement will be charged. If an applicant also simultaneously applies for a staff officer or radio officer endorsement along with the deck or engineer officer's endorsement, only the evaluation fee for the deck or engineer officer's endorsement will be charged. No evaluation fee is charged for an STCW Endorsement.

(2) *Examination fees.* One examination fee will be charged for each exam or series of exams for an original, raise in grade, or renewal of an endorsement on an MMC taken within one year from the date of the application approval. An examination fee will also be charged to process an open book exercise used to renew an MMC. If an officer endorsement examination under part 11 of this chapter also fulfills the examination requirements in part 12 of this chapter for rating endorsements, only the fee for the officer endorsement examination is charged.

(3) Issuance fees. Only one issuance fee will be charged for each MMC application.

(f) The Coast Guard may assess additional charges to anyone to recover collection and enforcement costs associated with delinquent payments, failure to pay a fee, or returned checks. The Coast Guard will not provide credentialing services to a mariner who owes money for credentialing services previously provided.

(g) Anyone who fails to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

(h) No-fee MMC for certain applicants. (1) For the purpose of this section, a no-fee MMC applicant is a person who is a volunteer, or part-time or full-time employee of an organization which is:

(i) Charitable in nature.

(ii) Not for profit.

(iii) Youth oriented.

(2) *Determination of eligibility.* (i) An organization may submit a written request to Commanding Officer, U.S. Coast Guard National Maritime Center, 4200 Wilson Boulevard, Suite 630, Arlington, VA 22203–1804, in order to be considered an eligible organization under the criteria set forth in paragraph (h)(1) of this section. With the written request, the organization must provide evidence of its status as a youth oriented, not for profit, charitable organization.

(ii) The following organizations are accepted by the Coast Guard as meeting the requirements of paragraph (h)(1) of this section and need not submit evidence of their status: Boy Scouts of America, Sea Explorer Association, Girl Scouts of the United States of America, and Young Men's Christian Association of the United States of America.

(3) A letter from an organization determined eligible under paragraph (h)(2) of this section must also accompany the person's MMC application to the Coast Guard. The letter must state that the purpose of the person's application is solely to further the conduct of the organization's maritime activities. The applicant then is eligible under this section to obtain a no-fee MMC if other requirements for the MMC are met.

(4) An MMC issued to a person under this section is endorsed restricting its use to vessels owned or operated by the sponsoring organization.

(5) The holder of a no-fee MMC issued under this section may have the restriction removed by paying the appropriate evaluation, examination, and issuance fees that would have otherwise applied.

**§ 10.221 Applications submitted by aliens.**

No MMC may be issued to an alien unless the alien is lawfully admitted to the United States for permanent residence. Only individuals with valid U.S. citizenship may apply for officer endorsements.

**§ 10.223 Modification or removal of limitations.**

(a) If an Officer in Charge, Marine Inspection, (OCMI) is satisfied by the documentary evidence submitted that an applicant is entitled by experience, training, and knowledge to an endorsement or increase in the scope of any MMC held, any limitations that were previously placed upon the MMC by that OCMI may be changed or removed. Such an increase in scope may include a change in horsepower or tonnage limitations, or geographic route restrictions.

(b) A endorsement limitation on an MMC may not be changed before full information regarding the reason for the limitation is obtained from the OCMI responsible for that limitation.

(c) No limitation on any endorsement may be changed before the applicant has made up any deficiency in the

experience prescribed for the endorsement or endorsement desired and passed any necessary examination.

**§ 10.225 Issuance of Merchant Mariner Credentials.**

(a) Applications are valid for 12 months from the date of approval.

(b) *Oath*. Every person who receives an original MMC must first take an oath, before an official authorized to give such oath, that he or she will faithfully and honestly, according to his or her best skill and judgment, without concealment or reservation, perform all the duties required by law and obey all lawful orders of superior officers. An oath may be administered by any Coast Guard-designated individual or any person legally permitted to administer oaths in the jurisdiction where the person taking the oath resides. An oath administered at a location other than those listed in § 10.217 must be verified in writing by the administering official and submitted to the same Regional Examination Center where the applicant applied for his or her MMC. This oath remains binding for any subsequently issued MMC and endorsements added to the MMC unless specifically renounced in writing.

(c) Upon determining that the applicant satisfactorily meets all requirements for an MMC or an endorsement thereon, the Coast Guard will issue the properly endorsed MMC to the applicant.

(d) When a new MMC is issued, the mariner must return the previously issued MMC, License, MMD, or STCW Endorsement, unless the new MMC is being issued to replace a lost or stolen credential.

**§ 10.227 Additional requirements for renewal.**

(a) In addition to the requirements in § 10.209 of this part, applicants for renewal must also meet the requirements of this section. Except as provided in paragraph (i) of this section, an applicant for renewal of a credential must establish possession of all of the necessary qualifications before the MMC will be renewed.

(b) A credential may be renewed at any time during its validity and for one year after expiration.

(c) Applications are valid for 12 months from the date of approval.

(d) Each application must be on a Coast Guard-furnished form and be accompanied by the appropriate fee set forth in § 10.219 of this part.

(e) The applicant must submit the original or a photocopy of the MMC, MMD, License, Certificate of Registry, or STCW Endorsement to be renewed. A photocopy must include the back and any attachments. If requested, the old credential, with the exception of the MMC, will be returned to the applicant.

(f) No credential will be renewed if it has been suspended without probation or revoked as a result of action under part 5 of this chapter or if facts that would render a renewal improper have come to the attention of the Coast Guard.

(g) *Professional requirements*. (1) In order to renew a License or MMC with endorsement as master, mate, engineer, pilot, operator, or qualified rating the applicant must either—

(i) Present evidence of at least one year of sea service during the past five years;

(ii) Pass a comprehensive, open-book exercise covering the general subject matter contained in appropriate sections of subpart I of this part;

(iii) Complete an approved refresher training course; or

(iv) Present evidence of employment in a position closely related to the operation, construction or repair of vessels (either deck or engineer as appropriate) for at least three years during the past five years. An applicant for a deck license or officer endorsement with this type of employment must also demonstrate knowledge on an applicable Rules of the Road exercise.

(2) The qualification requirements for renewal of radar observer endorsement are in § 11.480 of this chapter.

(3) Additional qualification requirements for renewal of an officer endorsement as first-class pilot are contained in § 11.713 of this chapter.

(4) An applicant for renewal of a radio officer's endorsement must, in addition to meeting the requirements of this section, present a currently valid license as first- or second-class radiotelegraph operator issued by the Federal Communications Commission. This license will be returned to the applicant.

(5) An applicant for renewal of an endorsement as medical doctor or professional nurse must, in addition to meeting the requirements of this section, present evidence that he or she holds a currently valid appropriate license as physician, surgeon, or registered nurse issued under the authority of a State or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. Any such renewal will retain the limitations placed upon the medical license by the issuing body. There are no professional requirements for renewal of an endorsement as marine physician assistant or hospital corpsman.

(6) An applicant for renewal of an endorsement as master or mate (pilot) of towing vessels must submit satisfactory evidence of—

(i) Having completed a practical demonstration of maneuvering and handling a towing vessel to the satisfaction of a designated examiner; or

(ii) Ongoing participation in training and drills during the validity of the License or MMC being renewed.

(h) Except as otherwise provided, each candidate for a renewal of an STCW endorsement must meet the applicable requirements of § 11.202 of this chapter and must meet the requirements of Section A–VI/2, paragraph 1 to 4 of the STCW Code.

(i) *Inactive renewal (certificate of continuity)*. (1) Applicants for renewal who are unwilling or otherwise unable to meet the requirements of paragraph (g) of this section or the medical and physical standards of § 10.215 of this part may renew their credential by applying for a certificate of continuity. The certificate of continuity will appear in the form of an MMC with the following restrictive endorsement: ''Merchant Mariner Credential renewed for continuity purposes only; service under the authority of this credential is prohibited.'' Holders of MMCs with this continuity endorsement may have the prohibition rescinded at any time by satisfying the renewal requirements in paragraph (g) of this section, and the medical and physical standards of §§ 10.215 and 10.209(c)(9).

(2) Applications for renewal with the continuity endorsement must include:

(i) The credential to be renewed, or, if it is unexpired, a photocopy of the credential including the back and all attachments; and

(ii) A signed statement from the applicant attesting to an awareness of the restriction to be placed on the renewed MMC, and of the requirements for rescinding the continuity endorsement.

(j) *Administrative grace period*. Except as provided herein, a credential may not be renewed more than 12 months after it has expired. To obtain a reissuance of the credential, an applicant must comply with the requirements of paragraph (k) of this section. When an applicant's credential expires during a time of service with the Armed Forces and there is no reasonable opportunity for renewal, including by mail, this period may be extended. The period of military service following the date of expiration which precluded renewal may be added to the 12-month grace period. The 12-month grace period and any extensions do not affect the expiration date of the

credential. A License, MMD, COR, STCW Certificate, MMC, and any endorsements, are not valid for use after the expiration date.

(k) *Re-issuance of expired credentials.* (1) Whenever an applicant applies for re-issuance of an endorsement as deck officer, engineer officer, or qualified rating more than 12 months after expiration, instead of the requirements of paragraph (g) of this section, the applicant must demonstrate continued professional knowledge by completing a course approved for this purpose, or by passing the complete examination. The examination may be oral-assisted if the expired credential was awarded on an oral exam. The fees set forth in § 10.219 apply to these examinations. In the case of an expired radio officer's endorsement, the endorsement may be issued upon presentation of a valid first- or second-class radiotelegraph operator license issued by the Federal Communications Commission.

(2) An endorsement for chief purser, purser, senior assistant purser, junior assistant purser, hospital corpsman, marine physician assistant, medical doctor, or professional nurse that has been expired for more than 12 months shall be renewed in the same way as a current endorsement of that type. There are no additional requirements for reissuing endorsements for chief purser, purser, senior assistant purser, junior assistant purser, hospital corpsman, marine physician assistant, medical doctor, or professional nurse that have been expired for more than 12 months.

(l) *Submission of application materials.* The written portion of the application may be submitted by mail, fax, or other electronic means. The written portion of the application may include:

(1) A properly completed application on a Coast Guard furnished form and the evaluation fee required by § 10.219 of this part;

(2) The expired credential to be renewed; or, if it has not expired, a photocopy of the credential, including the back and all attachments;

(3) Proof that the applicant passed the applicable vision, hearing, medical or physical exam as required by § 10.215 of this part;

(4) If the applicant desires to renew a credential with a radar observer endorsement, either the radar observer certificate or a certified copy;

(5) Evidence of, or acceptable substitute for, sea service for the renewal of an officer's endorsement;

(6) For an endorsement as a medical doctor or professional nurse, evidence that the applicant holds a currently valid, appropriate license as physician, surgeon, or registered nurse, issued under the authority of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. Any MMC issued will retain any limitation associated with the medical license; and

(7) The open-book exercise, if required, may be administered through the mail.

**§ 10.229 Issuance of duplicate Merchant Mariner Credentials.**

(a) Upon request and without examination, a mariner may be issued a duplicate credential after submitting an application with an affidavit describing the circumstances of the loss. The Coast Guard will only issue the duplicate credential after confirming the validity of the mariner's credential and TWIC.

(b) The duplicate will have the same authority, wording, and expiration date as the lost credential. A duplicate credential will reference the serial number, type, place of issue, and date of issue of the replaced credential(s). The duplicate issued will be in the form of an MMC. Until [date 5 years after the effective date of the final rule], if a mariner seeks a duplicate of more than one credential, the MMC issued will reflect endorsements for all credentials lost, and the expiration date will match the earliest expiration date of the credentials lost.

(c) If a person loses a credential by shipwreck or other casualty, a duplicate will be issued free of charge. The term ''other casualties'' includes any damage to a ship caused by collision, explosion, tornado, wreck, flooding, beaching, grounding, or fire; or personal loss associated with a federally declared natural disaster.

(d) If a person loses a credential by means other than those noted in paragraph (c) of this section and applies for a duplicate, the appropriate fee set out in § 10.219 must be paid.

(e) No application from an alien for a duplicate credential will be accepted unless the alien complies with the requirements of § 10.221 of this part.

(f) The Coast Guard may deny applications for duplicate credentials for any reason listed in § 10.211.

**§ 10.231 Additional requirements for raises of grade for officer endorsements.**

(a) *General.* In addition to the requirements of § 10.209, before any person is issued a raise of grade of officer endorsement, the applicant must present satisfactory documentary evidence of eligibility. Each applicant must make written application on a Coast Guard furnished form and, unless exempted under § 10.219(h), submit the evaluation fee set out in § 10.219 of this part.

(b) *Surrendering old License or MMC.* Upon the issuance of a new endorsement for raise of grade, the applicant must surrender the old License or MMC to the OCMI. If requested, the old License or MMC may be returned to the applicant after cancellation.

(c) *Age, experience, training, and assessment.* (1) Each applicant for a raise of grade must establish that he or she possesses the age, experience, and training necessary, and has been examined and otherwise assessed as may be required to establish competence to hold the particular endorsement requested, before he or she is entitled to a raise in grade.

(2) Applicants for raise of grade must present to the OCMI at a Regional Examination Center or other Coast Guard-designated facility, letters, discharges, or other official documents certifying to the amount and character of their experience and the names of the vessels on which acquired. Certificates of discharge are returned to the applicant after review by the OCMI. All other documentary evidence of service, or copies thereof, are filed with the application.

(3) Sea service acquired prior to the issuance of the officer endorsement held is generally not accepted as any part of the service required for raise of grade of that endorsement. However, service acquired prior to issuance of an officer endorsement will be accepted for certain crossovers, endorsements, or increases in scope of an MMC, as appropriate. In the limited tonnage categories for deck officers, total accumulated service is a necessary criterion for most raises in grade; service acquired before the issuance of such officer endorsements will, therefore, be accepted.

(4) No raise of grade may be issued to any naturalized citizen on less experience in any grade than would have been required of a citizen of the United States by birth.

(5) Experience and service acquired on foreign vessels while holding a valid U.S. officer endorsement is creditable for establishing eligibility for a raise of grade, subject to evaluation by the OCMI to determine that it is a fair and reasonable equivalent to service acquired on merchant vessels of the United States, with respect to grade, tonnage, horsepower, waters, and operating conditions. An applicant who has obtained the qualifying experience on foreign vessels shall submit satisfactory documentary evidence of such service (including any necessary

translations into English) in the forms prescribed by paragraph (c)(2) of this section.

(6) An applicant remains eligible for a raise of grade while on probation as a result of action under part 5 of this chapter. A raise of grade issued to a person on probation will be subject to the same probationary conditions imposed against the applicant's other credentials. The offense for which he or she was placed on probation will be considered on the merits of the case in determining fitness to hold the endorsement applied for. No applicant will be examined for a raise of grade during any period when a suspension without probation or a revocation imposed under part 5 of this chapter is effective against the applicant's credential or while an appeal from these actions is pending.

(d) *Professional examination.* (1) (i) When the OCMI finds an applicant's experience and training for raise of grade to be satisfactory and the applicant is eligible in all other respects, the OCMI will authorize the examination. Oral-assisted examinations may be administered in accordance with § 11.205(f) of this chapter. The OCMI will place in the applicant's file a record indicating the subjects covered.

(ii) The general instructions for administration of examinations and the lists of subjects for all officer endorsements appear in part 11, subpart I of this chapter.

(2) The qualification requirements for radar observer are contained in § 11.480 of this chapter.

(e) *Firefighting certificate.* Applicants for endorsements for which § 11.205(d) of this chapter applies must meet the requirements contained in that section.

**§ 10.233 Obligations of the holder of a Merchant Mariner Credential.**

(a) The holder of a credential may not voluntarily part with it or place it beyond his or her personal control by pledging or depositing it with any other person for any purpose. If the holder violates this section, he or she may be proceeded against under part 5 of this chapter, looking to a suspension or revocation of the License or credential.

(b) Whenever a mariner loses a credential, he or she must immediately report the loss to the Coast Guard. The report must be made in writing, giving the facts incident to its loss.

(c) Invalid credentials must be returned to the Coast Guard upon request.

**§ 10.235 Suspension or revocation of Merchant Mariner Credentials.**

(a) Any MMC or endorsement is subject to suspension or revocation on the same grounds, in the same manner, and with like procedure as provided in 46 U.S.C. chapter 77.

(b) When any individual's credential is revoked, it is no longer valid for any purpose and any MMC subsequently requested must be applied for as an original. When an endorsement on an individual's MMC is revoked, it is no longer valid and any endorsement of the same type subsequently requested must be applied for as an original. When an officer's endorsement is revoked, the Coast Guard will issue an MMC containing any rating endorsement for which the holder is qualified.

(c) An applicant who has had a TWIC, credential, or endorsement revoked, and who is applying for a subsequent MMC or endorsement, must state in his or her application the date of revocation, the serial number of the document revoked, and the type of document or endorsement revoked.

(d) A person whose credential or endorsement has been revoked or suspended without probation may not be issued a replacement credential or endorsement without approval of the Commandant.

(e) When a credential or endorsement that is about to expire has been suspended, the renewal of the credential or endorsement will be withheld until expiration of the suspension period.

(f) An applicant for renewal or return of a credential with endorsement as master or mate (pilot) of towing vessels whose most recent credential has been suspended or revoked by an administrative law judge for incompetence must complete the practical demonstration required under § 10.227(g)(6)(i).

(g) If the Coast Guard is advised by the Transportation Security Administration that a mariner's TWIC has been revoked, the mariner's credential will immediately become invalid. If a credential is invalidated in this manner, the Coast Guard will notify the applicant in writing of the invalidation, the reason for the invalidation, and their right of appeal.

**§ 10.237 Right of appeal.**

(a) Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal under the provisions of subpart 1.03 of part 1 of this chapter.

(b) If the Coast Guard refuses to grant an applicant an MMC or endorsement, a written statement listing the reason(s) for denial will be provided, unless the Coast Guard determines that such disclosure of information is prohibited by law, regulation, or agency policy.

## PART 11—NEWLY REDESIGNATED FROM PART 10 AND AMENDED]

91. The authority citation for part 11 continues to read as follows:

**Authority:** 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

92. In newly redesignated § 11.101—

a. Revise paragraphs (a) introductory text and (a)(1) to read as set out below;

b. In paragraph (a)(2), remove the words ''certificate or'' and, after the words ''as amended'', remove the words ''in 1995'';

c. In paragraph (b), remove the word ''license'' and add, in its place, the words ''officer endorsements''; remove the words ''all licensed personnel shall'' and add, in their place, the words ''each officer credentialed under this part must''; and, after the words ''characteristics of'', remove the word ''each'' and add, in its place, the word ''a''; and

d. In paragraph (c)(1), remove the words ''license or license endorsement'' and add, in their place, the words ''officer endorsement'':

**§ 11.101 Purpose of regulations.**

(a) These regulations provide—

(1) A means of determining the qualifications an applicant must possess to be eligible for an officer endorsement as a staff officer, deck officer, engineer, pilot, or radio officer on merchant vessels, or for an endorsement to operate uninspected passenger vessels; and

* * * * *

93. Revise newly redesignated § 11.102 to read as follows:

**§ 11.102 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental

Standards (G–PSO), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in this section.

(b) *International Maritime Organization (IMO)*, 4 Albert Embankment, London, SE1, 7SR, England:

(1) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (the STCW Convention or the STCW), approved for incorporation by reference in § § 11.202, 11.304, 11.603; 11.901, 11.903, 11.1005, and 11.1105.

(2) The Seafarers'' Training, Certification and Watchkeeping Code, as amended (the STCW Code), approved for incorporation by reference in § § 11.202, 11.304, 11.603, 11.901, 11.903, 11.1005, and 11.1105.

**§ 11.103 [Removed and Reserved]**

94. Remove and reserve newly redesignated § 11.103.

**§ 11.105 [Removed and Reserved]**

95. Remove and reserve newly redesignated § 11.105.

96. In newly redesignated § 11.107, revise paragraphs (b)(1), (2) and (3) to read as follows:

**§ 11.107 Paperwork approval.**

* * * * *

(b) * * *

(1) OMB 1625–0040–46 CFR 11.201, 11.202, 11.205, 11.470, 11.472, 11.474, 11.542, and 11.544.

(2) OMB 1625–028–46 CFR 11.302, 11.303, 11.304, 11.480.

(3) OMB 1625–0079–46 CFR 11.304 and 11.309.

**§ 11.109 [Removed and Reserved]**

97. Remove and reserve newly redesignated § 11.109.

**§ 11.110 [Removed and Reserved]**

98. Remove and reserve newly redesignated § 11.110.

**§ 11.111 [Removed and Reserved]**

99. Remove and reserve newly redesignated § 11.111.

**§ 11.112 [Removed and Reserved]**

100. Remove and reserve newly redesignated § 11.112.

**§ 11.201 [Amended]**

101. In newly redesignated § 11.201—

a. In the section heading, remove the words ''licenses and certificates of registry'' and add, in their place, the words ''officer endorsements and STCW endorsements'';

b. In paragraph (a), remove the words ''The applicant for a license or certificate of registry'', and add the words ''In addition to the requirements of part 10 of this chapter, the applicant for an officer endorsement''; and, after the words ''will issue a'', remove the words ''license or certificate of registry'' and add, in their place, the words ''merchant mariner credential (MMC)'';

c. Remove paragraphs (b) and (j) and redesignate paragraphs (c) through (i) as paragraphs (b) through (h), respectively;

d. In redesignated paragraph (b), remove the text ''§ 10.467(h)''; and add, in its place, the text ''§ 11.467(h)'' and remove the words ''of the part, an applicant for a license'' and add, in their place, the words ''this part, an applicant for an officer endorsement'';

e. Revise redesignated paragraph (c) to read as set out below;

f. In redesignated paragraph (d), remove the words ''license or certificate of registry'' and add, in their place, the words ''officer endorsement'';

g. Revise redesignated paragraph (e) to read as set out below;

h. In redesignated paragraph (f), remove the word ''recommended'' and add, in its place, the word ''encouraged'' and remove the words ''of ascertaining'' and add, in their place, the words ''to ascertain''; and before the words ''color vision'' remove the word ''and''; and after the words ''color vision'', add the words '', hearing, and general physical condition''; and remove the words ''of an officer at sea is cause for denial of a license'' and add, in their place, the words ''required of an officer at sea is cause for denial of an officer endorsement'';

i. Revise redesignated paragraphs (g) and (h) and add new paragraph (i) to read as follows:

**§ 11.201 Eligibility for officer endorsements and STCW endorsements, general.**

* * * * *

(c) An applicant for an officer endorsement must have at least 3 months of qualifying service on vessels of appropriate tonnage or horsepower within the 3 years immediately preceding the date of application.

* * * * *

(e) Except as specified in this paragraph, no officer endorsement may be issued to a person who has not attained the age of 21 years. The required evidence of age may be established using any of the items submitted to establish citizenship set out in § 10.209 of this chapter:

(1) An endorsement may be granted to an applicant who has reached the age of 19 years as:

(i) Master of near coastal, Great Lakes and inland, inland, or river vessels of 25–200 GRT;

(ii) Third mate;

(iii) Third assistant engineer;

(iv) Mate of vessels of 200–1600 GRT;

(v) Ballast control operator;

(vi) Assistant engineer (MODU);

(vii) Assistant engineer of fishing industry vessels;

(viii) Mate (pilot) of towing vessels;

(ix) Radio officer;

(x) Assistant engineer (limited-oceans); or

(xi) Designated duty engineer of vessels of not more than 4000 horsepower.

(2) An endorsement may be granted to an applicant who has reached the age of 18 years as:

(i) Limited master of near coastal vessels of not more than 100 GRT;

(ii) Limited master of Great Lakes and inland vessels of not more than 100 GRT;

(iii) Mate of Great Lakes and inland vessels of 25–200 GRT;

(iv) Mate of near coastal vessels of 25–200 GRT;

(v) Operator of uninspected passenger vessels;

(vi) Designated duty engineer of vessels of not more than 1,000 horsepower; or

(vii) Apprentice mate (steersman) of towing vessels.

* * * * *

(g) Applications for an original officer's endorsement, raises of grade, extensions of route, or STCW endorsements must be current and up-to-date with respect to service and the physical examination, as appropriate. Physical examinations and applications are valid for 12 months from the date the application is approved.

(h) Applicants for an endorsement as operator of uninspected passenger vessels must meet the requirements for an officer endorsement.

(i) The Officer in Charge, Marine Inspection (OCMI), may modify the service and examination requirements in this part to satisfy the unique qualification requirements of an applicant. The OCMI may also lower the age requirement for operator of uninspected passenger vessels license applicants. The authority granted by a license will be restricted on its face to reflect any modifications made under the authority of this paragraph. These restrictions may not be removed without the approval of the OCMI issuing the license.

102. Revise newly redesignated § 11.202 to read as follows:

**§ 11.202 STCW endorsements.**

(a) When an original MMC is issued, renewed, upgraded, or otherwise modified, the OCMI will determine

whether the applicant needs to have an STCW endorsement for service on a seagoing vessel and then, if the applicant is qualified, will issue the appropriate endorsement. The OCMI will also issue an STCW endorsement at other times, if circumstances so require and if the applicant is qualified to hold the endorsement.

(b) *Basic safety training or instruction.* Except as provided in paragraph (f) of this section, an STCW endorsement will be issued only when the candidate provides evidence of having achieved or, if training has been completed, having maintained the minimum standards of competence for the following four areas of basic safety within the previous five years upon assessment of a practical demonstration of skills and abilities:

(1) Personal survival techniques as set out in table A–VI/1–1 of the STCW Code (Incorporated by reference in § 11.102).

(2) Fire prevention and fire-fighting as set out in table A–VI/1–2 of the STCW Code (Incorporated by reference, see § 11.102.).

(3) Elementary first aid as set out in table A–VI/1–3 of the STCW Code (Incorporated by reference, see § 11.102.).

(4) Personal safety and social responsibilities as set out in table A–VI/1–4 of the STCW Code (Incorporated by reference § 11.102.).

(c) *Competence in the use of Automatic Radar-Plotting Aids (ARPA).* (1) Subject to paragraphs (c)(2) and (f) of this section, each candidate for an STCW endorsement as master or mate for service on vessels in ocean or near-coastal service, must present a certificate of completion from an approved course or from accepted training on an ARPA simulator. The course or training must be sufficient to establish that the applicant is competent to maintain safe navigation through the proper use of ARPA, by correctly interpreting and analyzing the information obtained from that device and taking into account both the limitations of the equipment and the prevailing circumstances and conditions. The simulator used in the course or training must meet or exceed the performance standards established under STCW Regulation I/12 of the 1995 Amendments.

(2) Training and assessment in the use of ARPA are not required for mariners serving exclusively on vessels not fitted with ARPA. However, when any mariner so serving has not completed it, his or her STCW endorsement will indicate this limitation.

(d) *Endorsement for operator of radio in the Global Maritime Distress and Safety System (GMDSS).* (1) Subject to paragraphs (d)(2) and (f) of this section, each candidate for an STCW endorsement as master or mate for service in vessels in ocean or near-coastal service, shall present:

(i) A certificate for operator of radio in the GMDSS issued by the Federal Communication Commission (FCC); and

(ii) A certificate of completion from a Coast Guard-approved or accepted course for operator of radio in the GMDSS or from another approved or accepted program of training and assessment covering the same areas of competence. The course or program must be sufficient to establish that the applicant is competent to perform radio duties on a vessel participating in the GMDSS and meets the standard of competence under STCW Regulation IV/2.

(2) Paragraph (d)(1) of this section does not apply to a candidate intending to serve only as a pilot, or intending to serve only on vessels not required to comply with the provisions of the GMDSS in Chapter IV of the Convention for the Safety of Life at Sea, 1974, as amended (SOLAS).

(3) Each candidate presenting a certificate described in paragraph (d)(1) of this section may receive a GMDSS endorsement.

(e) *Procedures for bridge team work.* Except as otherwise provided in paragraph (f) of this section, each candidate for an STCW endorsement as master or mate for service on vessels in ocean or near-coastal service, must present sufficient documentary proof that he or she understands and can effectively apply procedures for bridge team work as an essential aspect of maintaining a safe navigational watch, taking into account the principles of bridge-resource management enumerated in Section B–VIII/2 of the STCW Code.

(f) Notwithstanding paragraph (b) through (e) of this section, § 11.304, and § 11.901, each mariner found qualified to hold any of the following officer endorsements will also be entitled to hold an STCW endorsement corresponding to the service or other limitations on the MMC, because the vessels concerned are not subject to further obligation under STCW because of their special operating conditions as small vessels engaged in domestic voyages:

(1) Masters, mates, or engineers endorsed for service on small passenger vessels that are subject to subchapter T or K of this chapter and that operate beyond the boundary line.

(2) Masters, mates, or engineers endorsed for service on seagoing vessels of less than 200 gross register tons (GRT), other than passenger vessels subject to subchapter H of this chapter.

(g) No mariner serving on, and no owner or operator of any of the following vessels, need hold an STCW endorsement, because they are exempt from application of STCW:

(1) Uninspected passenger vessels as defined in 46 U.S.C. 2101(42).

(2) Fishing vessels as defined in 46 U.S.C. 2101(11)(a).

(3) Fishing vessels used as fish-tender vessels as defined in 46 U.S.C. 2101(11)(c).

(4) Barges as defined in 46 U.S.C. 2101(2), including non-self-propelled mobile offshore drilling units.

(5) Vessels operating exclusively on the Great Lakes or on the inland waters of the U.S. in the Straits of Juan de Fuca inside passage.

103. Revise newly redesignated § 11.203 to read as follows:

**§ 11.203 Quick reference table for MMC requirements.**

Table 11.203 provides a guide to the requirements for officer endorsements. Provisions in the reference section are controlling.

TABLE 11.203

| Endorsement category | Minimum age | Citizenship | Medical and physical exam | Experience | Recommendations and character check | Firefighting | Professional exam | Demonstration of professional ability | Recency of service | First aid and CPR |
|---|---|---|---|---|---|---|---|---|---|---|
| Master, mates and operators of uninspected passenger vessels (original). | 21, 11.201(e) Note: exceptions. | U.S., 10.209(c)(6) no exceptions. | Yes, 10.215 Note: exceptions. | Yes, 11.205(e); subpart D. | 11.205(c) ..... | 11.205(d) Note: exceptions. | Yes, 11.205 (f); 11.910 Note: 11.903(b). | Yes, 11.901(c); 11.903(c). | Yes, 3 months in past 3 years, 11.201(c). | 11.205(e) Note: exceptions. |
| Engineers (original). | 21, 11.201(e) Note: exceptions. | U.S., 10.209(c)(6) no exceptions. | Yes, 10.215 Note: exceptions. | Yes, 11.205(e); subpart E. | 11.205(c) ..... | 11.205(d) ..... | 11.205(f); 11.950. | Yes, 11.901(c); 11.903(c). | Yes, 3 months in past 3 years, 11.201(c). | 11.205(e) Note: exceptions. |
| Officer raises of grade. | 21, 11.201(e) Note: exceptions. | U.S., 10.209(c)(6) no exceptions. | Yes, 10.215 Note: exceptions. | Yes, 10.231(c); subpart D and E. | N/A ..... | Yes; 10.231(e). | Yes, 10.231(d); 11.910; 11.920; 11.950. | Yes, 11.901(c); 11.903(c). | Yes, 3 months in past 3 years, 11.201(c). | N/A. |
| Officer renewals. | N/A ..... | U.S., 10.209(c)(6) no exceptions. | Yes, 10.215 Note: exceptions. | Yes, 10.227(g) Note: exceptions. | N/A ..... | N/A ..... | 10.227(g) ..... | Towing officers, 10.227(i). | Yes, 1 year in past 5, 10.227(g) Note: alternative. | N/A. |
| Pilot ..... | 21, 46 U.S.C. 7101. | U.S., 10.209(c)(6) no exceptions. | Yes, 10.215 Note: exceptions. | Yes, 11.703 ... | 11.205(c) ..... | N/A ..... | 11.707; 11.910. | N/A ..... | Yes, 11.703, 11.75(e), 11.713. | 11.205(e) Note: exceptions. |
| Towing vessels. | 21, Master 19, Mate 18, App. Mate 11.201(e). | U.S., 10.209(c)(6) no exceptions. | Yes, 10.215 Note: exceptions. | Yes, 10.464; 10.465; 10.466. | 11.205(c) ..... | Yes, 11.205(d) oceans. | Yes, 11.205 (f); 11.910 Note: 11.903(b). | Yes, 11.464; 11.465; 11.901(c). | Yes, 3 months in past 3 years, 11.201(c). | 11.205(e) Note: exceptions. |
| Uninspected fishing industry vessels. | 21, 11.201(e) Note: exceptions. | U.S., 10.209(c)(6) no exceptions. | Yes, 10.215 Note: exceptions. | Deck: 11.462; Eng: 11.530. | 11.205(c) ..... | 11.205(d) Note: exceptions. | Yes, 11.205 (f); 11.910 Note: 11.903(b). | N/A ..... | Yes, 3 months in past 3 years, 11.201(c). | 11.205(e) Note: exceptions. |
| Radio officer | 19, 11.201(e)(1) | U.S., 10.209(c)(6) no exceptions. | Yes, 10.215 Note: exceptions. | 11.603 ..... | 11.205(c) ..... | N/A ..... | N/A ..... | N/A ..... | N/A ..... | 11.205(e) Note: exceptions. |
| Staff officer | N/A ..... | U.S., 10.209(c)(6) no exceptions. | Yes, 10.215 Note: exceptions. | 11.807 ..... | 11.205(c) ..... | N/A ..... | N/A ..... | N/A ..... | N/A ..... | N/A. |
| Staff officer renewals. | N/A ..... | U.S., 10.209(c)(6) no exceptions. | Yes, 10.215 Note: exceptions. | 10.227(g)(5) .. | N/A ..... | N/A ..... | N/A ..... | N/A ..... | N/A ..... | N/A |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Offshore installation manager, barge supervisor, ballast control operator. | 21, 11.201(e) Note: exceptions. | U.S., 10.209(c)(6) no exceptions. | Yes, 10.215 Note: exceptions. | OIM: 11.470 B.S.: 11.472 BCO: 11.474 Eng: 11.540. | 11.205(c) ..... | 11.205(d) ..... | Yes, 11.205(f); 11.920. | N/A ..... | Yes, 3 months in past 3 years, 11.201(c). | 11.205(e) Note: exceptions. |
| Able seamen | 18, 12.05–3(a)(1) | U.S. or alien admitted for permanent residence, 10.209(c)(6) 10.221. | Yes, 10.215 Note: exceptions. | 12.05–7 ..... | N/A ..... | N/A ..... | Yes, 12.05–3(a). | Yes, 12.05–3(c); 12.05–9. | Yes, 1 year in past 5, 10.227(g) Note: alternative. | 12.05–3(b). |
| Qualified members of engine department. | N/A ..... | U.S. or alien admitted for permanent residence, 10.209(c)(6) 10.221. | Yes, 10.215 Note: exceptions. | 12.15–7 ..... | N/1 ..... | N/A ..... | Yes, 12.15–9 | Yes, 12.15–3(d). | Yes, 1 year in past 5, 10.227(g) Note: alternative. | 12.15–3(d). |
| Entry level ratings. | N/A ..... | U.S. or alien admitted for permanent residence, 10.209(c)(6) 10.221. | Yes, 10.215 Note: exceptions. | N/A ..... | N/A ..... | N/A ..... | N/A ..... | N/A ..... | N/A ..... | N/A. |

**§ 11.204 [Removed and reserved]**

104. Remove and reserve newly redesignated § 11.204—

105. In newly redesignated § 11.205—

a. Revise the section heading and paragraph (a) to read as set out below;

b. Remove paragraphs (b) through (d) and (j) through (o); and redesignate paragraphs (e) through (i) as paragraphs (b) through (f); and redesignate paragraph (p) as paragraph (g);

c. In redesignated paragraph (b)(1), remove the words ''licenses and certificates of registry'' and add, in their place, the words ''officer or STCW endorsements''; and remove the words ''A license'' and add, in their place, the words ''An MMC'';

d. In redesignated paragraph (b)(2), remove the words ''license or certificate of registry'' and add, in their place, the words ''officer or STCW endorsement'';

e. In redesignated paragraph (b)(3), remove the word ''license'' and add, in its place, the words ''officer or STCW endorsement''; and remove the words ''paragraph (e)(1)'' and add, in their place, the words ''paragraph (b)(1)'';

f. In redesignated paragraph (b)(4), after the words ''No applicant for an original'' remove the word ''license'' and add, in its place, the words ''officer or STCW endorsement''; and after the words ''will be given an original'', remove the word ''license'' and add, in its place, the words ''officer endorsement''; and, after the words ''of a foreign'', remove the word ''license'' and add, in its place, the word ''credential'';

g. Revise redesignated paragraph (c) to read as set out below;

h. In redesignated paragraph (d), remove the words ''the licenses'' and add, in their place, the words ''officer endorsements'', and after the words ''date of the application for the'', remove the word ''license'' and add, in its place, the words ''officer endorsement'';

i. Revise redesignated paragraphs (d)(1) through (5) to read as set out below;

j. In redesignated paragraph (e), remove the words ''license or certificate of registry'' and add, in their place, the words ''officer endorsement''; and remove the words ''§§ 10.429, 10.456, and 10.466'' and add, in their place the words ''§ § 11.429, 11.456, and 11.466'';

k. In redesignated paragraph (e)(1), remove the words ''within the past 12 months'' and add, in their place, the words ''not more than one year from the date of application'';

l. In redesignated paragraph (f)(1)(i), remove the word ''license'' wherever it appears and add, in its place, the words ''officer endorsement''; and, after the words ''500 gross tons, or'', remove the word ''a'' and add, in its place, the word ''an'';

m. In redesignated paragraph (f)(1)(ii), remove the word ''licenses'' and add, in its place, the words ''officer endorsements'';

n. In redesignated paragraph (f)(2), remove the word ''license'';

o. In redesignated paragraph (f)(4), remove the words ''license as radio officer or a certificate of registry'' and add, in their place, the words ''staff officer or radio officer endorsement''; and

p. In redesignated paragraph (g), remove the words ''license shall'' and add, in their place, the words ''STCW endorsement must''; and after the words ''to the particular'', remove the word ''license'' and add, in its place, the word ''endorsement''; and after the words ''The OCMI must be satisfied'', remove the words ''as to'' and add, in their place, the word ''with''; and after the words ''The OCMI will place'', remove the words ''in the file of each candidate''; and, after the words ''the requirements were fulfilled'', add the words ''in the file of each candidate''

**§ 11.205 Requirements for original officer endorsements and STCW endorsements.**

(a) *General.* In addition to the requirements in part 10 of this chapter and §§ 11.201 through 11.203, the applicant for an original officer endorsement must also satisfy the requirements of this section.

* * * * *

(c) *Character check and references.* (1) Each applicant for an original officer or STCW endorsement must submit written recommendations concerning the applicant's suitability for duty from a master and two other individuals holding officer endorsements or licenses on vessels on which the applicant has served.

(i) For an officer endorsement as engineer or as pilot, at least one of the recommendations must be from the chief engineer or pilot, respectively, of a vessel on which the applicant has served.

(ii) For an officer endorsement as engineer where service was obtained on vessels not carrying a credentialed engineer and for an officer endorsement as master or mate (pilot) of towing vessels, the recommendations may be by recent marine employers with at least one recommendation from a master, operator, or person in charge of a vessel upon which the applicant has served.

(ii) For an officer endorsement as offshore installation manager, barge supervisor, or ballast control operator, at least one recommendation must be from an offshore installation manager of a unit on which the applicant has served.

(iii) Where an applicant qualifies for an endorsement through an approved training school or program, one of the character references must be an official of that school or program.

(iv) For an endorsement for which no commercial experience may be required, such as master or mate 25–200 gross tons, operator of uninspected passenger vessels, radio officer or certificate of registry, the applicant may have the written recommendations of three persons who have knowledge of the applicant's suitability for duty.

(v) A person may apply for an original officer or STCW endorsement, or officer or STCW endorsement of a different type, while on probation as a result of administrative action under part 5 of this chapter. The offense for which the applicant was placed on probation will be considered in determining his or her fitness to hold the endorsement applied for. An officer or STCW endorsement issued to an applicant on probation will be subject to the same probationary conditions as were imposed against the applicant's other credential. An applicant may not take an examination for an officer or STCW endorsement during any period when a suspension without probation or a revocation is effective against the applicant's currently held license, merchant mariner's document, or MMC, or while an appeal from these actions is pending.

(vi) If an original license, certificate of registry, or endorsement has been issued when information about the applicant's habits of life and character is brought to the attention of the OCMI, if such information warrants the belief that the applicant cannot be entrusted with the duties and responsibilities of the license, certificate of registry, or endorsement issued, or if such information indicates that the application for the license, certificate of registry, or endorsement was false or incomplete, the OCMI may notify the holder in writing that the license, certificate of registry, or endorsement is considered null and void, direct the holder to return the credential to the OCMI, and advise the holder that, upon return of the credential, the appeal procedures of § 10.235 of this chapter apply.

(d) * * *

(1) Officer endorsement as master on vessels of 200 GRT or less in ocean service.

(2) Officer endorsements as master or mate on vessels of over 200 GRT.

(3) All officer endorsements for master or mate (pilot) of towing vessels,

except apprentice mate (steersman) of the vessels, on oceans.

(4) All officer endorsements for mobile offshore drilling units.

(5) All officer endorsements for engineers.

* * * * *

**§ 11.207 [Removed and Reserved]**

106. Remove and reserve newly redesignated § 11.207.

**§ 11.209 [Removed and Reserved]**

107. Remove and reserve newly redesignated § 11.209.

**§ 11.210 [Removed and Reserved]**

108. Remove and reserve newly redesignated § 11.210.

**§ 11.211 [Amended]**

109. In newly redesignated § 11.211—

a. In the section heading, remove the words ''licensing purposes'' and add, in their place, the words ''officer endorsements'';

b. In paragraph (a), remove the words ''licensing purposes'' and add, in their place, the words, ''the purposes of this part''; and remove the words ''officials or licensed masters'' and add, in their place, the words ''officials, or individuals holding an officer endorsement or license as master.'';

c. In paragraph (b) introductory text, remove the word ''license'' and add, in its place, the words ''officer endorsement'';

d. In paragraph (c), after the words ''raise of grade'' remove the word ''license'' and add, in its place, the words ''officer endorsement''; and after the words ''equivalent while holding''; remove the word ''a'' and add, in its place, the words ''an officer endorsement or''; and, after the words ''unlimited, nonrestricted'' remove the word ''licenses'' and add in its place the words ''officer licenses or endorsements''; and

e. In paragraph (d), after the words ''raise of grade of any deck'', remove the word ''licenses'' and add, in its place, the words ''officer endorsement''; and, after the words ''required for an unlimited'', remove the word ''license'' and add, in its place, the words ''officer endorsement''.

**§ 11.213 [Amended]**

110. In newly redesignated § 11.213—

a. In paragraph (a), after the words ''in scope of all'', remove the word ''license'' and add, in its place, the words ''officer endorsements''; and after the words ''and limit of'', remove the word ''license'' and add, in its place, the words ''officer endorsement''; and, after the words ''or chief engineer's unlimited'', remove the word ''license'' and add, in its place, the words ''officer endorsement'';

b. In paragraph (b), remove the words ''licensing purposes'' wherever they appear and add, in their place, the words ''the purposes of this part'';

c. In paragraph (d), remove the word ''licenses'' wherever it appears and add, in its place, the words ''officer endorsements''; after the words ''submitted for the'' remove the word ''license'' and add, in its place, the word ''endorsement''; and, after the words ''submitted for an original'', remove the word ''license'' and add, in its place, the words ''officer endorsement''; and

d. In paragraph (e), after the words ''in which a license'', add the words ''or officer endorsement''.

**§ 11.215 [Removed and Reserved]**

111. Remove and reserve § 11.215.

**§ 11.217 [Amended]**

112. In newly redesignated § 11.217—

a. In the section heading, remove the word ''licenses'' and add, in its place, the words ''officer endorsements'';

b. In paragraph (a)(1), after the words ''deck and engineer unlimited'', remove the word ''licenses'' and add, in its place, the words ''officer endorsements'', and remove the words ''table 10.109 in § 10.109'' and add, in their place, the words ''table 10.219 in § 10.219 of this chapter'';

c. In paragraph (a)(2), after words ''deck and engineer'', remove the words ''license'' and add, in its place, the words ''officer endorsement''; and remove the words ''table 10.109 in § 10.109 of this chapter'' and add, in their place, the words ''table 10.219 in § 10.219''; and

d. In paragraph (b), remove the word ''license'' and add, in its place, the word ''endorsement''; and remove the words ''the applicant is furnished'' and add, in their place, the words ''the Coast Guard will provide the applicant''.

**§ 11.219 [Removed and Reserved]**

113. Remove and reserve newly redesignated § 11.219.

**§ 11.221 [Removed and Reserved]**

114. Remove and reserve newly redesignated § 11.221.

**§ 11.223 [Removed and Reserved]**

115. Remove and reserve newly redesignated § 11.223.

**§ 11.302 [Amended]**

116. In newly redesignated § 11.302(e), remove the words ''parts 10, 12, 13 or 15,'' and add, in their place, the words ''parts 10, 11, 12, 13, or 15''.

**§ 11.304 [Amended]**

117. In newly redesignated § 11.304—

a. In paragraph (a), remove the words ''licenses and for qualified ratings of unlicensed personnel'' and add, in their place, the words ''officer endorsements and for qualified rating endorsements''; and remove the words ''licenses and ratings is maintained by Commanding Officer, National Maritime Center, NMC–4B'' and add, in their place, the words ''endorsements is maintained by the National Maritime Center''; after the words ''two-thirds of the required service on deck or in the engine department for deck or engineer'', remove the words ''licenses, respectively, and for qualified ratings'' and add, in their place, the words ''officer endorsements, respectively, and for qualified rating endorsements'';

b. In paragraph (c), remove the words ''a license'' and add, in their place, the words ''an officer endorsement'';

c. In paragraph (d), remove the word ''license'' and add, in its place, the words ''officer endorsement'';

d. In paragraph (e), remove the words ''§ 10.202'' and add, in their place, the words ''§ 11.202'' and remove the words ''both applies for an STCW endorsement or'' and add, in their place, the words ''applies for an STCW endorsement'' and remove the words ''commencing on or after August 1, 1998'';

e. In paragraph (f), remove the words ''§ 10.202'' wherever they appear and add, in their place, the words ''§ 11.202''; remove the words ''certificate or endorsement as an officer in charge of an engineering watch'' and add, in their place, the words ''STCW endorsement as an OICEW or an officer endorsement''; remove the words ''commencing on or after August 1, 1998''; and, after the words ''training or sea service'', remove the words ''commencing on or after August 1, 1998'';

f. In paragraph (g)(6), remove the words ''Coast Guard license or document'' and add, in their place, the words ''MMC endorsements'';

g. In paragraph (g)(7), remove the words ''Coast Guard license or document'' and add, in their place, the words ''MMC endorsement, license, or document'';

h. In paragraph (h) introductory text, remove the word ''a license'' and add, in its place, the word ''an endorsement'';

i. In paragraph (h)(5), remove the word ''licensed'' and add, in its place, the word ''credentialed'';

j. In paragraph (h)(7), remove the word ''licensed'' and add, in its place, the word ''credentialed'' and remove the word ''number'' and add, in its place,

the words ''TWIC and serial number of the MMC, license, or document held''; and

k. In paragraph (h)(8), remove the words ''licenses or documents'' and add, in their place, the words ''TWIC and serial number of the MMC, license, or document''.

**§ 11.309 [Amended]**

118. In newly redesignated § 11.309—

a. In paragraph (a) introductory text, remove the words ''§ 10.302'' and add, in their place, the words ''§ 11.302''; and, after the words ''hold an STCW'', remove the words ''certificate or'';

b. In paragraph (a)(3)(iii), after the words ''level of license,'' add the word ''officer'';

c. In paragraph (a)(4), after the words ''maritime license'', add the words '', MMC,'';

d. In paragraph (b), remove the word ''licenses'' and add, in its place, the word ''officer''; and

e. In paragraph (c)(3), remove the words ''STCW endorsement'' and add, in their place, the words ''officer or STCW endorsements''.

**§ 11.401 [Amended]**

119. In newly redesignated § 11.401—

a. In the section heading, remove the word ''licenses'' and add, in its place, the words ''or STCW endorsements'';

b. In paragraph (a), remove the word ''issued'' and add, in its place, the words ''or MMC endorsement''; and remove the word ''licensee'' and add, in its place, the word ''mariner''; and remove the words ''license, without additional'';

c. In paragraph (b), after the words ''A license'', add the words or MMC endorsement''; remove the word ''licensee'' and add, in its place, the word ''mariner''; and remove the words ''license, without additional'';

d. In paragraph (c), remove the word ''licenses'' wherever it appears and add, in its place, the words ''endorsements''; and, before the words ''any gross tons'', remove the word ''of'' and add, in its place, the word ''for'';

e. In paragraph (d), remove the word ''licensee''; and add, in its place, the word ''mariner'', and after the words ''near coastal license'' add the words ''or MMC endorsement''; and, after the words ''service may have'', remove the words ''the license'' and add, in their place the words ''an MMC'';

f. In paragraph (e), after the words ''holding a license'', add the words ''or MMC endorsement''; and, after the words ''near coastal unlimited'', remove the word ''license'' and add, in its place, the word ''endorsement'';

g. In paragraph (f), remove the words ''Masters and mates licenses'' and add, in their place, the words ''Masters' and mates' endorsements''; after the words ''required for conventional'', remove the word ''licenses'' and add, in its place, the words ''officer endorsements''; after the words ''For example, for'', remove the words ''a license'' and add, in their place, the words ''an officer endorsement''; after the words ''requirements for the conventional'', remove the word ''license'' and add, in its place, the words ''officer endorsement''; and remove the words ''license endorsement for service on vessels of 200 gross tons or less see individual license'' and add, in their place, the words ''an endorsement to serve on vessels of 200 gross tons or less see individual endorsement'';

h. In paragraph (g) introductory text, remove the word ''license'' wherever it appears and add, in its place, the word ''endorsement''; after the words ''200 gross tons, or'', remove the word ''a'' and add, in its place, the word ''an''; and, after the words ''the scope of'', add the word ''the'';

i. In paragraph (g)(3), remove the word ''licenses'' and add, in its place, the word ''endorsements''; and

j. In paragraph (h), after the words ''for a deck'', remove the word ''license'' and add, in its place, the words ''officer endorsement''; remove the words ''A license'' and add, in their place, the word ''An''; and, after the words ''may be issued'', remove the words ''a license'' and add, in their place, the words ''an endorsement''.

**§ 11.402 [Amended]**

120. In newly redesignated § 11.402—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a), remove the word ''license'' and add, in its place, the word ''endorsement'';

c. In paragraph (b), remove the words ''original or raise of grade of a license'' and add, in their place, the word ''endorsement'' and remove the words ''§ 10.407(c)'' and add, in their place, the words ''§ 11.407(e)''; before the words ''is limited to'', remove the word ''license'' and add, in its place, the word ''endorsement''; after the words ''an unlimited tonnage'', remove the word ''license'' and add, in its place, the word ''endorsement'';

d. In paragraph (c)(1), remove the word ''licensed'' and add in its place, the word ''endorsed'';

e. In paragraph (c)(2), remove the words ''licensed capacity'' and add, in their place, the words ''capacity as an officer''; after the words ''for which'', remove the word ''licensed'' and, add in its place, the word ''endorsed''; after the words ''next higher grade'', remove the word ''license'' and add, in its place, the word ''endorsement'', and, after the words ''limited license'', add the words ''or MMC endorsement'';

f. In paragraph (c)(3), after the words ''a license'', add the words ''or endorsement''; and, after the words ''third mate's license'', add the words ''or MMC endorsement''; and

g. In paragraph (d), after the word ''licenses'' wherever it appears, add the words ''or endorsements''.

**§ 11.403 [Amended]**

121. In newly redesignated § 11.403—

a. In the section heading remove the word ''licenses'' and add, in its place, the words ''officer endorsements''; and

b. In the text, remove the word ''license'' and add, in its place, the words ''officer endorsement''.

**§ 11.404 [Amended]**

122. In newly redesignated § 11.404—

a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement''; and

b. In paragraph (b), after the words ''holding a license'', add the words ''or MMC endorsement''.

**§ 11.405 [Amended]**

123. In newly redesignated § 11.405, after the words ''qualify an applicant for'' remove the word ''license'' and add, in its place, the words ''an endorsement''; and after the words ''holding a license'', add the words ''or MMC endorsement''.

**§ 11.406 [Amended]**

124. In newly redesignated § 11.406—

a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement'';

b. In paragraph (a), after the words ''holding a license'', add the words ''or endorsement'';

c. In paragraph (b) introductory text, after the words ''holding a license'', add the words ''or MMC endorsement''; and

d. In paragraph (c), remove the words ''A licensed'' and add, in their place, the words ''An individual holding an endorsement or license as''; and, after the words ''may obtain'', remove the words ''a license'' and add, in their place, the words ''an endorsement''.

**§ 11.407 [Amended]**

125. In newly redesignated § 11.407—

a. In paragraph (a) introductory text, remove the word ''license'' and add, in their place, the words ''an endorsement'';

b. In paragraph (a)(1), remove the word ''license'' and add, in its place, the words ''officer endorsement'';

c. In paragraph (b), remove the words ''a license'' and add, in their place, the words ''an endorsement''; and

d. In paragraph (c), after the words ''holding a license'', add the words ''or MMC endorsement'' and after the words ''qualify the applicant for'' remove the words ''a license'' and add, in their place, the words ''an endorsement''.

**§ 11.410 [Amended]**

126. In newly redesignated § 11.410—

a. In the section heading, remove the word ''licenses'' and add, in its place, the words ''officer endorsements'';

b. In paragraph (a) introductory text, remove the word ''Licenses'' and add, its their place, ''Endorsements'';

c. In paragraph (b), remove the word ''license'' and add, in its place, the word ''endorsement''; and

d. In paragraph (c), remove the words ''A license'' and add, in their place, the words ''An officer's endorsement''.

**§ 11.412 [Amended]**

127. In newly redesignated § 11.412—

a. In the introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement'';

b. In paragraph (a), after the words ''holding a license'', add the words ''or MMC endorsement''; and

c. In paragraph (b), after the words ''holding a license'', add the words ''or MMC endorsement''; and, after the words ''eligible for this'', remove the word ''license'' and add, in its place, the word ''endorsement''.

**§ 11.414 [Amended]**

128. In newly redesignated § 11.414—

a. In the introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement''; and

b. In paragraph (a), after the words ''holding a license'' add the words ''or MMC endorsement''.

**§ 11.416 [Amended]**

129. In newly redesignated § 11.416, remove the words ''a license'' and add, in their place, the words ''an endorsement''; and, after the words ''holding a certificate'', add the words ''or endorsement''.

**§ 11.418 [Amended]**

130. In newly redesignated § 11.418—

a. In the introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement'';

b. In paragraph (a), after the words ''holding a license'' add the words ''or MMC endorsement'';

c. In paragraph (b), after the words ''The holder of a license'' add the words ''or MMC endorsement''; and, after the words ''is eligible for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''.

**§ 11.420 [Amended]**

131. In newly redesignated § 11.420, after the words ''qualify an applicant for'' remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''position while holding a license'' add the words ''or endorsement''.

**§ 11.421 [Amended]**

131A. In newly redesignated § 11.421, remove the words ''a license'' and add, in their place, the words ''an endorsement''; and, after the words ''holding a certificate'', add the words ''or endorsement''.

**§ 11.422 [Amended]**

132. In newly redesignated § 11.422—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a), remove the word ''licenses'' and add, in its place, the word ''endorsements''; and remove the word ''license'' and add, in its place, the word ''endorsement'';

c. In paragraph (b) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

d. In paragraphs (b)(1) and (b)(2), remove the word ''license'' wherever it appears and add, in its place, the word ''endorsement'';

e. In paragraph (b)(3), remove the word ''license'' and add, in its place, the words ''officer endorsement'';

f. In paragraph (b)(4), after the words ''increment on the'', remove the word ''license'' and add, in its place, the words ''officer's license or MMC endorsement'';

g. In paragraph (c), after the words ''vessels upon which'', remove the words ''licensed personnel are not required'' and add, in their place, the words ''no personnel need an officer endorsement or license''; and, after the words ''required to engage'', remove the words ''licensed individuals'' and add, in their place, the words ''individuals with officer endorsements''; and

h. In paragraph (e), remove the word ''license'' and add, in its place, the words ''officer endorsement''.

**§ 11.424 [Amended]**

133. In newly redesignated § 11.424—

a. In paragraph (a) introductory text, remove the words ''a license'' and add, in their place, the words ''an officer endorsement'';

b. In paragraph (a)(1), after the words ''holding a license'', add the words ''or MMC endorsement'';

c. In paragraph (a)(2), remove the word ''licensed'';

d. In paragraph (b), remove the words ''endorsement on this license'' and add, in their place, the words ''officer endorsement''; and, after the words ''master's license'', add the words ''or MMC endorsement''; and

e. In paragraph (c), remove the words ''§ 10.401(g) of this subpart'' and add, in their place, the words ''§ 11.401(g)''.

**§ 11.426 [Amended]**

134. In newly redesignated § 11.426—

a. In paragraph (a), remove the words ''a license'' and add, in its place, the words ''an endorsement'';

b. In paragraph (a)(1), after the words ''holding a license'' add the words ''or endorsement'';

c. In paragraph (a)(2), remove the word ''licensed''; and

d. In paragraph (b), remove the words ''an endorsement on this license'' and add, in its place, the words ''this officer endorsement''; and, after the words ''of the master's license'', add the words ''or MMC endorsement''.

**§ 11.427 [Amended]**

135. In newly redesignated § 11.427—

a. In paragraph (a) introductory text, remove the word ''license'' and add, in its place, the word ''endorsement'';

b. In paragraph (a)(2), after the words ''holding a license'', add the words ''or MMC endorsement'';

c. In paragraph (b), after the words ''holder of a license'', add the words ''or MMC endorsement''; and, after the words ''may obtain this'', remove the word ''license'' and add, in its place, the word ''endorsement'';

d. In paragraph (d), after the words ''A license'', add the words ''or MMC endorsement''; and

e. In paragraph (e), after the words ''a tonnage endorsement'', remove the word ''of'' and add, in its place, the word ''for''.

**§ 11.428 [Amended]**

136. In newly redesignated § 11.428—

a. In paragraph (a), remove the words ''a license'' and add, in its place, the words ''an endorsement''; and

b. In paragraph (b), remove the words ''endorsement on this license'' and add, in their place, the word ''endorsement''; and, after the words ''issuance of the license'', add the words ''or MMC endorsement''.

**§ 11.429 [Amended]**

137. In newly redesignated § 11.429—

a. In paragraph (a) introductory text after the words ''Limited masters' '', remove the word ''licenses'' and add, in its place, the word ''endorsements''; after the words ''educational institutions.'', remove the words ''A license'' and add, in their place, the words ''An endorsement''; and, after the

words ''obtain this restricted'', remove the word ''license'' and add, in its place, the word ''endorsement'';

b. In paragraph (a)(1), after the words ''for which the'' remove the word ''license'' and add, in its place, the word ''endorsement'';

c. In paragraph (b), remove the words ''§ 10.205(h) of this part'' and add in their place, the words ''§ 11.205(h)''; and

d. In paragraph (c), after the words ''obtain an endorsement'', remove the words ''on this license'' and after the words ''issuance of the license'' add the words ''or MMC endorsement''.

**§ 11.430 [Amended]**

138. In newly redesignated § 11.430—

a. In the section heading, remove the word ''Licenses'' and add, in its place, the word ''Endorsements''; and

b. In the text, after the words ''Any license'', wherever they appear, add the words ''or MMC endorsement''; after the word ''licenses'', wherever it appears, add the words ''and MMC endorsements''; and, after the words ''COLREGS or the'', remove the words ''license must be endorsed with an exclusion from'' and add, in their place, the words ''endorsement must exclude''.

**§ 11.431 [Amended]**

139. In newly redesignated § 11.431—

a. In the section heading, remove the word ''licenses'', and add, in its place, the word ''endorsements'';

b. In paragraph (a), remove the word ''licenses'', and add, in its place, the word ''endorsements''; and

c. In paragraph (b), remove the word ''licenses'', and add, in its place, the word ''endorsements''; and remove the words ''§ 10'' and add, in their place, the words ''§ 11''.

**§ 11.433 [Amended]**

140. In newly redesignated § 11.433—

a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement''; and

b. In paragraph (c), after the words ''holding a license'', add the word ''or MMC endorsement''.

**§ 11.435 [Amended]**

141. In newly redesignated § 11.435—

a. In the introductory text, remove the word ''license'', and add, in its place, the word ''endorsement''; and

b. In paragraph (b), after the words ''mate/pilot first class pilot license'', add the words ''or MMC endorsement''.

**§ 11.437 [Amended]**

142. In newly redesignated § 11.437—

a. In paragraph (a) introductory text, remove the word ''license'', and add, in its place, the word ''endorsement''; and

b. In paragraph (a)(3), after the words ''holding a license'', add the words ''or MMC endorsement''.

**§ 11.442 [Amended]**

143. In newly redesignated § 11.442—

a. In the introductory text, remove the words ''a license'', and add, in their place, the words ''an endorsement''; and

b. In paragraphs (a) and (b), after the words ''holding a license'', wherever they appear, add the words ''or MMC endorsement''.

**§ 11.444 [Amended]**

144. In newly redesignated § 11.444—

a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement'';

b. In paragraph (a), after the words ''holding a certificate'', add the words ''or endorsement''; and

c. In paragraph (b), after the words ''holding a license'', add the words ''or MMC endorsement''.

**§ 11.446 [Amended]**

145. In newly redesignated § 11.446—

a. In the introductory text, remove the words ''a license'', and add, in their place, the words ''an endorsement'';

b. In paragraph (a), after the words ''holding a license'', add the words ''or MMC endorsement''; and

c. In paragraph (b), after the words ''holding a license'', wherever they appear, add the words ''or MMC endorsement'' and after the words ''eligible for this'', remove the word ''license'' and add, in its place, the word ''endorsement''.

**§ 11.448 [Amended]**

146. In newly redesignated § 11.448, after the words ''an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''holding a certificate'', add the words ''or endorsement''.

**§ 11.450 [Amended]**

147. In newly redesignated § 11.450—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a), remove the word ''licenses'' and add, in its place, the word ''endorsements''; and remove the words ''§ 10.422'' each time they appear and add, in their place, the words ''§ 11.422'';

c. In paragraph (c), after the words ''vessels upon which'', remove the words ''licensed personnel'' and add, in their place, the words ''personnel with licenses or endorsements''; and, after the words ''required to engage'', remove the words ''licensed individuals'' and add, in their place, the words ''individuals with endorsements''; and

d. In paragraph (d), remove the word ''license'' and add, in its place, the word ''endorsement''.

**§ 11.452 [Amended]**

148. In newly redesignated § 11.452—

a. In paragraph (a), after the words ''qualify an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''holding a license'', add the words ''or MMC endorsement''; and after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement''; and

b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license''; and after the words ''master's license'' add the words ''or MMC endorsement''.

**§ 11.454 [Amended]**

149. In newly redesignated § 11.454—

a. In paragraph (a), after the words ''qualify an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement'';

b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license'';

c. In paragraph (c), before the words ''as master of steam'', remove the words ''A license'' and add, in their place, the words ''An endorsement''; and

d. In paragraph (d), after the words ''The holder of a license'' add the words ''or MMC endorsement''; and after the words ''may obtain this'', remove the word ''license'' and add, in its place, the word ''endorsement''; and, after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement''.

**§ 11.455 [Amended]**

150. In newly redesignated § 11.455—

a. In paragraph (a), after the words ''qualify an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement''; and

b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license''; and, after the words ''issuance of the'', remove the word ''license'' and add, in its place, the word ''endorsement''.

**§ 11.456 [Amended]**

151. In newly redesignated § 11.456—

a. In the introductory text, after the words ''Limited masters'' remove the word ''licenses'' and add, in its place, the word ''endorsements''; and before

the words ''issued under this'', remove the words ''A license'' and add, in their place, the words ''An endorsement''; and after the words ''In order to obtain this restricted'', remove the word ''license'' and add, in its place, the word ''endorsement'';

b. In paragraph (a), remove the word ''license'' and add, in its place, the word ''endorsement''; and

c. In paragraph (d), after the words ''required by'', remove the text ''§ 10'' and add, in its place, the text ''§ 11''.

**§ 11.457 [Amended]**

152. In newly redesignated § 11.457—

a. In paragraph (a), after the words ''An applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''requirements of'', remove the text ''§ 10'' and add, in its place, the text ''§ 11''; and

b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license''; and, after the words ''issuance of the license'', add the words ''or MMC endorsement''.

**§ 11.459 [Amended]**

153. In newly redesignated § 11.459—

a. In paragraph (a), after the words ''An applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and

b. In paragraph (b), after the words ''An applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''steam or motor'', remove the word ''license'' and add, in its place, the word ''endorsement''.

**§ 11.462 [Amended]**

154. In newly redesignated § 11.462—

a. In the section heading, remove the word ''Licenses'' and add, in its place, the word ''Endorsements''.

b. In paragraph (a) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

c. In paragraph (b), before the words ''as master or mate'', remove the word ''Licenses'' and add, in its place, the word ''Endorsements''; and after the words ''industry vessel'', remove the word ''license'' and add, in its place, the word ''endorsement''; and, after the words ''requirements of'', remove the words ''§ 10.401(g) of this subpart'' and add, in its place, the text ''§ 11.401(g)'';

d. In paragraph (c) introductory text, after the words ''An applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''must have been as'', remove the words ''as licensed master, as unlicensed master, or as licensed mate'' and add, in their place, the words ''master, or as mate''; and after the words ''while holding a license'', add the words ''or MMC endorsement'';

e. In paragraphs (c)(1) and (c)(2), remove the words ''a license of'' wherever they appear and add, in their place, the words ''an endorsement for'';

f. In paragraph (c)(3), remove the words ''a license of'' wherever they appear and add, in their place, the words ''an endorsement for''; and before the words ''is limited to'', remove the word ''license'' and add, in its place, the word ''endorsement''; and before the words ''as master of'', remove the words ''A license'' and add, in their place, the words ''An endorsement'';

g. In paragraph (c)(4) introductory text, after the words ''The tonnage limitation'' remove the words ''on this license'' and add, in their place, the words ''for this endorsement'';

h. In paragraphs (c)(4)(v) and (c)(4)(vi), after the words ''holding a license'' wherever they appear, add the words ''or MMC endorsement''; and, after the words ''limitation on the'', remove the words ''master's license'' wherever they appear and add, in their place, the word ''MMC'';

i. In paragraphs (d) introductory text, (d)(1), and (d)(2), remove the words ''a license'' wherever they appear and add, in their place, the words ''an endorsement'';

j. In paragraph (d)(3), after the words ''To qualify for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and, before the words ''is limited to'', remove the word ''license'' and add, in its place, the word ''endorsement'';

k. In paragraph (d)(4), after the words ''limitation on this'', remove the word ''license'' and add, in its place, the word ''endorsement'';

l. In paragraph (d)(4)(iv), after the words ''holding a license'', add the words ''or MMC endorsement''; and, after the words ''limitation on the'', remove the words ''mate's license'' and add, in their place, the word ''MMC'';

m. In paragraph (d)(4)(v), after the words ''while holding'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and, after the words ''limitation on the'', remove the words ''mate's license'' and add, in their place, the word ''MMC''; and

n. In paragraph (d)(4)(vi), after the words ''holding a license'', add the words ''or MMC endorsement''; and after the words ''limitation on the'', remove the words ''mate's license'' and add, in their place, the word ''MMC''.

**§ 11.463 [Amended]**

155. In newly redesignated § 11.463—

a. In the section heading, remove the words ''licenses for'' and add, in their place, the words ''endorsements as'';

b. In paragraph (a), remove the word ''licenses'' and add, in its place, the word ''endorsements''; and

c. In paragraphs (b) and (c), remove the words ''a license'' wherever they appear and add, in their place, the words ''an endorsement''.

156. In newly redesignated § 11.464—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a), remove the words ''a license as master of towing vessels endorsed'' and add, in their place, the words ''an endorsement as master of towing vessels'' and remove the words ''Table 10.464–1'' and add, in their place, the words ''Table 11.464(a) of this section'';

c. Redesignate Table 10.464–1 as Table 11.464(a) and revise it to read as set out below;

d. In paragraph (b), after the words ''to obtain an'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and, after the words ''columns 2 through 5 of'', remove the words ''Table 10.464–2'' and add, in their place, the words ''Table 11.464(b) of this section'';

e. Redesignate Table 10.464–2 as Table 11.464(b) and revise the heading to read as set out below;

f. In paragraph (c), after the words ''hold a license'', add the words ''or MMC endorsement''; and after the words ''added to your'', remove the word ''license'' and add, in its place, the word ''MMC'';

g. In paragraph (d), after the words ''training and have your'', remove the words ''license endorsed'' and add, in their place, the words ''MMC include an endorsement'';

h. In paragraph (e), remove the words ''licensed mariner with appropriate'' and add, in their place, the words ''mariner with the appropriate endorsement and'';

i. In paragraph (f) introductory text, after the words ''If you hold a license'', add the words ''or MMC endorsement''; and, after the words ''restrictions on your'', remove the word ''license'' and add, in its place, the word ''endorsement'';

j. In paragraph (f)(2)(i), after the words ''described in'', remove the text ''§ 10'' and add, in its place, the text ''§ 11'';

k. In paragraph (f)(3), after the words ''Your license'', add the words ''or MMC''; and, after the words ''does not need'', add the words ''to include''; and

l. Remove paragraph (g).

**§ 11.464 Requirements for endorsements as master of towing vessels.**

* * * * *

TABLE 11.464(A).—REQUIREMENTS FOR ENDORSEMENT AS MASTER[1] OF TOWING VESSELS

| 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|
| Route endorsed | Total service[2] | TOS[3] on T/V as mate (pilot) | TOS[3] on T/V as mate (pilot) not as harbor assist | TOS[3] on particular route | Sub-ordinate route authorized |
| (1) OCEANS (O) | 48 | 18 of 48 | 12 of 18 | 3 of 18 | NC, GL–I. |
| (2) NEAR-COASTAL (NC) | 48 | 18 of 48 | 12 of 18 | 3 of 18 | GL–I. |
| (3) GREAT LAKES-INLAND (GL–I) | 48 | 18 of 48 | 12 of 18 | 3 of 18. | |
| (4) WESTERN RIVERS (WR) | 48 | 18 of 48 | 12 of 18 | 3 of 18. | |

[1] If you hold an endorsement as master of towing vessels you may have an endorsement—as mate (pilot) of towing vessels for a route superior to your current route on which you have no operating experience—placed on your MMC after passing an examination for that additional route. After you complete 90 days of experience and complete a TOAR on that route, we will add it to your endorsement as master of towing vessels and remove the one for mate (pilot) of towing vessels.
[2] Service is in months.
[3] TOS is time of service.

* * * * *

Table 11.464(b)—Requirements for endorsement as master of towing vessels (limited).

* * * * *

157. In newly redesignated § 11.465—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a), after the words ''like to obtain'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and, after the words ''column 1 of'' remove the words ''Table 10.465–1'' and add, in their place, the words ''Table 11.465(a) of this section''; and after the words ''hold a license'' wherever they appear, add the words ''or MMC endorsement''; and, before the words ''with a route endorsed'', remove the words ''A license'' and add, in their place, the words ''An endorsement'';

c. Redesignate Table 10.465–1 as Table 11.465(a) and revise it to read as set out below;

d. In paragraph (b), after the words ''training and have'', remove the words ''license endorsed'' and add, in their place, the words ''MMC include an endorsement'';

e. In paragraph (c), remove the words ''licensed mariner with appropriate'' and add, in their place, the words ''mariner with the appropriate endorsement an'';

f. In paragraph (d) introductory text, after the words ''hold a license'' add the words ''or MMC endorsement'' and after the words ''on your license'' add the words ''or MMC'';

g. In paragraph (d)(2) introductory text, after the words ''described in'' remove the words ''§ 10'' and add, in their place, the words ''§ 11'' and redesignate the second paragraph as (d)(3) and after the words ''Your license'' add the words ''or MMC'' and after the words ''does not need'' add the words ''to include'';

h. In paragraph (e) after the words ''required by'' remove the words ''§ 10'' and add, in their place, the words ''§ 11''; and

i. Remove paragraph (f).

**§ 11.465 Requirements for endorsements as mate (pilot) of towing vessels.**

* * * * *

TABLE 11.465(A).—REQUIREMENTS FOR ENDORSEMENT AS MATE (PILOT[1]) OF TOWING VESSELS

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| Route endorsed | Total service[2] | TOS[3] on T/V as apprentice mate (Steersman) | TOS[3] on particular route | TOAR[4] or an approved course | 30 Days of observation and training while holding mater (limited) and pass a limited examination | Subordinate route authorized |
| (1) OCEANS (O) | 30 | 12 of 30 | 3 of 12 | YES | YES | NC, GL–I |
| (2) NEAR-COASTAL (NC) | 30 | 12 of 30 | 3 of 12 | YES | YES | GL–I, |
| (3) GREAT LAKES–INLAND (GL–I). | 30 | 12 of 30 | 3 of 12 | YES | YES | |
| (5) WESTERN RIVERS (WR) | 30 | 12 of 30 | 3 of 12 | YES | NO (90 days service required)I. | |

[1] For all inland routes, as well as Western Rivers, the endorsement as pilot of towing vessels is equivalent to that as mate of towing vessels. All qualifications and equivalencies are the same.
[2] Service is in months unless otherwise indicated.
[3] TOS is time of service.
[4] TOAR is Towing Officers' Assessment Record.

* * * * *

158. In newly redesignated § 11.466—

a. In paragraph (a), after the words ''As Table'' remove the word ''10'' and add, in its place, the word ''11'' and after the words ''like to obtain'', remove the words ''a license'' and add, in their place, the words ''an endorsement'';

b. Redesignate Table 10.466–1 as Table 11.466(a) and revise it to read as follows; and

c. In paragraph (b), after the words ''hold a license'' add the words ''or endorsement'' and after the words ''endorsement will go on your'' remove the word ''license'' and add, in its place,

the word ''MMC'' and after the words ''may have the'' remove the words ''restricted endorsement'' and add, in their place, the word ''restriction''.

**§ 11.466 Requirements for endorsements as apprentice mate (steersman) of towing vessels.**

* * * * *

TABLE 11.466(A).—REQUIREMENTS FOR ENDORSEMENT AS APPRENTICE MATE (STEERSMAN) OF TOWING VESSELS

| 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|
| License type | Route endorsed | Total service[1] | TOS[2] on T/V | TOS[2] on particular route | Pass examination[3] |
| (1) APPRENTICE MATE (STEERSMAN). | OCEANS (O) | 18 | 12 of 18 | 3 of 18 | YES |
| | NEAR-COASTAL (Nc) | 18 | 12 of 18 | 3 of 18 | YES |
| | GREAT LAKES- | 18 | 12 of 18 | 3 of 18 | YES |
| | INLAND (GI-I) | 18 | 12 of 18 | 3 of 18 | YES |
| | WESTERN RIVERS (WR) | 18 | 12 of 18 | 3 of 18 | YES |
| (2) APPRENTICE MATE (STEERSMAN) (LIMITED). | NOT APPLICABLE | 18 | 12 of 18 | 3 of 18 | YES |

* * * * *

**§ 11.467 [Amended]**

159. In newly redesignated § 11.467—

a. In the section heading, remove the words ''Licenses for operators'' and add, in their place, the words ''Endorsement as'';

b. In paragraph (a), remove the words ''all applicants for the license'' and add, in their place, the words ''an applicant for the endorsement'';

c. In paragraph (b), remove the word ''licenses'' wherever it appears and add, in its place, the word ''endorsements'' and after the words ''local area under paragraph'' remove the word ''(f)'' and add, in its place, the word ''(g)'';

d. In paragraph (c), before the words ''as operator of'' remove the words ''a license'' and add, in their place, the words ''an endorsement'' and after the words ''uninspected passenger vessel'' remove the words ''with a near coastal endorsement'' and add, in their place, the words ''on near-coastal waters'';

e. In paragraph (d), before the words ''as operator of'' remove the words ''a license'' and add, in their place, the words ''an endorsement'' and after the words ''uninspected passenger vessel'' remove the words ''with a Great Lakes and inland waters endorsement'' and add, in their place, the words ''on the Great Lakes and inland waters'';

f. In paragraph (e), before the words ''as operator of'' remove the words ''a license'' and add, in their place, the words ''an endorsement'' and after the words ''uninspected passenger vessel'' remove the words ''with an inland endorsement'' and add, in their place, the words ''on inland waters'';

g. Remove paragraph (f), redesignate paragraph (g) as paragraph (f) and redesignate paragraph (h) as paragraph (g);

h. In newly redesignated paragraph (f) introductory text, after the words ''uninspected passenger vessel'' remove the word ''licenses'' and add, in its place, the word ''endorsements'' and before the words ''issued under this paragraph'' remove the words ''A license'' and add, in its place, the words ''An endorsement'' and after the words ''obtain this restricted'' remove the word ''license'' and add, in its place, the word ''endorsement'';

i. In newly redesignated paragraph (f)(1), remove the word ''license'' and add, in its place, the word ''endorsement'';

j. In newly redesignated paragraph (f)(4), remove the words § 10.205(h)'' and add, in their place, the words ''§ 10.205(d)''; and

k. In newly redesignated paragraph (g), remove the words ''a license'' wherever they appear and add, in their place, the words ''an endorsement''.

**§ 11.468 [Amended]**

160. In newly redesignated § 11.468—

a. In the section heading and text, remove the word ''Licenses'' wherever it appears and add, in its place, the words ''Officer Endorsements''; and

b. In the text remove the word ''license'' and add, in its place, the word ''endorsement''.

161. In newly redesignated § 11.470—

a. In the section heading, remove the words ''Licenses for'' and add, in their place, the words ''Officer endorsements as'';

b. Revise paragraph (a) introductory text to read as follows;

c. In paragraph (b) introductory text, remove the words ''a license or'' and add, in their place, the word ''an'';

d. In paragraph (b)(2)(i), remove the words ''an OIM Unrestricted license or endorsement'' and add, in their place, the words ''a license or MMC endorsement as OIM Unrestricted'';

e. In paragraph (d)(2)(iv), remove the words ''§ 10.205(g)'' and add, in their place, the words ''§ 11.205(d)'';

f. In paragraph (c), after the words ''unlimited license'' add the words ''or MMC endorsement'';

g. In paragraph (d) introductory text, remove the words ''a license'' and add, in their place, the word ''an'';

h. In paragraph (d)(2)(i), remove the words ''OIM Surface Units license or endorsement'' and add, in their place, the words ''license or MMC endorsement as OIM Surface Units'';

i. In paragraph (d)(2)(iv), remove the words ''§ 10.205(g)'' and add, in their place, the words ''§ 11.205(d)'';

j. In paragraph (e), after the words ''unlimited license'' add the words ''or MMC endorsement'';

k. In paragraph (f)(2)(i), remove the words ''license or'';

l. In paragraph (f)(2)(iii), remove the words ''§ 10.205(g)'' and add, in their place, the words ''§ 11.205(d)'';

m. In paragraph (g) introductory text, after the words ''unlimited license'' add the words ''or MMC endorsement'';

n. In paragraph (h) introductory text, remove the words ''a license or'' and add, in their place, the word ''an'';

o. In paragraph (h)(2)(iii), remove the words ''§ 10.205(g)'' and add, in their place, the words ''§ 11.205(d)'';

p. In paragraph (i), after the words ''unlimited license'' add the words ''or MMC endorsement'';

q. In paragraph (j) introductory text, remove the words ''a license or'' and add, in their place, the word ''an'';

r. In paragraph (j)(2)(i), remove the words ''OIM Bottom Bearing Units license or endorsement'' and add, in their place, the words ''a license or MMC endorsement as OIM Bottom Bearing Units'';

s. In paragraph (j)(2)(iii), remove the words ''§ 10.205(g)'' and add, in their place, the words ''§ 11.205(d)''; and

t. In paragraph (k), after the words ''unlimited license'' add the words ''or MMC endorsement''.

**§ 11.470 Officer endorsements as offshore installation manager.**

(a) Officer endorsements as offshore installation manager (OIM) include:

* * * * *

**§ 11.472 [Amended]**

162. In newly redesignated § 11.472—

a. In the section heading, remove the words ''License for'' and add, in their place, the words ''Officer endorsements as'';

b. In paragraph (a) introductory text, remove the words ''a license or'' and add, in their place, the word ''an'';

c. In paragraph (a)(2)(i), remove the words ''barge supervisor license or endorsement'' and add, in their place, the words ''license or MMC endorsement as barge supervisor'';

d. In paragraph (a)(2)(iii), remove the words ''§ 10.205(g)'' and add, in their place, the words ''§ 11.205(d)''; and

e. In paragraph (b), after the words ''unlimited license'' add the words ''or MMC endorsement''.

**§ 11.474 [Amended]**

163. In newly redesignated § 11.474—

a. In the section heading, remove the words ''License for'' and add, in their place, the words ''Officer endorsements as'';

b. In paragraph (a) introductory text, remove the words ''a license'' and add, in its place, the words ''an endorsement'';

c. In paragraph (a)(1)(i) and (ii), remove the words ''a licensed'' wherever they appear and add, in their place, the words ''an individual holding a license or MMC endorsement as'';

d. In paragraph (a)(2)(i), remove the words ''barge supervisor or ballast control operator license or endorsement'' and add, in their place, the words ''license or MMC endorsement as barge supervisor or ballast control operator'';

e. In paragraph (a)(2)(iii), remove the words ''§ 10.205(g)'' and add, in their place, the words ''§ 11.205(d)'';

f. In paragraph (b), after the words ''unlimited license'' add the words ''or MMC endorsement'' and remove the word ''licensed'' and add, in its place, the words ''an individual holding an endorsement as'';

**§ 11.476 [Removed and Reserved]**

164. Remove and reserve § 11.476.

**§ 11.480 [Amended]**

165. In newly redesignated § 11.480—

a. In paragraph (b) introductory text, remove the words ''deck officer's license'' and add, in their place, the word ''MMC'';

b. In paragraph (c), remove the words ''Endorsement as'' wherever they appear;

c. In paragraph (f), remove the last sentence;

d. In paragraph (g), after the words ''printed on the'' remove the word ''license'' and add, in its place, the word ''MMC'';

e. In paragraph (i), after the words ''renew the license'' wherever they appear, add the words ''or MMC'';

f. In paragraph (j), after the words ''grade of a license'' add the words ''or MMC endorsement''; and

g. In paragraph (k), after the words ''date of the'' remove the word ''license'' and add, in its place, the word ''MMC''.

**§ 11.482 [Amended]**

166. In newly redesignated § 11.482—

a. In paragraph (a), after the words ''endorsement authorizing'' remove the words ''an applicant'' and add, in their place, the words ''a mariner''; and after the words ''applies to all'' remove the words ''licenses except those for'' and add, in their place, the words ''MMCs except''; and before the words ''master or mate authorizing'' remove the words ''those for''; and after the words ''Holders of any of these'' remove the word ''licenses'' and add, in its place, the word ''endorsements''; and remove the words ''the licenses and without the endorsement'' and add, in their place, the words ''their MMC or license'';

b. In paragraph (c), after the words ''scope of the license'' add the words ''or MMC''; and

c. In paragraph (d), after the words ''same as the license'' add the words ''or MMC''; and remove the words '' on which it is endorsed'' and add, in their place, the words ''on which it is included''; and after the words ''renewed with the'' remove the word ''license'' and add, in its place, the word ''MMC''.

**§ 11.491 [Amended]**

167. In newly redesignated § 11.491—

a. In the section heading, remove the word ''Licenses'' and add, in it place, the word ''Officer endorsements''; and

b. In the text, before the words ''for service on'' remove the word ''license'' and add, in its place, the words ''officer endorsement'' and after the words ''restrictions placed on the license'' add the words ''or MMC''.

**§ 11.493 [Amended]**

168. In newly redesignated § 11.493(a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

**§ 11.495 [Amended]**

169. In newly redesignated § 11.495(a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

**§ 11.497 [Amended]**

170. In newly redesignated § 11.497(a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

**§ 11.501 [Amended]**

171. In newly redesignated § 11.501—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a) introductory text, remove the word ''Licenses'' and add, in its place, the words ''Engineer endorsements'';

c. In paragraph (b) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

d. In paragraph (c) introductory text, after the words ''Engineer licenses'' add the words ''or MMC endorsements''; and

e. In paragraph (e), after the words ''holding an engineer license'' add the words ''or MMC endorsement'' and after the words ''limitations of the license'' add the words ''or MMC''.

**§ 11.502 [Amended]**

172. In newly redesignated § 11.502—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a), after the words ''engineer licenses'' add the words ''or MMC endorsements'';

c. In paragraph (b) introductory text, remove the words ''a licensed applicant desires to obtain an endorsement on an engineer license in the other propulsion mode (steam or motor)'' and add, in their place, the words ''an applicant desires to add a propulsion mode to his or her endorsement'' and after the words ''holding a license'' add the words ''or MMC endorsement'';

d. In paragraph (b)(1), remove the words ''licensed capacity'' and add, in their place, the words ''capacity as their endorsement'';

e. In paragraph (b)(2), remove the words ''a licensed officer at a lower license level'' and add, in their place, the words ''an engineer officer at a lower level''; and

f. In paragraph (c), after the words ''of an engineer license'' add the words ''or MMC endorsement'' and remove the text ''§ 10'' and add, in their place, the text ''§ 11''.

**§ 11.503 [Amended]**

173. In newly redesignated § 11.503—

a. In paragraph (a), after the words ''Engineer licenses'' add the words ''and

endorsements'' and after the words ''as provided in'' remove the text ''§ 10'' and add, in its place, the text ''§ 11'' and after the words ''designated duty engineer'' remove the word ''license'' and after the words ''placed on a license'' add the words ''or MMC endorsement'';

b. In paragraph (b), after the words ''an engineer license'' add the words ''or MMC endorsement''; and after the words ''designated duty engineer'' remove the word ''license''; and after the words ''limitation is placed on the'' remove the word ''license'' and add, in its place, the word ''MMC''; and before the words ''is limited to the'' remove the word ''license'' and add, in its place, the word ''endorsement''; and after the words ''an unlimited horsepower'' remove the word ''license'' and add, in its place, the word ''endorsement'';

c. In paragraph (c) introductory text, remove the words ''engineer licenses'' and add, in their place, the words ''an engineer license or MMC endorsement'';

d. In paragraph (c)(1), remove the word ''licensed'' and add, in its place, the word ''endorsed'';

e. In paragraph (c)(2), after the words ''Six months of service'' add the words ''as an officer''; and before the words ''capacity other than'' remove the word ''licensed''; and after the words ''for which licensed'' add the words ''or endorsed''; and after the words ''next higher grade'' remove the word ''license'' and add, in its place, the word ''endorsement''; and after the words ''issuance of the limited license'' add the words ''or MMC endorsement'';

f. In paragraph (c)(3), after the words ''holding a license'' add the words ''or MMC endorsement'' and after the words ''assistant engineer's (limited-oceans)'' remove the word ''license'' and add, in its place, the word ''endorsement'';

g. In paragraph (c)(4), after the words ''holding a license'' add the words ''or MMC endorsement'' and after the words ''third assistant engineer's'' remove the word ''license'' and add, in its place, the word ''endorsement''; and

h. In paragraph (d), after the words ''applicant's license'' add the words ''or MMC endorsement''.

**§ 11.504 [Amended]**

174. In newly redesignated § 11.504—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements''; and

b. In the text, remove the words ''a license'' and add, in their place, the words ''an endorsement''.

175. In newly redesignated § 11.505—

a. In the section heading, remove the word ''license'' and add, in its place, the word ''officer'';

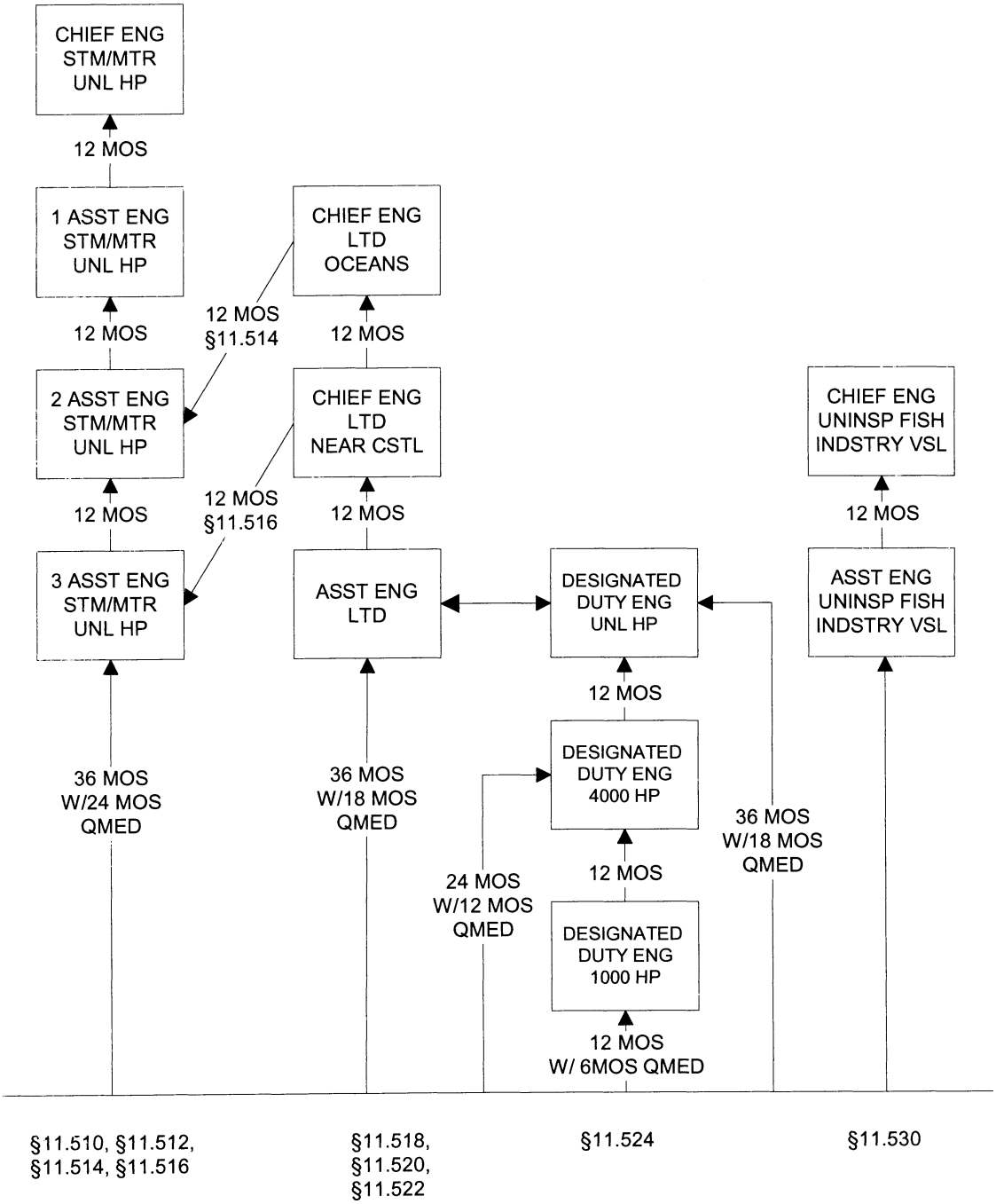
b. In the text, remove the word ''license'' and add, in its place, the word ''endorsement''; and

c. Redesignate Figure 10.505 as Figure 11.505 and revise it to read as follows:

**§ 11.505 Engineer officer structure.**

Figure 11.505—Engineer officer endorsement structure

BILLING CODE 4910–15–P




BILLING CODE 4910–15–C

**§ 11.510 [Amended]**

176. In newly redesignated § 11.510—

a. In the introductory text, remove the word ''license'' and add, in its place, the word ''endorsement''; and

b. In paragraph (b), after the words ''holding a license'' add the words or MMC endorsement''.

**§ 11.512 [Amended]**

177. In newly redesignated § 11.512, after the words ''qualify an applicant for'' remove the word ''license'' and add, in its place, the word ''endorsement'' and after the words ''holding a license'' add the words or MMC endorsement''.

**§ 11.514 [Amended]**

178. In newly redesignated § 11.514—

a. In the introductory text, after the words ''qualify an applicant for'' remove the word ''license'' and add, in its place, the word ''endorsement''; and

b. In paragraphs (a) and (b) introductory text, after the words ''holding a license'', wherever they appear, add the words ''or MMC endorsement''.

**§ 11.516 [Amended]**

179. In newly redesignated § 11.516, in paragraph (a) introductory text, after the words ''an applicant for'', remove the word ''license'' and add, in its place, the word ''endorsement''.

180. Revise newly redesignated § 11.518 to read as follows:

**§ 11.518 Service requirements for chief engineer (limited-oceans) of steam and/or motor vessels.**

The minimum service required to qualify an applicant for endorsement as chief engineer (limited-oceans) of steam and/or motor vessels is five years total

service in the engineroom of vessels. Two years of this service must have been as an engineer officer. Thirty months of the service must have been as a qualified member of the engine department or equivalent supervisory position.

181. Revise newly redesignated § 11.520 to read as follows:

**§ 11.520 Service requirements for chief engineer (limited-near coastal) of steam and/or motor vessels.**

The minimum service required to qualify an applicant for endorsement as chief engineer (limited near coastal) of steam and/or motor vessels is four years total service in the engineroom of vessels. One year of this service must have been as an engineer officer. Two years of the service must have been as a qualified member of the engine department or equivalent supervisory position.

182. Revise newly redesignated § 11.522 to read as follows:

**§ 11.522 Service requirements for assistant engineer (limited-oceans) of steam and/or motor vessels.**

The minimum service required to qualify an applicant for endorsement as assistant engineer (limited-oceans) of steam and/or motor vessels is three years of service in the engineroom of vessels. Eighteen months of this service must have been as a qualified member of the engine department or equivalent supervisory position.

183. Amend newly redesignated § 11.524 by revising paragraphs (a) and (b) introductory text to read as follows:

**§ 11.524 Service requirements for designated duty engineer of steam and/or motor vessels.**

(a) Designated duty engineer endorsements are issued in three levels of horsepower limitations dependent upon the total service of the applicant and completion of appropriate examination. These MMCs are limited to vessels of not more than 500 gross tons on certain waters as specified in § 11.501.

(b) The service requirements for endorsements as designated duty engineer are:

* * * * *

184. Revise newly redesignated § 11.530 to read as follows:

**§ 11.530 Endorsements for engineers of uninspected fishing industry vessels.**

(a) This section applies to endorsements for chief and assistant engineers of all vessels, however propelled, navigating the high seas, which are documented to engage in the fishing industry, with the exception of:

(1) Wooden ships of primitive build;

(2) Unrigged vessels; and,

(3) Vessels of less than 200 gross tons.

(b) Endorsements as chief engineer and assistant engineer of uninspected fishing industry vessels are issued for ocean waters and with horsepower limitations in accordance with the provisions of § 11.503.

(c) For an endorsement as chief engineer, the applicant must have served four years in the engineroom of vessels. One year of this service must have been as an assistant engineer officer or equivalent supervisory position.

(d) For an endorsement as assistant engineer, an applicant must have served three years in the engine room of vessels.

(e) Two-thirds of the service required under this section must have been on motor vessels.

(f) Applicants may request an orally assisted examination on the subjects listed in subpart I of this part.

185. Revise newly redesignated § 11.540 to read as follows:

**§ 11.540 Endorsements for engineers of mobile offshore drilling units.**

Endorsements as chief engineer (MODU) or assistant engineer (MODU) authorize service on certain self-propelled or non-self-propelled units of any horsepower where authorized by the vessel's certificate of inspection.

**§ 11.542 [Amended]**

186. In newly redesignated § 11.542—

a. In the section heading, remove the words ''License for'' and add, in their place, the words ''Endorsement as'';

b. In the introductory text and paragraph (c), remove the words ''a license'' wherever they appear and add, in their place, the words ''an endorsement''; and

c. In paragraph (b), remove the number ''10'' and add, in its place, the number ''11''.

**§ 11.544 [Amended]**

187. In newly redesignated § 11.544—

a. In the section heading, remove the words ''License for'' and add, in their place, the words ''Endorsement as'';

b. In the introductory text and paragraph (c), remove the words ''a license'' wherever they appear and add, in their place, the words ''an endorsement'';

c. In paragraph (a)(3), remove the words ''Commanding Officer'' and add, in their place, the word ''The''; and

d. In paragraph (b), remove the number ''10'' and add, in its place, the number ''11''.

188. Revise newly redesignated § 11.551 to read as follows:

**§ 11.551 Endorsements for service on offshore supply vessels.**

Each endorsement for service on OSVs as Chief Engineer (OSV) or Engineer (OSV) authorizes service on OSVs as defined in 46 U.S.C. 2101(19) and as interpreted under 46 U.S.C. 14104(b), subject to any restrictions placed on the MMC.

**§ 11.553 [Amended]**

189. In newly redesignated § 11.553, paragraph (a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

**§ 11.555 [Amended]**

190. In newly redesignated § 11.555, paragraph (a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

191. Revise newly redesignated § 11.601 to read as follows:

**§ 11.601 Applicability.**

This subpart provides for endorsement as radio officers for employment on vessels, and for the issue of STCW endorsements for those qualified to serve as radio operators on vessels subject to the provisions on the Global Maritime Distress and Safety System (GMDSS) of Chapter IV of SOLAS.

192. In newly redesignated § 11.603 revise the heading and paragraphs (a) and (c) and remove and reserve paragraph (b) to read as follows:

**§ 11.603 Requirements for radio officers' endorsements, and STCW endorsements for GMDSS radio operators.**

(a) Each applicant for an original endorsement or renewal of license shall present a current first or second class radiotelegraph operator license issued by the Federal Communications Commission. The applicant shall enter on the endorsement application form the number, class, and date of issuance of his or her Federal Communications Commission license.

(b) [Reserved]

(c) Each applicant who furnishes evidence that he or she meets the standard of competence set out in STCW Regulation IV/2 (incorporated by reference in Sec. 11.102), including the competence to transmit and receive information using subsystems of GMDSS, to fulfill the functional requirements of GMDSS, and to provide radio services in emergencies is entitled to hold an STCW endorsement suitable for performing duties associated with GMDSS.

* * * * *

193. Revise newly redesignated § 11.701 to read as follows:

**§ 11.701 Scope of pilot endorsements.**

(a) An applicant for an endorsement as first-class pilot need not hold any other officer endorsement issued under this part.

(b) The issuance of an endorsement as first-class pilot to an individual qualifies that individual to serve as pilot over the route(s) specified on the endorsement, subject to any limitations imposed under paragraph (c) of this section.

(c) The Officer in Charge, Marine Inspection, issuing an endorsement as first-class pilot, imposes appropriate limitations commensurate with the experience of the applicant, with respect to class or type of vessel, tonnage, route, and waters.

(d) A license or MMC endorsement issued for service as a master, mate, or operator of uninspected towing vessels authorizes service as a pilot under the provisions of § 15.812 of this subchapter. Therefore, first-class pilot endorsements will not be issued with tonnage limitations of 1600 gross tons or less.

194. In newly redesignated § 11.703—

a. Revise paragraphs (a) and (c) to read as set out below; and

b. In paragraph (d), after the words ''holding a license'', add the words ''or MMC endorsement'':

**§ 11.703 Service requirements.**

(a) The minimum service required to qualify an applicant for an endorsement as first-class pilot is predicated upon the nature of the waters for which pilotage is desired.

* * * * *

(c) Completion of a course of pilot training approved by the National Maritime Center, under subpart C of this part may be substituted for a portion of the service requirements of this section in accordance with § 11.304. Additionally, round trips made during this training may apply toward the route familiarization requirements of § 11.705. An individual using substituted service must have at least nine months of shipboard service.

* * * * *

195. In newly redesignated § 11.705, revise paragraphs (b) and (c) to read as follows:

**§ Route familiarization requirements.**

* * * * *

(b) An applicant holding no other deck officer endorsement seeking an endorsement as first-class pilot shall furnish evidence of having completed a minimum number of round trips, while serving as quartermaster, wheelsman, able seaman, apprentice pilot, or in an equivalent capacity, standing regular watches at the wheel or in the pilot house as part of routine duties, over the route sought. Evidence of having completed a minimum number of round trips while serving as an observer, properly certified by the master and/or pilot of the vessel, is also acceptable. The range of round trips for an endorsement is a minimum of 12 round trips and a maximum of 20 round trips. An applicant may have additional routes added to the first-class pilot endorsement by meeting the requirements in paragraph (c) of this section.

(c) An applicant who currently holds a deck officer license or MMC endorsement seeking an endorsement as first-class pilot for a particular route shall furnish evidence of having completed the number of round trips over the route, specified by the Officer In Charge, Marine Inspection, within the range limitations of this paragraph, for the particular grade of existing license or MMC endorsement held. The range of round trips for an endorsement is a minimum of eight round trips and a maximum of 15 round trips.

* * * * *

196. Revise newly redesignated § 11.707 to read as follows:

**§ 11.707 Examination requirements.**

(a) An applicant for an endorsement as first class pilot, except as noted in paragraph (b) of this section, is required to pass the examination described in subpart I of this part.

(b) An applicant for an extension of route, or an applicant holding a license or MMC endorsement as master or mate authorized to serve on vessels of over 1,600 gross tons seeking an endorsement as first class pilot, is required to pass those portions of the examination described in subpart I of this part that concern the specific route for which endorsement is sought.

197. In newly redesignated § 11.709——

a. In paragraph (c), remove the words ''§ 10.205 (d)'' and add, in their place, ''§ 10.215'';

b. In paragraph (d), wherever the phrase ''license or endorsement'' appears, insert the word ''MMC'' before the word ''endorsement''; and

c. Revise paragraph (b) to read as follows:

**§ 11.709 Annual physical examination requirements.**

* * * * *

(b) Every person holding a license or MMC endorsement as first-class pilot shall have a thorough physical examination each year.

* * * * *

**§ 11.711 [Amended]**

198. In newly redesignated § 11.711—

a. In paragraphs (a) and (d), after the words ''first class pilot'', remove the words ''license or''; and

b. In paragraph (b), after the words ''additional round trips,'' remove the words ''license or'' and, after the words ''contained in § '' remove the number ''10'' and add, in its place, the number ''11''.

**§ 11.713 [Amended]**

199. In newly redesignated § 11.713—

a. In paragraphs (a) and (b), wherever the phrase ''license or endorsement'' appears, insert the word ''MMC'' before the word ''endorsement''; and

b. In paragraph (b), after the words ''of the renewed'' remove the words ''license or''.

**§ 11.803 [Removed and Reserved]**

200. Remove and reserve newly redesignated § 11.803.

201. Revise newly redesignated § 11.805 to read as follows:

**§ 11.805 General requirements.**

(a) The applicant for an endorsement as staff officer is not required to take any examination; however, the applicant shall present to the Officer in Charge, Marine Inspection a letter justifying the need for the endorsement.

(b) [Reserved]

(c) An applicant for a higher grade in the staff department shall apply in the same manner as for an original endorsement and shall surrender the previous Coast Guard issued credentials upon issuance of the new MMC. A staff officer may serve in a lower grade of service for which he or she is registered.

(d) Title 46 U.S.C. 8302 addresses uniforms for staff officers who are members of the Naval Reserve.

(e) A duplicate MMC may be issued by the Officer in Charge, Marine Inspection. (See § 10.229.)

(f) An MMC is valid for a term of five years from the date of issuance. Procedures for renewing endorsements are found in § 10.227. .

(g) Each applicant for an original or a higher grade of endorsement, as described by paragraph (c) of this section, shall produce evidence of having passed a chemical test for dangerous drugs or of qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued an MMC.

202. In newly redesignated § 11.807—

a. In paragraph (a) introductory text, after the words ''The applicant for'' remove the words ''a certificate of registry'' and add, in their place, the words ''an endorsement'';

b. In paragraph (c), after the words ''an applicant for'' remove the words ''a certificate of registry'' and add, in their place, the words ''an endorsement'';

c. In paragraph (d), after the words ''an applicant for'' remove the words ''a certificate of registry'' and add, in their place, the words ''an endorsement'', and after the words ''may issue the'' remove the words ''certificate of registry'' and add, in their place, the word ''MMC'';

d. Add new paragraphs (a)(7) and (8) to read as follows:

**§ 11.807 Experience requirements for registry.**

(a) * * *

* * * * *

(7) *Marine physician assistant.* Successful completion of an accredited course of instruction for a physician's assistant or nurse practitioner program.

(8) *Hospital corpsman.* A rating of at least hospital corpsman or health services technician, first class in the U.S. Navy, U.S. Coast Guard, U.S. Marine Corps, or an equivalent rating in the U.S. Army (not less than staff sergeant, Medical Department, U.S.A.), or in the U.S. Air Force (not less than technical sergeant, Medical Department, U.S.A.F.), and a period of satisfactory service of at least one month in a military hospital or U.S. Public Health Service Hospital.

* * * * *

**§ 11.809 [Removed and Reserved]**

203. Remove and reserve newly redesignated § 11.809.

204. In newly redesignated § 11.901—

a. In paragraph (a), remove the word ''license'' and add, in its place, the word ''endorsement'', and remove the number ''10'' and add, in its place, the number ''11'';

b. In paragraph (b) introductory text, remove the word ''license'' and add, in its place, the word ''endorsement'';

c. In paragraph (b)(2), remove the word ''licenses'' and add, in its place, the word ''endorsements'';

d. In paragraph (c) introductory text, remove the number ''10'' wherever it appears and add, in its place, the number ''11''; and

e. Revise paragraph (b)(1) to read as follows:

**§ 11.901 General provisions.**

* * * * *

(b) * * *

(1) MMCs endorsed for restricted routes for reduced service (master or mate of vessels of not more than 200 gross tons, operator of uninspected passenger vessels or master or mate (pilot) of towing vessels); or

* * * * *

**§ 11.903 [Amended]**

205. In newly redesignated § 11.903—

a. In the section heading, remove the word ''Licenses'' and add, in its place, the word ''Endorsements'';

b. In paragraph (a) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

c. In paragraph (b) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

d. In paragraphs (b)(2) and (3), remove the word ''license'';

e. In paragraph (c) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'', and remove the number ''10'' and add, in its place, the number ''11'';

f. In paragraph (d), remove the words ''a license'' and add, in their place, the words ''an endorsement'' and remove the number ''10'' wherever it appears and add, in its place, the number ''11''; and

g. Redesigante Table 10.903–1 as Table 11.903(c).

206. In newly redesignated § 11.910—

a. Revise the section heading and introductory text as set out below;

b. Redesignate Table 10.910–1 as Table 11.910–1 and revise the heading and subheading to read as set out below; and

c. In Table 10.910–2—

i. Redesignate Table 10.910–2 as Table 11.910–2;

ii. In the subheading for newly redesignated Table 11.910–2, remove the word ''License'' and add, in its place, the word ''Endorsement'';

iii. In the first column entitled ''Examination topics'', on line 182, remove the words ''Licensing & Certification'' and add, in their place, the word ''Credentialing'';

iv. In footnotes 6 and 7, remove the word ''licenses'' wherever it may appear, and add, in its place, the words ''officer endorsements''; and

v. In footnote 8, remove the word ''licenses'':

**§ 11.910 Subjects for deck officer endorsements.**

Table 11.910–1 gives the codes used in table 11.910–2 for all deck officers. Table 11.910–2 indicates the examination subjects for each endorsement, by code number. Figures in the body of the table, in place of the letter ''x'', refer to notes.

Table 11.910-1 Codes for Deck Officer Endorsements

Deck Officer Endorsements:

* * * * *

207. In newly redesignated § 11.920—

a. Revise the section heading and introductory text to read as set out below;

b. Redesignate Table 10.920–1 as Table 11.920–1 and revise it to read as set out below; and

c. Redesignate Table 10.920–2 as Table 11.920–2 and in the first column entitled ''Examination topics'', on line 138, remove the words ''Licensing and certification'' and add, in their place, the word ''Credentialing'':

**§ 11.920 Subjects for MODU endorsements.**

Table 11.920–1 gives the codes used in Table 11.920–2 for MODU endorsements. Table 11.920–2 indicates the examination subjects for each endorsement by the code number.

Table 11.920–1 Codes for MODU Endorsements

* * * * *

208. In newly redesignated § 11.950, revise the section heading and redesignate Table 10.950 as Table 11.950 and revise the heading to read as follows:

**§ 11.950 Subjects for engineer endorsements.**

Table 11.950 Subjects for Engineer Endorsements

* * * * *

209. Revise newly redesignated § 11.1005 to read as follows:

**§ 11.1005 General requirements for officers.**

To serve on a Ro-Ro passenger ship after January 31, 1997, a person endorsed as master, chief mate, mate, chief engineer, or engineer shall meet the appropriate requirements of STCW Regulation V/2 and Section A–V/2 of the STCW Code (incorporated by reference in § 11.102) and shall hold documentary evidence to show his or her meeting these requirements.

210. Revise newly redesignated § 11.1105 introductory text and paragraph (a) to read as follows:

**§ 11.1105 General requirements for officer's endorsements.**

If you are a master, mate, chief mate, engineer, or chief engineer, then, before you may serve on a passenger ship, you must—

(a) Meet the appropriate requirements of the STCW Regulation V/3 and of section A–V/3 of the STCW Code (incorporated by reference in § 11.102); and

* * * * *

## PART 12—CERTIFICATION OF SEAMEN

211. The authority citation for part 12 is revised to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701,

and 70105; Department of Homeland Security Delegation No. 0170.1.

**§ 12.01–1 [Amended]**

212. In § 12.01–1—

a. In paragraph (a)(2), after the words ''and to receive the'', remove the words ''certificate or''; and

b. Remove paragraphs (a)(3) and (c).

213. Revise § 12.01–3 to read as follows:

**§ 12.01–3 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental Standards (G–PSO), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in this section.

(b) *International Maritime Organization (IMO)*, 4 Albert Embankment, London, SE1 7SR, England.

(1) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (the STCW Convention or the STCW) , incorporation by reference approved for § § 12.01–1, 12.02–7, 12.02–11, 12.03–1, 12.05–3, 12.05–7, 12.05–11, 12.10–3; 12.10–5, 12.10–7, 12.10–9, 12.15–3, 12.15–7, 12.25–45, 12.30–5, and 12.35–5.

(2) The Seafarers' Training, Certification and Watchkeeping Code (the STCW Code), incorporation by reference approved for § § 12.01–1, 12.02–7, 12.02–11, 12.03–1, 12.05–3, 12.05–7, 12.05–11, 12.10–3, 12.10–5, 12.10–7, 12.10–9, 12.15–3, 12.15–7, 12.25–45, 12.30–5, and 12.35–5.

**§ 12.01–6 [Removed and Reserved]**

214. Remove and reserve § 12.01–6.

**§ 12.01–7 [Removed and Reserved]**

215. Remove and reserve § 12.01–7.

**§ 12.02–3 [Removed and Reserved]**

216. Remove and reserve § 12.02–3.

**§ 12.02–4 [Removed and Reserved]**

217. Remove and reserve § 12.02–4.

**§ 12.02–5 [Removed and Reserved]**

218. Remove and reserve § 12.02–5.

**§ 12.02–7 [Amended]**

219. In § 12.02–7—

a. In paragraph (a), remove the words ''shall be issued, at the option of the seaman, a continuous discharge book, a certificate of identification, or merchant mariner's document representing such certificate of identification which shall be retained by him. This book or certificate of identification or merchant mariner's document will bear a number, and this same number shall be shown on all certificates of service or efficiency issued to the holder of the book or certificate or document.'' and add, in their place, the words ''must carry a valid Merchant Mariner Credential (MMC) or Merchant Mariner Document (MMD) with all appropriate rating endorsements for the position served and a valid Transportation Worker Identification Credential (TWIC).'';

b. In paragraph (b), remove the words ''continuous discharge book or certificate of identification or merchant mariner's document representing such a certificate'' and add, in their place, the words ''valid MMC or MMD with all applicable rating endorsements for the position sought and a valid TWIC''; and after the words ''before a shipping commissioner'' and after the words ''who do not possess'', remove the words ''one of these documents'' and add, in their places, the words ''these credentials'';

c. In paragraph (c)(1), remove the words ''licensed officer and registered staff officer, shall possess a valid certificate of service, or merchant mariner's document representing such certificate, issued by an Officer in Charge, Marine Inspection'' and add, in their place, the words ''officer and staff officer, must possess a valid MMC or MMD with all appropriate endorsements for the position served'';

d. In paragraphs (c)(2) and (c)(3), remove the words ''certificate of service or efficiency is'', wherever they appear, and add, in their place, the words ''endorsements are'';

e. In paragraph (c)(3), after the words ''below the rank of'', remove the word ''licensed'';

f. In paragraph (d), remove the words ''After January 31, 1997, each'' and add, in their place, the word ''Each''; and remove the word ''tons'' and add, in its place, the words ''tonnage (200 gross register tons)'';

g. In paragraph (e), remove the words ''After January 31, 2002, each'' and add, in their place, the word ''Each''; and

h. In paragraph (f), remove the words ''no unlicensed person'' and add, in their place, the words ''no person subject to this part''.

**§ 12.02–9 [Removed and Reserved]**

220. Remove and reserve § 12.02–9.

**§ 12.02–10 [Removed and Reserved]**

221. Remove and reserve § 12.02–10.

222. Revise § 12.02–11 to read as follows:

**§ 12.02–11 General provisions respecting rating endorsements.**

(a)(1) An MMC with a deck officer endorsement will also be endorsed for ''any rating in the deck department, except able seaman'', and will authorize the holder to serve in any rating capacity in the deck department, except able seaman. If a deck officer qualifies as able seaman, the MMC will be endorsed, ''any rating in the deck department, including able seaman'', and such endorsement will be deemed to include an endorsement as lifeboatman.

(2) An MMC issued to an engineer officer endorsed for inspected vessels of over 2,000 horsepower will be endorsed for ''any rating in the engine department'', and will authorize the holder to serve in any rating capacity in the engine department. If an engineer officer qualifies as a lifeboatman, the further endorsement, ''lifeboatman'', will be placed on the MMC.

(b) The authorized holder of any valid rating endorsement may serve in any capacity in the staff department of a vessel, except in those capacities requiring a staff officer; except that, whenever the service includes the handling of food, no person may be so employed unless his or her credential bears the food handler's endorsement ''(F.H.)''.

(c) A rating endorsement as able seaman or as lifeboatman must authorize service as lifeboatman.

(d) When a rating endorsement is issued, renewed, or endorsed, the Officer in Charge, Marine Inspection, will determine whether the holder of the credential is required to hold an STCW endorsement for service on a seagoing vessel, and then, if the holder is qualified, the Officer in Charge, Marine Inspection will issue the appropriate endorsement. The Officer in Charge, Marine Inspection, will also issue an STCW endorsement at other times, if circumstances so require and if the holder of the document is qualified to hold the endorsement. The Officer in

Charge, Marine Inspection, will issue an STCW endorsement for the following ratings:

(1) A rating forming part of a navigational watch on a seagoing ship of 500 GT or more if the holder of the credential is qualified in according to STCW Regulation II/4 of the STCW Code (Incorporated by reference, see § 12.01–3.), to perform the navigational function at the support level.

(2) A rating forming part of a watch in a manned engineroom, or designated to perform duties in a periodically unmanned engineroom, on a seagoing ship driven by main propulsion machinery of 750 kW (1,000 hp) of propulsion power or more, if the holder is qualified in according to STCW Regulation III/4 and Section A–iii/4 of the STCW Code, to perform the marine-engineering function at the support level.

(e) At the request of the holder of the document, the Officer in Charge, Marine Inspection, may add an endorsement to indicate that a qualified holder has received basic safety-training or instruction required under Chapter VI of STCW.

**§ 12.02–12 [Removed and Reserved]**

223. Remove and reserve § 12.02–12.

**§ 12.02–13 [Removed and Reserved]**

224. Remove and reserve § 12.02–13.

**§ 12.02–14 [Removed and Reserved]**

225. Remove and reserve § 12.02–14.

**§ 12.02–15 [Removed and Reserved]**

226. Remove and reserve § 12.02–15.

**§ 12.02–17 [Amended]**

227. In § 12.02–17—

a. In the section heading, remove the words ''Preparation and issuance of documents'' and add, in their place, the words ''Examination procedures and denial of rating endorsements.'';

b. In paragraph (a), remove the words ''of a person for a merchant mariner's document'' and add, in their place, the words ''for a rating endorsement'';

c. Remove paragraphs (b), (c), (d), (e), and (h);

d. Redesignate paragraph (f) as paragraph (b) and remove the words ''certificate of service or efficiency'' and add, in their place, the words ''rating endorsement''; and after the words ''examined and refused'', remove the words ''a certificate'' and add, in their place, the words ''the endorsement''; and

e. Redesignate paragraph (g) as paragraph (c), and remove the word ''certificate'' and add, in its place, the words ''rating endorsement''.

**§ § 12.02–18 through 12.02–27 [Removed and Reserved]**

228. Remove and reserve § § 12.02–18 through 12.02–27.

**§ 12.03–1 [Amended]**

229. In § 12.03–1—

a. In paragraph (a) introductory text, after the words ''part 10 of this'', remove the word ''chapter'', and add, in its place, the word ''subchapter''; remove the text ''§ 10.302'' and add, in its place, the text ''§ 11.302''; after the words ''used to qualify'' add the words ''an applicant''; after the words ''hold an STCW'', remove the words ''certificate or endorsement'', and add, in their place, the words ''or rating''; and remove the words ''for service on or after February 1, 2002,'';

b. In paragraph (a)(3)(iii), remove the words ''license, endorsement,'' and add, in their place, the words ''Coast Guard credential'';

c. In paragraph (a)(4), remove the words ''a maritime license or document'' and add, in their place, the words ''Coast Guard credential'';

d. In paragraph (b), after the words ''training necessary for'', remove the word ''licenses'' and add, in its place, the words ''both officer'';

e. In paragraph (c) introductory text, before the words ''particular training does'', add the word ''the''; and

f. In paragraph (c)(2), remove the words ''Commanding Officer,''; and after the words ''National Maritime Center'', add the text ''(NMC)''.

**§ 12.05–1 [Amended]**

230. In paragraph (a), remove the words ''employed in a rating'' and add, in their place, the words ''serving under the authority of a rating endorsement''; and remove the words ''a merchant mariner's document'' and add, in their place, the words ''an MMC or MMD endorsement''.

**§ 12.05–3 [Amended]**

231. In § 12.05–3—

a. In paragraph (a)(2), remove the word ''examination'' and add, in its place, the words ''and medical examination in § 10.215 of this subchapter''; and

b. In paragraph (b) introductory text, remove the words ''valid for any period on or after February 1, 2002,''.

**§ 12.05–7 [Amended]**

232. In § 12.05–7—

a. In paragraph (a) introductory text, before the words ''able seaman'' add the words ''endorsement as''; and

b. Remove paragraphs (c), (d), and (e).

**§ 12.05–9 [Amended]**

233. In paragraph (e), remove the words ''is in valid possession of a certificate as able seaman endorsed'' and add, in their place, the words ''holds a valid MMC or MMD endorsed as able seaman''; and after the words ''service to qualify for'', remove the word ''a certificate as able seaman endorsed'' and add, in their place, the words ''an endorsement as able seaman''; after the words ''issued a new'', remove the word ''document'' and add, in its place, the word ''MMC''; after the words ''for cancellation the'' remove the word ''document'' and add, in its place, the word ''credential''; remove the words ''by a medical officer of the Public Health Service''; and after the words ''determine his competency'', add the words ''as set forth in § 10.215 of this chapter''.

**§ 12.05–11 [Amended]**

234. In § 12.05–11—

a. In the section heading, remove the words ''merchant mariner's document endorsed'' and add, in their place, the word ''endorsements'';

b. In paragraph (a), remove the words ''a merchant mariner's document'' and add, in their place, the words ''an MMC or MMD''; remove the word ''unlicensed''; and after the words ''when serving'', remove the words ''in as a ''rating forming part of a navigational watch'' '' and add, in their place, the words ''as a rating forming part of a navigational watch (RFPNW)''; and

c. In paragraph (b), remove the words ''A merchant mariner's document'' and add, in their place, the words ''An MMC or MMD''; remove the words ''a certificate of efficiency'' and add, in their place, the words ''an endorsement''; and remove the words ''without further endorsement''.

**§ 12.10–1 [Amended]**

235. In § 12.10–1—

a. In the section heading, remove the word ''Certification'' and add, in its place, the word ''Credentials''; and

b. In the text, remove the words ''employed in a rating'' and add, in their place, the words ''serving under the authority of a rating endorsement''; remove the words ''certificated lifeboatmen shall produce a certificate as lifeboatman or merchant mariner's document'' and add, in their place, the words ''lifeboatmen must produce an MMC or MMD''; and remove the words ''certificate of efficiency'' and add, in their place, the word ''endorsement''.

**§ 12.10–3 [Amended]**

236. In § 12.10–3—

a. In paragraph (a) introductory text, remove the word ''certification'' and add, in its place, the words ''an endorsement'';

b. In paragraph (a)(5), after the words ''training vessel'', remove the word ''and'' and add, in its place, the word ''or'';

c. In paragraph (b), remove the word ''certification'' and add, in its place, the words ''an endorsement''; and

d. In paragraph (c), remove the word ''certified'' and add, in its place, the words ''eligible for an endorsement''.

**§ 12.10–5 [Amended]**

237. In § 12.10–5—

a. In paragraph (a) introductory text, remove the word ''certified'' and add, in its place, the words ''issued an endorsement''; and

b. In paragraph (d), remove the words ''After July 31, 1998, each'' and add, in their place, the word ''Each'' and remove the words ''certificate endorsed for'' and add, in their place, the words ''endorsement with an STCW endorsement for''.

**§ 12.10–7 [Amended]**

238. In § 12.10–7—

a. In the section heading, after the words ''provisions respecting'', remove the words ''merchant mariner's documents'' and add, in their place, the words ''an MMC or MMD'' ; and

b. In the introductory text, before the words ''endorsed as able seaman'', remove the words ''A merchant mariner's document and'' and add, in their place, the words ''An MMC or MMD''; and after the words ''equivalent of'', remove the words ''a certificate as lifeboatman or of''; after the words ''will be accepted'' remove the words ''as either of these wherever either is'' and add, in their place, the words ''wherever a lifeboatman is''; after the words ''that, when'', remove the words ''the holder documented as''; and remove the word ''certified'' and add, in its place, the word ''endorsed''.

239. In § 12.10–9, revise the heading, paragraph (a) and paragraph (b) introductory text to read as follows:

**§ 12.10–9 Endorsement for proficiency in fast rescue boats.**

(a) Each person engaged or employed as a lifeboatman proficient in fast rescue boats must hold an appropriately endorsed MMC or MMD.

(b) To be eligible for an MMC endorsed for proficiency in fast rescue boats, an applicant must—

* * * * *

**§ 12.13–3 [Amended]**

240. In § 12.13–3 text, remove the words ''license or document'' and add, in their place, the word ''MMC''.

**§ 12.15–1 [Amended]**

241. In § 12.15–1—

a. In the section heading, remove the word ''Certification'' and add, in its place, the word ''Credentials'';

b. In paragraph (a), remove the words ''employed in a rating'' and add, in their place, the words ''serving under the authority of a rating endorsement'' and after the words ''vessel requiring'' remove the word ''certificated'' and after the words ''shall produce'' remove the words ''a certificate'' and add, in their place, the words ''an endorsement''; and

c. In paragraph (b), remove the word ''certificate'' and add, in its place, the word ''endorsement''.

**§ 12.15–3 [Amended]**

242. In § 12.15–3—

a. In paragraph (a), after the words ''any person below'', remove the words ''the rating of licensed''; and after the words ''who holds'', remove the words ''a certificate of service as such'' and add, in their place, the words ''an MMC or MMD endorsed as''; and, after the words ''Coast Guard'', remove the words ''or predecessor authority'';

b. In paragraph (b), after the words ''considered a rating'', remove the words ''not above that of'' and add, in their place, the words ''equal to''; and after the words ''passer or wiper'', remove the words '', but equal thereto'';

c. In paragraph (c), remove the word ''certification'' and add, in its place, the words ''an endorsement'';

d. In paragraph (d) introductory text, remove the words ''After July 31, 1998, an'' and add, in their place, the word ''An''; and remove the word ''certification'' and add, in its place, the word ''endorsement''; and

e. In paragraph (e), remove the words ''After July 31, 1998, an'' and add, in their place, the word ''An''; and remove the word ''certification'' and add, in its place, the word ''endorsement''.

243. Revise § 12.15–5 to read as follows:

**§ 12.15–5 Physical and medical requirements.**

The physical and medical requirements for an endorsement as QMED are found in part 10 of this chapter.

**§ 12.15–7 [Amended]**

244. In § 12.15–7—

a. In paragraph (a), after the words ''applicant for'', remove the words ''a certificate of service'' and add, in their place, the words ''an endorsement'';

b. In paragraph (b)(1), after the words ''graduate of a school ship may'', remove the words ''be rated'' and add, in their place, the words ''qualify for a rating endorsement''; and

c. In paragraph (c), after the words ''qualified rating'', add the words ''in the engineer department''.

**§ 12.15–9 [Amended]**

245. In § 12.15–9—

a. In paragraph (a), remove the word ''certification'' and add, in its place, the word ''endorsement'';

b. In paragraph (c), remove the word ''certification'' and add, in its place, the words ''an endorsement''; and

c. In paragraph (d), remove the word ''certification'' and add, in its place, the words ''an endorsement''.

**§ 12.15–11 [Amended]**

246. In § 12.15–11—

a. In the section heading, remove the words ''merchant mariner's documents endorsed'' and add, in their place, the words ''an endorsement''; and

b. In the introductory text, after the words ''The holder of'', remove the words ''a merchant mariner's document endorsed'', and add, in their place, the words ''an endorsement''; after the words ''Each qualified member of the engine department rating'', remove the words ''for which a holder of a merchant mariner's document is qualified must be endorsed separately'' and add, in their place, the words ''must be a separate endorsement''; and after the words ''all ratings covered by'', remove the words ''a certificate as a qualified member of the engine department, the certification'' and add, in their place, the words ''an endorsement as a QMED, the endorsement''.

**§ 12.15–13 [Amended]**

247. In § 12.15–13—

a. In paragraph (a) introductory text, remove the words ''a certificate'', and add, in their place, the words ''an endorsement''; and remove the words ''a merchant mariner's document'', and add, in their place, the words ''an MMC or MMD'';

b. In paragraph (b), remove the words ''merchant mariner's document'', and add, in their place, the word ''MMC''; and

c. In paragraph (c), remove the words ''a merchant mariner's document'', and add, in their place, the words ''an MMC or MMD''; remove the word ''unlicensed''; and after the words ''entered on his'', remove the word ''document'' and add, in its place, the words ''or her credential''.

**§ 12.15–15 [Amended]**

248. In § 12.15–15—

a. In paragraph (a) introductory text, remove the words ''a certificate'', and add, in their place, the words ''an

endorsement''; remove the words ''a merchant mariner's document'', and add, in their place, the words ''an MMC or MMD''; and remove the word ''certification'' and add, in its place, the word ''endorsement'';

b. In paragraph (b), remove the words ''current merchant mariner's document held by the applicant'', and add, in their place, the words ''applicant's MMC''; and

c. In paragraph (c), remove the words ''a merchant mariner's document'', and add, in their place, the words ''an MMC or MMD''; and remove the word ''unlicensed'' and after the words ''entered on his'', remove the word ''document'' and add, in its place, the words ''or her credential''.

**§ 12.25–1 [Amended]**

249. In § 12.25–1—

a. In the section heading, remove the word ''Certification'' and add, in its place, the word ''Credentials''; and

b. In the text, remove the word ''certificated'' and remove the words ''a merchant mariner's document'' and add, in their place, the words ''an MMC or MMD with the appropriate endorsement''.

250. Revise § 12.25–10 to read as follows:

**§ 12.25–10 General requirements.**

(a) Rating endorsements shall be issued without professional examination to applicants in capacities other than able seaman, lifeboatman, tankerman, or qualified member of the engine department. For example, ordinary seaman—wiper—steward's department (F.H.). Holders of MMCs or MMDs endorsed as ordinary seaman may serve in any unqualified rating in the deck department. Holders of MMCs or MMDs endorsed as wiper may serve in any unqualified rating in the engine department. MMCs or MMDs endorsed as steward's department (F.H.) will authorize the holder's service in any capacity in the steward's department. (See § 12.02–11(b) for unqualified ratings in the staff department.)

(b) When the holder of an endorsement is qualified as a food handler, the steward's department endorsement will be followed by the further endorsement (F.H.).

251. Revise § 12.25–20 to read as follows:

**§ 12.25–20 Physical and medical requirements.**

The physical and medical requirements for this subpart are found in part 10.

252. Revise § 12.15–25 to read as follows:

**§ 12.25–25 Members of Merchant Marine Cadet Corp.**

No ratings other than cadet (deck) or cadet (engine), as appropriate, and lifeboatman will be shown on an MMC issued to a member of the U.S. Merchant Marine Cadet Corps. The MMC will also indicate that it is valid only while the holder is a cadet in the U.S. Maritime Administration training program. The MMC must be surrendered upon the holder being endorsed in any other rating or upon being issued an officer's endorsement and the rating of cadet (deck) or cadet (engine) will be omitted.

**§ 12.25–30 [Amended]**

253. In § 12.25–30, in the text, remove the words ''merchant mariner's document'' and add, in their place, the words ''MMC endorsed''; and remove the words ''documents or certificates'' and add, in their place, the word ''endorsements''.

**§ 12.25–35 [Amended]**

254. In § 12.35–35—

a. In paragraph (a), remove the words ''a merchant mariner's document'' and add, in their place, the words ''an endorsement''; and

b. In paragraph (b), remove the words ''merchant mariner's document with''.

**§ 12.25–40 [Amended]**

255. In § 12.25–40-in the text, remove the words ''a merchant mariner's document'' and add, in their place, the words ''an endorsement''.

**§ 12.25–45 [Amended]**

256. In § 12.25–45, in the text, remove the words ''certificates or''.

**§ 12.30–1 [Amended]**

257. In § 12.30–1, in the text, remove the words ''certification of'' and add, in their place, the words ''endorsements for''.

**§ 12.30–3 [Removed and Reserved]**

258. Remove and reserve § 12.30–3.

**§ 12.30–5 [Amended]**

259. In § 12.30–5, in the text, remove the words ''after January 31, 1997,''; and remove the word ''MMD'' and add, in its place, the word ''endorsement''.

**§ 12.35–1 [Amended]**

260. In § 12.35–1, in the text, remove the word ''certification'' and add, in its place, the word ''qualification''; and remove the word ''§ 12.35–3'' and add, in its place, the words ''part 10''.

**§ 12.35–3 [Removed and Reserved]**

261. Remove and reserve § 12.35–3.

**§ 12.35–5 [Amended]**

262. In § 12.35–5—

a. In the introductory text, remove the words ''If you are an unlicensed person then before you'' and add, in their place, the words ''A mariner with no endorsements,''; and remove the words ''you must'' and add, in their place, the words ''only after meeting the following conditions''; and

b. In paragraph (b), remove the words ''you do meet'', and add, in their place, the words ''the mariner meets''.

## PART 13—CERTIFICATION OF TANKERMEN

263. The authority citation for part 13 continues to read as follows:

**Authority:** 46 U.S.C. 3703, 7317, 8105, 8703, 9102; Department of Homeland Security Delegation No. 0170.1.

**§ 13.101 [Amended]**

264. In § 13.101, remove the words ''to a merchant mariner's document'' and add, in their place, the words ''on a merchant mariner credential''.

**§ 13.103 [Removed and Reserved]**

265. Remove and reserve § 13.103.

266. Add new § 13.106 to read as follows:

**§ 13.106 Requirement to hold an MMC.**

An applicant for any endorsement in this part must also meet the requirements for the MMC on which the endorsement would appear. These requirements are set out in part 10 of this chapter.

**§ 13.107 [Amended]**

267. In § 13.107—

a. In paragraphs (a), (b), (c), (d), (e), and (f), remove the word ''MMD'' wherever it appears, and add, in its place, the word ''MMC'';

b. In paragraph (a), remove the words ''engineer's license'' and add, in its place, the words ''engineer license or engineer endorsement'';

c. In paragraph (d), place quotation marks (''') before and after the words ''Tankerman-Engineer''; after the words ''No person licensed'', add the words ''or credentialed''; and remove the number ''10'', and add, in its place, the number ''11''.

d. In paragraph (f), remove the text ''10.105'', and add, in their place, the text ''10.217''; and remove the word ''chapter'', and add, in its place, the word ''title''.

**§ 13.109 [Amended]**

268. In § 13.109(c), remove the text ''10.105'' and add, in their place, the text ''10.217''; and remove the word ''MMD'' and add, in its place, the word ''MMC''.

**§ 13.111 [Amended]**

269. In § 13.111—

a. In the section heading, after the word ''Restricted'' add the word ''tankerman'';

b. In paragraph (a), remove the words ''46 CFR 10.105'' and add, in their place, the words ''§ 10.217 of this chapter''; and

c. In paragraph (d)(3), after the words ''passing a physical'', add the words ''and medical''; and remove the words ''in accordance with § 13.125'' and add, in their place, the words ''according to § 10.215 of this chapter''.

**§ 13.119 [Amended]**

270. Remove the word ''MMD'' and add, in its place, the words ''merchant mariner's document or merchant mariner credential on which the endorsement appears''.

**§ 13.120 [Amended]**

271. In § 13.120, in the section heading, before the word ''endorsement'', add the word ''tankerman''; remove the number ''12.02–27'' and add, in its place, the number ''10.227''; and remove the word ''MMD'' and add, in its place, the word ''MMC''.

**§ 13.121 [Amended]**

272. In § 13.121—

a. In the section heading, remove the word ''training'' and after the word ''tankerman'', add the word ''endorsements''; and

b. In paragraph (a), remove the number ''10'' wherever it may appear and add, in its place, the number ''11''.

**§ 13.125 [Amended]**

273. In § 13.125—

a. In the section heading, after the word ''Physical'' add the words ''and medical''.

b. In the text, remove the words ''10.205(d) of this chapter, excluding paragraph (d)(2) of that section'' and add, in their place, the words ''10.215 of this chapter''.

**§ 13.129 [Amended]**

274. In § 13.129—

a. In the section heading, after the word ''tankerman'', add the word ''endorsements''.

b. In Table 13.129, in the column ''Physical required'', remove the numbers ''13.125'', ''13.111(b)'', ''13.111(c)'', and ''13.111(d)(3)'' wherever they appear and add, in their place, the number ''10.215''.

**§ 13.201 [Amended]**

275. In § 13.201(c), after the word ''physical'' add the words ''and medical''; and remove the words ''in accordance with § 13.125'' and add, in their place, the words ''according to § 10.215 of this chapter''.

**§ 13.203 [Amended]**

276. In § 13.203—

a. In paragraph (a)(1), after the words ''service as a'', remove the word ''licensed''; after the words ''deck officer or'', remove the words ''a licensed''; and before the word ''engineering'', add the word ''an'';

b. In paragraph (a)(2), remove the word ''unlicensed'' and add, in its place, the word ''rating''; and

c. In paragraph (c) introductory text, after the word ''MMD'', add the words ''or MMC''.

**§ 13.207 [Amended]**

277. In § 13.207, in the text, remove the words ''license or a tankerman endorsement'' and add, in their place, the words ''license, tankerman endorsement, or officer endorsement on an MMC''.

**§ 13.301 [Amended]**

278. In § 13.301(c), after the word ''physical'' add the words ''and medical''; and remove the words ''in accordance with § 13.125'' and add, in their place, the words ''according to § 10.215 of this chapter''.

**§ 13.303 [Amended]**

279. In § 13.303(c) introductory text, after the word ''MMD'' add the words ''or MMC''.

**§ 13.307 [Amended]**

280. In § 13.307(a), remove the words ''license or a tankerman endorsement'' and add, in their place, the words ''license, tankerman endorsement on an MMD or MMC, or an officer endorsement on an MMC''.

**§ 13.401 [Amended]**

281. In § 13.401(c), after the word ''physical'' add the words ''and medical''; and remove the words ''in accordance with § 13.125'' and add, in their place, the number ''according to § 10.215 of this chapter''.

**§ 13.403 [Amended]**

282. In § 13.403(b) introductory text, after the word ''MMD'' add the words ''or MMC''.

**§ 13.407 [Amended]**

283. In § 13.407, in the text, remove the words ''for a license or endorsement'' and add, in their place, the words ''to the Coast Guard for any other endorsement or credential''.

**§ 13.501 [Amended]**

284. In § 13.501(c), after the word ''physical'' add the words ''and medical''; and remove the words ''in accordance with § 13.125'' and add, in their place, the words ''according to § 10.215 of this chapter''.

**§ 13.503 [Amended]**

285. In § 13.503—

a. In paragraph (a)(1), remove the words ''a licensed'' and add, in their place, the word ''an''; and remove the word ''of'' and add, in its place, the word ''on'';

b. In paragraph (a)(2), remove the word ''unlicensed'' and add, in its place, the word ''rating''; and

c. In paragraph (b), after the word ''MMD'', add the words ''or MMC''.

**§ 13.505 [Amended]**

286. In § 13.505(a)(2), remove the words ''licensed and unlicensed'' and add, in their place, the words ''officer, rating, and cadet''.

**§ 13.507 [Amended]**

287. In § 13.507, in the text, remove the words ''license or tankerman endorsement'' and add, in their place, the words ''license, tankerman endorsement, or officer endorsement on an MMC''.

## PART 14—SHIPMENT AND DISCHARGE OF MERCHANT MARINERS

288. The authority citation for part 14 is revised to read as follows:

**Authority:** 5 U.S.C. 552; 46 U.S.C. Chapters 103 and 104; 46 U.S.C. 70105.

**§ 14.205 [Amended]**

289. In § 14.205, in the text, remove the words ''every document, certificate,'' and add, in their place, the words ''a valid Transportation Worker Identification Credential and every document, certificate, credential,''.

**§ 14.207 [Amended]**

290. In § 14.207(a)(1), after the words ''specify at least the name, the'', remove the words ''number of the license or merchant mariner's document'' and add the words ''TWIC number and license, MMD, or MMC number,''.

**§ 14.307 [Amended]**

291. In § 14.307(a), remove the words ''and merchant mariner's document number'' and add, in their place, the words ''TWIC number, and MMD or MMC number''.

## PART 15—MANNING REQUIREMENTS

292. The authority citation for part 15 is revised to read as follows:

**Authority:** 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304,

8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, 9102, and 70105; and Department of Homeland Security Delegation No. 0170.1.

**§ 15.103 [Amended]**

293. In § 15.103—

a. In paragraph (b), remove the words ''of licensed individuals and members of the crew'' and add, in their place, the words ''number of officers and rated crew''; and after the words ''minimum qualifications concerning licenses'', add the words ''and MMC endorsements'';

b. In paragraph (c), remove the words ''licensed individuals'' and add, in their place, the word ''officers''; and

c. In paragraph (g), remove the words ''Licensed personnel'' and add, in their place, the word ''Personnel''; after the words ''an appropriate STCW'', remove the words ''certificate or endorsement'' and add, in their place, the words ''endorsement on their license or MMC''; and before the words ''endorsement will be expressly limited'', remove the words ''certificate or''.

## Subpart B—[Removed and Reserved]

294. Remove and reserve subpart B, consisting of § 15.301.

295. Revise § 15.401 to read as follows:

**§ 15.401 Employment and service within restrictions of credential.**

A person may not employ or engage an individual, and an individual may not serve, in a position in which an individual is required by law or regulation to hold a license, certificate of registry, merchant mariner's document, transportation worker identification credential, and/or merchant mariner credential, unless the individual holds all credentials required, as appropriate, authorizing service in the capacity in which the individual is engaged or employed and the individual serves within any restrictions placed on the credential.

**§ 15.405 [Amended]**

296. In § 15.405, in the text, remove the words ''licensed, registered, or certificated'' and add, in their place, the word ''credentialed''.

**§ 15.410 [Amended]**

297. In § 15.410—

a. In the section heading, remove the word ''Licensed'' and add, in its place, the word ''Credentialed''; and

b. In the text, remove the words ''a licensed individual'' and add, in their place, the words ''an individual holding a license or merchant mariner credential authorizing them''.

**§ 15.515 [Amended]**

298. In § 15.515(b) introductory text, remove the words ''issued by the Coast Guard'' and add, in their place, the words ''or appropriate officer endorsement on their merchant mariner credential''.

**§ 15.520 [Amended]**

299. In § 15.520—

a. In paragraph (b), remove the words ''licensed individuals'' and add, in their place, the word ''officers'';

b. In paragraph (c), after the words ''A license'', add the words ''or officer endorsement on an MMC''; and after the words ''operation specified on the'', remove the word ''license'' and add, in its place, the word ''credential'';

c. In paragraph (d), after the words ''endorsed as an OIM'', add the words ''or an MMC with master and OIM officer endorsements'';

d. In paragraph (e), after the words ''who holds a license'', add the words ''or MMC officer endorsement''; and after the words ''as master endorsed as OIM'', add the words ''or an MMC with master and OIM officer endorsements'';

e. In paragraph (f), after the words ''holds a license or'' add the words ''MMC officer'';

f. In paragraph (g), after the words ''appropriate license'', add the words ''or MMC officer endorsement''; and, after the words ''holding a license or'', add the words ''MMC officer''; and

g. In paragraphs (h), (i), and (l), after the words ''holding a license or'', add the words ''MMC officer''.

**§ 15.605 [Amended]**

300. In § 15.605—

a. In the section heading, remove the word ''Licensed'' and add, in its place, the word ''Credentialed'';

b. In the introductory text, remove the word ''licensed'' and add, in its place, the word ''credentialed'';

c. In paragraph (a), remove the words '', carrying not more than six passengers,''; and after the words ''holding a license'', add the words ''or MMC endorsed''; and after the words ''as operator'', add the words ''of uninspected passenger vessels''; and

d. In paragraph (b), remove the word ''licensed'' and add, in its place, the word ''credentialed''.

**§ 15.610 [Amended]**

301. In § 15.610—

a. In paragraph (a), after the words ''and control of a person'', remove the word ''licensed'' and add, in its place, the words ''holding a license or MMC officer endorsement''; and after the words ''endorsement on his or her license'', add the words ''or MMC'';

b. Remove paragraphs (b) and (c);

c. Redesignate paragraph (d) as paragraph (b);

d. In newly redesignated paragraph (b) introductory text, remove the words ''who holds a first-class pilot's license or'' and add, in their place, the words ''meeting the requirements of paragraph (a) of this section who holds either a first-class pilot's license or MMC officer''; and remove the words ''paragraph (d)(1) or paragraph (d)(2)'' and add, in their place, the words ''paragraphs (b)(1) or (b)(2)''.

**§ 15.701 [Amended]**

302. In § 15.701(b), after the words ''must hold a license'', add the words ''or MMC officer endorsement''; and remove the words ''part 10'' and add, in their place, the words ''parts 10 and 11''.

**§ 15.705 [Amended]**

303. In § 15.705—

a. In paragraph (b), remove the words ''licensed individuals'' and add, in their place, the word ''officers''; and after the words ''deck department other than'', remove the word ''licensed'';

b. In paragraph (c) introductory text, remove the words ''licensed individuals'' and add, in their place, the word ''officers''; and

c. In paragraphs (d) and (e)(1) and (2), remove the word ''licensed'' wherever it appears.

**§ 15.710 [Amended]**

304. In § 15.710 introductory text, after the words ''on the working hours of'', remove the words ''licensed individuals'' and add, in their place, the words ''credentialed officers''; and after the words ''master or other'', remove the words ''licensed individual'' and add, in their place, the words ''credentialed officer''.

305. In § 15.720—

a. In the section heading, remove the words ''licensed and/or documented'' and add, in their place, the word ''credentialed'';

b. In paragraph (a), remove the words ''utilize non-U.S. licensed and documented'' and add, in their place, the words ''use non-U.S. credentialed''; and

c. In paragraph (d), remove the words ''license or document'' wherever they appear and add, in their place, the word ''credential''.

**§ 15.725 [Amended]**

306. In § 15.725, in the text, remove the words ''licensed or documented'' and add, in their place, the word ''credentialed''.

**§ 15.730 [Amended]**

307. In § 15.730, paragraph (d), remove the words ''licensed individuals'' wherever they may appear and add, in their place, the word ''officers''; and after the words ''spoken directly by the'', remove the words ''licensed individual'' and add, in their place, the word ''officer''.

**§ 15.805 [Amended]**

308. In § 15.805—

a. In paragraph (a) introductory text, after the words ''license as master'', add the words ''or a valid MMC with endorsement as ''master'' '';

b. In paragraph (a)(5) introductory text, remove the word ''licensed'' and add, in its place, the words ''holding a license or MMC endorsed''; and

c. In paragraph (a)(5)(ii), remove the word ''endorsed'' and add, in its place, the words ''or MMC with officer endorsement''.

**§ 15.810 [Amended]**

309. In § 15.810—

a. In paragraph (a), remove the word ''licensed'';

b. In paragraph (b) introductory text, remove the word ''licensed'' and add, in its place, the words ''mariners holding a license or MMC officer endorsement as'';

c. In paragraph (b), remove the word ''licensed'' wherever it appears;

d. In paragraph (c), after the words ''appropriate license'', add the words ''or MMC'';

e. In paragraph (d) introductory text, remove the words ''hold a license'' and add, in their place, the words ''satisfy the requirements of § 15.805(a)(5) or hold a license or MMC'';

f. In paragraph (d)(2) introductory text, after the words ''officer's license'', add the words ''or MMC''; and

g. In paragraph (d)(2)(ii), remove the word ''endorsed'' and add, in its place, the words ''or MMC with officer endorsement''.

**§ 15.812 [Amended]**

310. In § 15.812—

a. In paragraph (b)(1), remove the words ''issued by the Coast Guard'', and add, in their place, the words ''or MMC officer endorsement''; and remove the word ''license'' and add, in its place, the word ''credential'';

b. In paragraph (b)(2) introductory text, remove the words ''issued by the Coast Guard'' and add, in their place, the words ''or MMC officer endorsement''; and remove the word ''license'' and add, in its place, the word ''credential'';

c. In paragraph (b)(2)(ii), remove the number ''10.713'' and add, in its place, the number ''11.713'';

d. In paragraph (b)(3) introductory text, remove the words ''issued by the Coast Guard'' and add, in their place, the words ''or MMC officer endorsement''; and remove the word ''license'' and add, in its place, the word ''credential'';

e. In paragraph (b)(3)(ii), remove the number ''10.713'' and add, in its place, the number ''11.713'';

f. In paragraph (b)(3)(iii), remove the number ''10.709'' and add, in its place, the number ''11.709'';

g. In paragraph (c) introductory text, remove the words ''issued by the Coast Guard'' and add, in their place, the words ''or MMC officer endorsement''; and remove the word ''license'' and add, in its place, the word ''credential'';

h. In paragraph (c)(2), remove the number ''10.713'' and add, in its place, the number ''11.713'';

i. In paragraph (c)(3), remove the number ''10.709'' and add, in its place, the number ''11.709'';

j. In table 15.812(e)(1), in the heading to the second column, after the words ''First Class Pilot's licenses'', add the words ''or MMC officer endorsements'';

k. In table 15.812(e)(2), in the heading to the second column, after the words ''First Class Pilot's licenses'', add the words ''or MMC officer endorsements''; and remove the word ''Operator'' wherever it may appear, and add, in its place, the words ''Master, Mate (Pilot) of towing vessels'';

l. In paragraph (f)(1), remove the words ''a federally licensed'' and add, in its place, the words ''an individual holding a valid license or MMC endorsed as'';

m. In paragraph (f)(1)(i), remove the words ''Federal license'' and add, in their place, the words ''authority of a license or MMC''; and

n. In paragraph (f)(2) introductory text, after the words ''with either two'', remove the word ''licensed'' and add, in its place, the word ''credentialed''; and after the words ''on the bridge or'', remove the words ''a federally licensed'' and add, in their place, the words ''an individual holding a valid license or MMC endorsed as''.

**§ 15.815 [Amended]**

311. In § 15.815—

a. In paragraph (a), remove the words ''licensed deck individuals'' and add, in their place, the words ''deck officers''; and

b. In paragraph (c), remove the words ''be licensed'' and add, in their place, the words ''hold a license or MMC officer endorsement''; and after the words ''service as master'', remove the words '', mate, or operator'' and add, in their place, the words ''or mate''.

**§ 15.820 [Amended]**

312. In § 15.820—

a. In paragraph (a) introductory text, remove the words ''appropriate license'' and add, in their place, the words ''MMC or license endorsed''; and after the words ''as chief engineer or'', remove the words ''a license'';

b. In paragraph (a)(3), remove the words ''a licensed individual'' and add, in their place, the words ''an individual with a license or the appropriate MMC officer endorsement''; and

c. In paragraph (b), remove the words ''appropriate license'' and add, in their place, the words ''appropriately endorsed license or MMC''.

**§ 15.825 [Amended]**

313. In § 15.825—

a. In paragraph (a), remove the words ''appropriate license'' and add, in their place, the words ''appropriately endorsed license or MMC''; and

b. In paragraph (b), remove the word ''licensed'' and add, in its place, the word ''credentialed''.

**§ 15.835 [Amended]**

314. In § 15.835, in the text, remove the number ''10'' and add, in its place, the number ''11''.

**§ 15.840 [Amended]**

315. In § 15.840, paragraph (a), remove the words ''licensed individuals'' and add, in their place, the words ''individuals serving as deck officers''.

**§ 15.860 [Amended]**

316. In § 15.860—

a. In paragraph (a), after the words ''merchant mariner's documents'' add the words ''or MMCs'';

b. In paragraph (f) introductory text, after the words ''merchant mariner's documents'', add the words ''or MMCs'';

c. In paragraph (f)(3), remove the words ''licensed person'' and add, in their place, the words ''credentialed officer'';

d. In paragraph (f)(4), remove the words ''licensed or unlicensed person'' and add, in their place, the words ''officer or crewmember''; and

e. In table 15.860(a)(2), in the first column, sixth row, remove the words ''Licensed Person'' and add, in their place, the words ''Credentialed Officer''; and, in the first column, seventh row, remove the words ''Licensed or Unlicensed Person'' and add, in their place, the words ''Credentialed Officer or Crewmember''.

**§ 15.901 [Amended]**

317. In § 15.901, paragraphs (a), (b), (c), and (d), after the words ''holding a license'' wherever they appear, add the

words ''or MMC endorsed''; after the words ''on the individual's license'' wherever they appear, add the words ''or MMC''; and, remove the words ''authorizing service'' wherever they appear.

**§ 15.905 [Amended]**

318. In § 15.905 (a), (b), and (c), after the words ''holding a license'' wherever they appear, add the words ''or MMC endorsed''; and after the words ''on the individual's license'', wherever they appear, add the words ''or MMC''.

319. Revise § 15.910 to read as follows:

**§ 15.910 Towing vessels.**

No person may serve as a master or mate (pilot) of any towing vessel without meeting the requirements of § § 15.805(a)(5) or 15.810(d).

**§ 15.915 [Amended]**

320. In § 15.915—

a. In the introductory text, after the words ''following licenses'', add the words ''and MMC officer endorsements''; and after the words ''on the license'' add the words ''or MMC''; and

b. In paragraphs (a) introductory text, (b), (c), and (d), after the word ''license'', wherever it appears, add the words ''or endorsement''.

**§ 15.1001 [Amended]**

321. In § 15.1001 remove the words ''an appropriately endorsed Federal first class pilot's license issued by the Coast Guard'' and add, in their place, the words ''a valid MMC or license with appropriate endorsement as a first-class pilot''.

**§ 15.1103 [Amended]**

322. In § 15.1103—

a. In the section heading, remove the words ''restrictions of a license, document, and'' and add, in their place, the words ''the restrictions of an'';

b. In paragraph (c), remove the words ''After January 31, 2002, on'' and add, in their place, the word ''On'';

c. In paragraph (d), remove the words ''§ 10.1005 (if licensed) or § 12.30–5 (if unlicensed) of this chapter'' and add, in their place, the words ''§ § 11.1005 or 12.30–5 of this chapter, as appropriate,'';

d. In paragraph (e) introductory text, remove the words ''§ 10.1105 (if licensed) or § 12.30–5 (if unlicensed) of this chapter'' and add, in their place, the words ''§ § 11.1005 or 12.30–5 of this chapter, as appropriate,'';

e. In paragraph (f), remove the words ''After January 31, 2002, on'' and add, in their place, the word ''On''; and, after the words ''appropriate certificate'', add the words ''or endorsement''; and

f. In paragraph (h), remove the words ''After January 31, 2002, on'' and add, in their place, the word ''On'' and remove the words ''in accordance with § 10.205 or § 10.209'' and add, in their place, the words ''according to § § 11.205 or 11.209''.

**§ 15.1105 [Amended]**

323. In § 15.1105(a) introductory text, (b), and (c) introductory text, remove the words ''After January 31, 1997, on'' and add, in their place, the word ''On''.

**§ 15.1107 [Amended]**

324. In § 15.1107—

a. In the introductory text, after the words ''mariner holding a license'', add the words '', merchant mariner credential''; and

b. In paragraph (c), remove the words ''licenses, documents, or endorsements'' and add, in their place, the word ''credentials''.

**§ 15.1111 [Amended]**

325. In § 15.1111(a), remove the words ''After January 31, 1997, each'' and add, in their place, the word ''Each''.

## PART 16—CHEMICAL TESTING

326. The authority citation for part 16 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; Department of Homeland Security Delegation No. 0170.1.

327. In § 16.105, add, in alphabetical order, a definition for ''credential'' and revise the the introductory text and paragraphs (a) and (b) introductory text of the definition for ''crewmember'' to read as follows:

**§ 16.105 Definitions of terms used in this part.**

* * * * *

Credential is a term used to refer to any or all of the following:

(1) Merchant mariner's document.

(2) License.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

*Crewmember* means an individual who is—

(a) On board a vessel acting under the authority of a credential issued under this subchapter, whether or not the individual is a member of the vessel's crew; or

(b) Engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a credential issued under this subchapter, except for the following:

* * * * *

**§ 16.113 [Amended]**

328. In § 16.113(a), remove the words ''documented and licensed'' and add, in their place, the word ''credentialed''.

**§ 16.201 [Amended]**

329. In § 16.201—

a. In paragraph (c), after the words ''If an individual holding'', remove the words ''a license, certificate of registry, or merchant mariner's document'' and add, in their place, the words ''a credential''; and, after the words ''against his or her'', remove the words ''license, certificate of registry, or merchant mariner's document'' and add, in their place, the word ''credential''; and

b. In paragraph (d), remove the words ''a license, certificate of registry, or merchant mariner's document'' and add, in their place, the words ''a credential''.

330. Revise § 16.220(a) and (b) to read as follows:

**§ 16.220 Periodic testing requirements.**

(a) Except as provided by paragraph (c) of this section and § 10.209(c)(9) of this chapter, an applicant must pass a chemical test for dangerous drugs for—

(1) An original issuance of a license, certificate of registry (COR), merchant mariner's document, or merchant mariner credential;

(2) The first issuance, raise in grade, or renewal of an officer endorsement on a merchant mariner credential;

(3) A raise in grade of a license or COR;

(4) The first endorsement as an able seaman, lifeboatman, qualified member of the engine department, or tankerman; or

(5) A reissuance of a credential with a new expiration date. The applicant must provide the results of the test to the Coast Guard Regional Examination Center (REC) at the time of submitting an application. The test results must be completed and dated not more than 185 days before submission of the application.

(b) Unless excepted under paragraph (c) of this section, each pilot required by this subchapter to receive an annual physical examination must pass a chemical test for dangerous drugs as a part of that examination. The individual must provide the results of each test required by this section to the REC when the pilot applies for a license or MMC renewal or when requested by the Coast Guard.

* * * * *

**§ 16.230 [Amended]**

331. In § 16.230—

a. In paragraph (b)(1), remove the words ''hold a license issued by the Coast Guard'' and add in their place the words ''hold a license or MMC endorsed as master, mate, or operator''; and

b. In paragraph (k), remove the words ''license or merchant mariner's document'' and add, in their place, the word ''credential''.

**§ 16.250 [Amended]**

332. In paragraph (a), remove the words ''license, certificate of registry, or merchant mariner's document'' and add, in their place, the word ''credential''.

## PART 26—OPERATIONS

333. The authority citation for part 26 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 4104, 6101, 8105; Pub. L. 103–206, 107 Stat. 2439; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

## Subpart 26.20—[Amended]

334. In the heading to subpart 26.20, remove the word ''License'' and add, in its place, the word ''Credential''.

**§ 26.20–1 [Amended]**

335. In § 26.20–1, in the text, after the words ''valid Coast Guard license'' add the words ''or MMC officer endorsement''; and after the words ''must have the license'' add the words ''or merchant mariner credential''.

## PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

336. The authority citation for part 28 continues to read as follows:

**Authority:** 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.1.

**§ 28.275 [Amended]**

337. In § 28.275—

a. In paragraph (a)(2) introductory text, remove the words ''merchant mariner's license'' and add, in their place, the words ''license or officer endorsement''; and remove the words ''64 CFR'' and add, in their place, the text ''§ ''; and

b. In paragraph (a)(3) introductory text, remove the words ''merchant mariner's license'' and add, in their place, the words ''license or officer endorsement''; and remove the words ''46 CFR'' and add, in their place, the text ''§ ''.

## PART 30—GENERAL PROVISIONS

338. The authority citation for part 30 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; Department of Homeland Security Delegation No. 0170.1; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

**§ 30.10–71 [Amended]**

339. In § 30.10–71, in the introductory text, remove the words ''merchant mariners'' documents'' and add, in their place, the word ''endorsements''.

## PART 31—INSPECTION AND CERTIFICATION

340. The authority citation for part 31 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 31.10–21 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

**§ 31.15–1 [Amended]**

341. In § 31.15–1, in the section heading, remove the words ''Licensed officers'' and add, in their place, the word ''Officers''.

## PART 35—OPERATIONS

342. The authority citation for part 35 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

**§ 35.05–1 [Amended]**

343. In § 35.05–1—

a. In the section heading, remove the words ''Licensed officers'' and add, in their place, the word ''Officers''; and

b. In the text, remove the words ''licensed'' and ''certificated'' wherever they appear.

## PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

344. The authority citation for part 42 continues to read as follows:

**Authority:** 46 U.S.C. 5101–5116; Department of Homeland Security Delegation No. 0170.1; section 42.01–5 also issued under the authority of 44 U.S.C. 3507.

345. Add new § 42.05–70 to read as follows:

**§ 42.05–70 Credential.**

As used in this subchapter, credential means any or all of the following:

(a) Merchant mariner's document.

(b) License.

(c) STCW endorsement.

(d) Certificate of registry.

(e) Merchant mariner credential.

**§ 42.07–50 [Amended]**

346. In § 42.07–50(b)(5), remove the words ''license or merchant mariner's document'' and add, in their place, the word ''credential''.

## PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

347. The authority citation for part 58 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 58.16–19 [Amended]**

348. In § 58.16–19(b), remove the word ''licensed'' and add, in its place, the word ''credentialed''.

## PART 61—PERIODIC TESTS AND INSPECTIONS

349. The authority citation for part 61 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 61.15–10 [Amended]**

350. In § 61.15–10(a), remove the words ''a licensed'' and add, in their place, the words ''an appropriately credentialed''.

## PART 78—OPERATIONS

351. The authority citation for part 78 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

## Subpart 78.65—[Amended]

352. In the heading to subpart 78.65, remove the word ''License'' and add, in its place, the words ''Merchant Mariner Credential'';

353. Revise § 78.65–1 to read as follows:

**§ 78.65–1 Officers.**

All officers on a vessel must have their merchant mariner credentials conspicuously displayed.

## PART 97—OPERATIONS

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

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757; 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

### Subpart 97.53—[Amended]

355. In the heading to subpart 97.53, remove the word ''License'' and add, in its place, the words ''Merchant Mariner Credential'';

356. Revise § 97.53–1 to read as follows:

#### § 97.53–1 Officers.

All officers on a vessel must have their merchant mariner credentials conspicuously displayed.

## PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

357. The authority citation for part 98 continues to read as follows:

**Authority:** 33 U.S.C. 1903; 46 U.S.C. 3306, 3307, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

#### § 98.30–17 [Amended]

358. In § 98.30–17—

a. In paragraph (b)(1), before the words ''merchant mariner's document'', add the words ''endorsement on his or her merchant mariner credential or''; and

b. In paragraph (b)(2), remove the words ''license or certificate'' and add, in their place, the words ''merchant mariner credential, license, or certificate''; and remove the words ''on his or her MMD''.

## PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

359. The authority citation for part 105 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 4502; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

#### § 105.05–10 [Amended]

360. In § 105.05–10(c)(2), remove the word ''licensed''.

#### § 105.45–1 [Amended]

361. In § 105.45–1—

a. In paragraph (a)(1), remove the word ''documents'' and add, in its place, the words ''merchant mariner credentials or merchant mariner's documents'';

b. In paragraph (b)(1), remove the words ''merchant mariner's document'' and add, in their place, the words ''merchant mariner credential or merchant mariner's document''; and

c. In paragraph (c)(2), remove the word ''license'' and add, in its place, the words ''license or merchant mariner credential''.

## PART 114—GENERAL PROVISIONS

362. The authority citation for part 114 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; Pub. L. 103µ206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security No. 0170.1; § 114.900 also issued under 44 U.S.C. 3507.

#### § 114.400 [Amended]

363. In § 114.400(b), in the definition for ''Master'', remove the word ''license'' and add, in its place, the words ''license or merchant mariner credential''.

## PART 115—INSPECTION AND CERTIFICATION

364. The authority citation for part 115 is revised to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971µ1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

#### § 115.113 [Amended]

365. In § 115.113(b)(1)(iii), remove the word ''licensed'' and add, in its place, the word ''credentialed''.

## PART 122—OPERATIONS

366. The authority citation for part 122 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

#### § 122.402 [Amended]

367. In § 122.402—

a. In the section heading, remove the word ''Licenses'' and add, in its place, the word ''Officers''; and

b. In the text, remove the words ''licensed individual'' and add, in their place, the word ''officer''; and remove the words ''shall have his or her ''license'' and add, in their place, the words ''must have his or her license or merchant mariner credential''.

#### § 122.910 [Amended]

368. In § 122.910, in the text, after the words ''An individual holding a'' add the words ''merchant mariner credential,''; and after the words ''suspension or revocation of a'' remove the words ''license, certificate, or document'' and add, in their place, the word ''credential''.

## PART 125–GENERAL

369. The authority for part 125 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1.

370. In § 125.160 add, in alphabetical order, a definition for the term ''credential'' to read as follows:

#### § 125.160 Definitions.

* * * * *

*Credential* means any or all of the following:

(1) Merchant mariner's document.

(2) License.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

* * * * *

## PART 131—OPERATIONS

371. The authority citation for part 131 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 10104; E.O. 12234, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

#### § 131.410 [Amended]

372. In § 131.410, remove the words ''merchant mariner's document'', wherever they appear, and add, in their place, the words ''merchant mariner credential or merchant mariner's document''.

#### § 131.905 [Amended]

373. In § 131.905(b), after the words ''the suspension or revocation of'' add the words ''credentials''.

374. Revise § 131.955 to read as follows:—

#### § 131.955 Display of merchant mariner credential.

Each officer on a vessel must conspicuously display his or her license or merchant mariner credential as required by 46 U.S.C. 7110.

## PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

375. The authority citation for part 151 continues to read as follows:

**Authority:** 33 U.S.C. 1903; 46 U.S.C. 3703; Department of Homeland Security Delegation No. 0170.1.

**§ 151.03–53 [Amended]**

376. In § 151.03–53 introductory text, remove the words ''merchant mariner's documents'' and add, in their place, the words ''merchant mariner credentials or merchant mariner's document''.

## PART 166—DESIGNATION AND APPROVAL OF NAUTICAL SCHOOL SHIPS

377. The authority citation for part 166 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 8105; 46 U.S.C. App. 1295g; Department of Homeland Security Delegation No. 0170.1.

**§ 166.01 [Amended]**

378. In § 166.01(a), remove the words ''or merchant mariner's documents'' and add, in their place, the words ''on merchant mariner credentials or merchant mariner's documents''.

## PART 169—SAILING SCHOOL VESSELS

379. The authority citation for part 169 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Pub. L. 103–206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1; § 169.117 also issued under the authority of 44 U.S.C. 3507.

**§ 169.107 [Amended]**

380. In § 169.107, in the definition for ''Master'', remove the word ''licensed'' and add, in its place, the word ''credentialed''.

**§ 169.805 [Amended]**

381. In § 169.805—

a. In the section heading, remove the word ''licenses'' and add, in its place, the words ''merchant mariner credentials''; and

b. In the text, remove the words ''Licensed personnel'' and add, in their place, the word ''Officers''; and remove the words ''shall have their licenses'' and add, in their place, the words ''must have their license or merchant mariner credential''.

## PART 175—GENERAL PROVISIONS

382. The authority citation for part 175 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; 175.900 also issued under authority of 44 U.S.C. 3507.

**§ 175.118 [Amended]**

383. In § 175.118(c)(3), after the words ''All officers must be'', remove the word ''licensed'' and add, in its place, the word ''endorsed''; remove the words ''licensed engineer'' and add, in their place, the words ''an appropriately endorsed engineer officer''; remove the words ''merchant mariner documents'' and add, in their place, the words ''merchant mariner credentials or merchant mariner's document''; and remove the words ''unlicensed deck crew must be rated as'' and add, in their place, the words ''rated deck crew must be''.

**§ 175.400 [Amended]**

384. In § 175.400, in the definition for ''Master'', remove the word ''license'' and add, in its place, the words ''merchant mariner credential''.

## PART 176—INSPECTION AND CERTIFICATION

385. The authority citation is revised to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 176.113 [Amended]**

386. In § 176.113(b)(1)(iii), remove the word ''licensed''.

## PART 185—OPERATIONS

387. The authority citation continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

388. Revise § 185.402 to read as follows:

**§ 185.402 Officers.**

Each officer employed on any vessel subject to this subchapter must have his or her license or merchant mariner credential on board and available for examination at all times when the vessel is operating.

**§ 185.910 [Amended]**

389. In § 185.910, after the words ''individual holding a'', add the words ''merchant mariner credential,''; and, after the words ''suspension or revocation of a'', add the words ''merchant mariner credential,''.

## PART 196—OPERATIONS

390. The authority citation for part 196 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2213, 3306, 5115, 6101; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

## Subpart 196.53—[Amended]

391. In the heading to subpart 196.53, remove the word ''License'' and add, in its place, the word ''Credential''.

392. Revise § 196.53–1 to read as follows:

**§ 196.53–1 Officers.**

All officers on a vessel must have their licenses or merchant mariner credentials conspicuously displayed.

## PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

393. The authority citation for part 199 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; Pub. L 103–206, 107 Stat. 2439; Department of Homeland Security Delegation No. 0170.1.

**§ 199.30 [Amended]**

394. In § 199.30, in the definition for ''Certificated person'', after the words ''merchant mariner's document'', add the words ''or merchant mariner credential''.

## PART 401—GREAT LAKES PILOTAGE REGULATIONS

395. The authority citation for part 401 continues to read as follows:

**Authority:** 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304 and 70105; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

**§ 401.110 [Amended]**

396. In § 401.110—

a. In paragraph (a)(8), after the word ''license'', add the words ''or merchant mariner credential''; and

b. In paragraph (a)(12), after the words ''who holds a license'', add the words ''or merchant mariner credential endorsed''.

c. Add a new paragraph (a)(17) to read as follows:

**§ 401.110 Definitions.**

(a) * * *

(17) *Merchant Mariner Credential or MMC* means the qualification document for all merchant mariners issued by the Coast Guard under 46 CFR part 10. The individual Merchant Mariner Document, License, and Certificate of Registry enumerated in 46 U.S.C. Subtitle II, Part E will be issued in the form of a Merchant Mariner Credential (MMC). An MMC will combine the separate qualification documents previously issued under 46 U.S.C. Subtitle II, Part E and STCW endorsements into a single certificate, which will be endorsed to reflect a mariner's level of qualification.

**§ 401.210 [Amended]**

397. In § 401.210—

a. In paragraph(a)(1), after the words ''individual holds a'', remove the word ''license'' and add, in its place, the words ''merchant mariner credential endorsed''.

b. In paragraph (a)(6), after the words ''Coast Guard'', add the words ''or a valid Transportation Worker Identification Credential''.

**§ 401.220 [Amended]**

398. In § 401.220(d), remove the word ''license'' and add, in its place, the word ''endorsement''.

**§ 401.230 [Amended]**

399. In § 401.230(a), remove the word ''license'' and add, in its place, the word ''endorsement''.

**§ 401.250 [Amended]**

400. In § 401.250(d), after the words ''whenever his or her license'', add the words ''or merchant mariner credential officer endorsement''; after the words ''simultaneously with his or her license'', add the words ''and/or merchant mariner credential''; after the words ''If the license'', add the words ''or officer endorsement''; and after the words ''with the suspended license'', add the words ''or officer endorsement''.

## PART 402—GREAT LAKES PILOTAGE RULES AND ORDERS

401. The authority citation for part 402 continues to read as follows:

**Authority:** 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

**§ 402.220 [Amended]**

402. In § 402.220(a)(1), (a)(2), and (a)(3), remove the word ''license'' wherever it appears and add, in its place, the word ''endorsement''.

Dated: April 19, 2006.

**C.E. Bone,**

*Rear Admiral, Acting Assistant Commandant for Prevention.*

[FR Doc. 06–4509 Filed 5–12–06; 12:25 pm]

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Monday,
May 22, 2006

Part III

# Department of Housing and Urban Development

## Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5004–N–01]**

## Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of approximately $30 million in grant funds to make emergency capital repairs to eligible multifamily projects owned by private nonprofit entities that are designated for occupancy by elderly tenants. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants. The intent of these grants is to provide one-time assistance for emergency items that could not be absorbed within the project's operating budget and other project resources, and where the tenants' continued occupancy in the immediate near future would be jeopardized by a delay in initiating the proposed cure.

The notice provides instructions for owners of multifamily projects to request funding and instructions for the HUD field offices to process requests.

**DATES:** HUD will accept applications on a first-come, first-serve basis upon publication of this notice and will award emergency capital repair grants until available amounts are expended. Applicants should submit emergency capital repair applications as soon as they have prepared an application that complies with the procedures and requirements contained in this notice.

**ADDRESSES:** Applications must be submitted to the local HUD Field Office for the project covered by the application. Please see Appendix II for a list of the local HUD Field Offices.

**FOR FURTHER INFORMATION CONTACT:** G. DeWayne Kimbrough, Director, Grant and Housing Assistance Field Support Division, Office of Multifamily Housing, Room 6146, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 202b of Title II of the Housing Act of 1959 (12 U.S.C. 1701q–2) was amended to provide grants for ''substantial capital repairs to eligible multifamily projects with elderly tenants that are needed to rehabilitate, modernize, or retrofit aging structures, common areas or individual dwelling units.'' The Consolidated Appropriations Act, 2005 (Pub. L. 108–447, approved December 8, 2004), provided $25 million ($15 million of which was announced in the FY 2005 Assisted Living Conversion Program's Notice of Funding Availability (NOFA) as being set aside for the Emergency Capital Repair Program). In addition, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115, approved November 30, 2005) provides $24.8 million for grants under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) for conversion of eligible projects to assisted living ''and for emergency capital repairs as determined by the Secretary'' of HUD.

This notice announces the availability of approximately $30 million in funding, including $15 million in FY 2006 appropriation funding and $15 million in carry-over grant funds to make emergency capital repairs to eligible multifamily projects that are owned by private nonprofit entities. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants. The intent of these grants is to provide one-time assistance for emergency items that could not be absorbed within the project's operating budget and other project resources, and where the tenants' continued occupancy in the immediate near future would be jeopardized by a delay in initiating the proposed cure.

### II. Definition of ''Emergency Capital Repairs''

For purposes of this notice, ''emergency capital repairs'' is defined as repairs at a project to correct a situation that presents an immediate threat to the life, health and safety of project tenants. Assistance is limited to those projects with emergency problems that are of such a magnitude that:

A. The problem poses an immediate threat to the quality of life of the tenants; and

B. The continuation of the existing problem could potentially result in an evacuation of the tenants or long-term tenant displacement unless the repairs are made.

### III. Eligibility Requirements

Eligibility for emergency capital repair grants under this notice is restricted to: private nonprofit owners of eligible multifamily-assisted housing developments designated for occupancy by elderly tenants, as specified in sections 683(2)(B), (C), (D), (E), (F), or (G) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992). Those projects, as identified below, must have had final closing on or before January 1, 1999. The eligible projects are:

A. Section 202 direct loan projects with or without Section 8 rental assistance;

B. Section 202 capital advance projects receiving rental assistance under their Project Rental Assistance Contract (PRAC);

C. Section 515 rural housing projects receiving Section 8 rental assistance;

D. Projects subsidized with Section 221(d)(3) below-market interest mortgage;

E. Projects assisted under Section 236 of the National Housing Act; and

F. Other projects receiving Section 8 project-based rental assistance.

To be eligible for an emergency capital repair grant under this notice, a project owner must be in compliance with:

1. Its Loan Agreement, Capital Advance Agreement, Regulatory Agreement Housing Assistance Payment contract, Project Rental Assistance contract, Rent Supplement or Loan Management Set Aside (LMSA) contract, or any other HUD grant or contract document, and

2. All applicants must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a), as applicable.

If you, the applicant:

(a) Have been charged with an ongoing systemic violation of the Fair Housing Act; or

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(c) Have received a letter of findings identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, and the charge, lawsuit, or letter of findings referenced in subparagraph (a), (b), or (c) above has not been resolved to HUD's satisfaction before the application deadline, then you are

ineligible and HUD will not rate and rank your application. HUD will determine if actions to resolve the charge, lawsuit, or letter of finding taken prior to the application deadline are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to:

(i) A voluntary compliance agreement signed by all parties in response to a letter of finding;

(ii) A HUD-approved conciliation agreement signed by all parties;

(iii) A consent order or consent decree; or

(iv) An issuance of a judicial ruling or a HUD Administrative Law Judge's decision.

## IV. Grant Requirements

### *A. Conditions for Assistance*

The following conditions apply to emergency capital grants awarded under this notice:

1. The request for funding must clearly identify the existing emergency and must contain a detailed justification in support of the emergency designation.

2. Funds awarded may be expended only for approved uses.

3. Repairs must be initiated immediately upon receiving the grant award and must be substantially completed within 6 months of the initial start, with final repairs completed no later than 12 months after receipt of funding. Unless there are safety concerns, tenants must be able to remain in their units while the repairs are being made.

4. The project owner must demonstrate that: (i) The project accounts have been maintained in accordance with all HUD requirements; and (ii) there are insufficient funds in the operating budget and other project resources. Owners must use all residual receipts available and all reserve for replacement funds in excess of $1,000 per unit to address the emergency.

5. The project owner's most recent management review rating is ''satisfactory'' or above.

6. The most recent Real Estate Assessment Center (REAC) physical inspection report for the project must have a score of 60 or above. Developments scoring less than 60 are ineligible.

7. The project is well maintained except for the current emergency capital repair needs.

8. The project does not have a recent history of mortgage defaults.

9. The project owner does not have any material-adverse financial or managerial actions or omissions with regard to any project that is federally assisted or financed with a loan or capital advance from, or mortgage insured by, an agency of the Federal government.

10. Tenants must be notified of the request for the grant and must be informed of the overall plan to complete the capital repairs.

11. The owner's Affirmative Fair Housing Marketing Plan (AFHMP) must meet all applicable HUD requirements. A copy of the approved AFHMP should be attached with the request for funding. If the owner does not have an approved AFHMP, one must be submitted for HUD approval along with the request for funds. A request for funds without either an existing approved AFHMP or a proposed AFHMP will be considered incomplete and will be processed using the procedures set out in Section V B.3 of this notice.

12. The project owner must not have an outstanding Letter of Noncompliance and must not be out of compliance with a voluntary compliance agreement, consent decree, court order, or other Settlement Agreement. If the project owner has an outstanding Letter of Noncompliance or is not in compliance with a voluntary compliance agreement, consent decree, court order, or other Settlement Agreement, the project owner must submit, along with the request for funds, a plan that identifies the compliance problem(s) and the method(s) to be used to correct it (them). A request for funds without a written correction plan under the conditions of this paragraph will be considered incomplete and will be processed using the procedures set out in Section V B.3 of this notice.

### *B. Funding*

The following requirements apply to emergency capital grant amounts awarded under this notice:

1. The maximum amount an individual project owner may apply for is $500,000. (The grant, along with funds from other sources, must remove the emergency condition's.)

2. All grant requests that are submitted by the Hub Directors will be funded based on the date and time of receipt in the Field Offices. See V B. (2) and (3) below.

3. HUD retains the right to adjust the amount of the grant up (to a maximum grant of $500,000) or down, based on review of the reasonableness of the costs for completing the repairs.

4. Davis-Bacon prevailing wage rate requirements do not apply to emergency capital repair grants. Davis-Bacon requirements may apply to emergency repairs if the repairs will also be assisted by another federal program that requires Davis-Bacon wage rates.

### *C. Eligible Uses of Funds*

Grant funds are available only for emergency capital repairs that relate to immediate health/safety needs that impact upon the quality of life of the tenants if the repairs are not made. The project owner must submit a description of the proposed use of the funds and demonstrate how the repairs relate to eliminating the immediate emergency for the tenants. The repair item must have existed prior to submission of the application in order to obtain grant funds. The award is a one-time opportunity for correction of the threat to the tenants. Funds may be used to repair or replace systems including, but not limited to:

1. Existing major building and structural components that are in critical condition; and

2. Repairs or replacements to existing mechanical equipment to the extent that they are necessary for health and safety reasons. The purchase of high efficiency heating and cooling systems (Energy Star) for the approved replacement equipment is encouraged to promote energy conservation.

### *D. Ineligible Uses of Funds*

Emergency capital repair grants may not be used for the following costs:

1. Deferred maintenance items.

2. Lead-based paint abatement.

3. Demolition and reconstruction activities, e.g., conversion of bedroom units.

4. Security systems.

5. Improvements, i.e., installation of sprinkler systems, air conditioning, additional lighting in parking lots, etc.

6. Clearing of mold or mildew unless it is related to a repair of an existing emergency item that poses an immediate threat to the residents.

### *E. Rental Use Agreement*

If there are less than 10 years remaining on the existing mortgage, owners must enter into a Rental Use Agreement (Appendix I of this notice), to extend the remaining affordability of the project for up to 10 years. For example, if the maturity date of the mortgage is 3 years from the execution of the Grant Agreement, the owner must enter into a Rental Use Agreement for 7 years beyond the term of the mortgage. If the maturity date of the mortgage is 15 years, the owner will not need to execute a Rental Use Agreement unless the mortgage is prepaid. All Rental Use Agreements must be recorded.

## V. Request Process

*A. Owner Submission Requirements*

An emergency categorization is critical to qualifying for participation in this program. Requests for grants must be submitted in accordance with the procedures described below:

1. The request must be made in writing and submitted by the project owner to the local field office. The request must clearly identify the basis for the emergency declaration and how it impacts the health and safety of the tenants, as well as what would happen if the emergency repair were not made immediately. The request also must identify the repairs proposed to correct the emergency for which funding is requested. Requests signed by a consultant or management agent on behalf of the owner are not acceptable.

**Note:** Repair items identified on the REAC physical inspection report are not sufficient to be classified as emergency in nature.

2. The repair and/or replacement items are to be written in a manner that specifically describes the scope of work to be performed, provides an estimate of the cost of the work to be performed, and provides an explanation of the basis for the estimate. The estimate provided for the cost of each action item must be reasonable and current (within 6 months of the application submission).

3. The request must demonstrate that the repairs cannot be corrected at a cost that can be absorbed within the operating budget or by use of the reserve for replacement funds in excess of $1,000 per unit and/or residual receipts funds.

4. The request must provide a project plan for substantially completing the repairs within 6 months, but no longer than 12 months from the date of the grant award.

5. The project owner must notify the tenants of the plans to apply for this grant. The request must provide evidence that the tenants were notified and given the opportunity to make comments. Any comments received from the tenants must be submitted to the local HUD field office along with the repair request.

6. The request must provide a description of any unsuccessful attempts the owner has made to acquire funds from other sources, including letters of denial from funding sources, to complete the outstanding emergency capital repairs.

7. The request must provide a description of any previous grants or loans received by the project for repairs during the past 3 years from the effective date of this notice.

*B. Field Office Processing*

1. The Hub Director/Program Center Director is responsible for ensuring that the requests are promptly and thoroughly reviewed and submitted to HUD Headquarters.

2. Upon receipt of an owner's application, the Field Office will notify Headquarters of the date and time of receipt by facsimile, which should be addressed, ''Attention: G. DeWayne Kimbrough, Director, Grant and Housing Assistance Field Support Division.'' His facsimile number is (202) 401–9087. Headquarters will acknowledge the date and time of receipt by return facsimile. Also, Headquarters will advise the Field Office that the application will be placed in the Headquarters funding queue as of the date and time of reported receipt and that the Field Office has 15 working days to review and mail the approved application to Headquarters in accordance with the approval process outlined in C. below.

3. Incomplete applications will not be processed and will be returned to the owner. Owners may revise and re-submit an application. However, the resubmitted application will be processed as a new request in the order in which it is received the second time. The Field Office must also notify Headquarters by facsimile of the date an incomplete application is returned to the owner so that the application can be taken out of the Headquarters funding queue.

4. Each field office has the responsibility for conducting a comprehensive review of the project's files, which may include an on-site review if such action is determined to be necessary to resolve concerns raised by the comprehensive review. The review should consist of completion of the questions in Appendix IV of this notice and may include any other concerns the field office may have about the project. The Office of Fair Housing and Equal Opportunity (FHEO) must be involved in determining fair housing and civil rights compliance.

*C. Approval Process*

1. All approvable requests along with the Recommendations from the Program Centers (Appendix III of this notice) along with narratives describing the emergency capital repairs at the property are to be sent to the Multifamily Hub Director. Hub Directors will review, sign the certification, and mail the approvable request to the Office of Housing Assistance and Grant Administration in Headquarters, Attention: Willie Spearmon, 451 Seventh Street, SW., Washington, DC 20410.

2. When Headquarters receives the request from the Hub Director, the Office of Housing Assistance and Grant Administration will process the request and award the funds, if approved, in accordance with the funding queue established by the date and time of receipt in the Field Office.

**Note:** HUD Headquarters reserves the right to deny or reduce any request for funds.

3. Headquarters will notify the Hub Director/Program Center Director by memorandum at the time the assignment of the funds has been approved. The Hub staff will prepare form HUD–718 and send it to the Fort Worth Accounting Center (FWAC) to reserve the funds in the name of the project. After the funds have been reserved, the Field Office can notify the grantee of the award and inform the grantee that execution of the Grant Agreement (Appendix V) and Rental Use Agreement (if appropriate) is necessary to receive the funds.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 14.315.

## VI. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0542. This Notice also contains information collection requirements that have not yet received OMB approval. These information collection requirements have been submitted to OMB for review, and approval is pending. HUD will announce the control numbers once OMB approval is received. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

## VII. Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. Eastern Time, Monday through Friday, except federal holidays, in the Office of the General Counsel, Regulations Division, Room

10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Dated: May 16, 2006.

**Brian D. Montgomery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

BILLING CODE 4210–67–P

Appendix I

PROJECT NAME: _____

FHA PROJECT NO: _____

CITY, STATE: _____

**RENTAL USE AGREEMENT**

This Agreement is made and entered into this _____ day of _____, 2006, by and between the Secretary of Housing and Urban Development (HUD) and _____ (Owner).

The Owner has entered into an agreement with HUD to maintain the property as rental housing for the elderly for the remainder of the specified _____-year period;

HUD has determined that continuation of the property as rental housing is clearly necessary to assure adequate rental housing opportunity for low- and moderate-income elderly tenants.

WHEREAS, the Owner has requested an Emergency Capital Repair Program Grant to make emergency capital repairs to the property.

WHEREAS, the Owner is willing to agree to maintain the subject property as an affordable rental property until _____.

WHEREAS, in the event the Owner chooses to sell, prepay, or transfer the property during the period of time this Use Agreement is in effect, it will require as a condition that the purchaser will commit to maintain the property pursuant to the terms of this Rental Use Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the parties agree as follows:

1. The execution and recording of this Agreement shall constitute HUD's approval of the Emergency Capital Repair Grant in the amount of $_____.

2. The Owner agrees that during the period that it owns the property, it will maintain the property as affordable rental housing until _____. During such period, should the property be sold, the purchaser shall not utilize project dwelling units for any purpose other than as affordable rental housing for the elderly.

3. The provisions of this Agreement shall be binding upon the heirs, successors, and assigns of the Owner and purchaser (if sold).

4. The provisions of this Agreement relating to the rental use of the property shall run with the land and shall be binding for the benefit of, in favor of, and enforceable by the Secretary and his successors in office. The Secretary and his successors in office and/or any third-party beneficiary shall be entitled to: (a) institute legal action to enforce performance and observance of, (b) enjoin any actions which are violative of, and (c) exercise any other legal or equitable right or remedy with respect to such provisions. For the purpose of these covenants, a third-party beneficiary shall be any person eligible for occupancy in the rental project insured pursuant to the provisions of the applicable program for the elderly. These rights and remedies will be exercised separately or in combination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

ATTEST:

_____

OWNER:

_____

TITLE

_____

UNITED STATES OF AMERICA
SECRETARY OF HOUSING AND
URBAN DEVELOPMENT

_____

By: Director, Multifamily
Hub/Program Center

On this _____ day of _____, 2006 before me, the undersigned officer, personally appeared _____, and who acknowledged himself /herself to the _____ of _____, and that as such _____, being authorized to do so, executed the within Agreement for the purpose therein contained by signing the name of said partnership by himself/herself as _____.

WITNESS my hand and Notary seal the day and year aforesaid.

SEAL

_____
Notary Public

My Commission expires_____

COUNTY OF _____

STATE OF _____

Appendix II

## FIELD OFFICE CONTACT INFORMATION

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| **HUD - BOSTON HUB**<br><br>**HARTFORD OFFICE**<br>20 Church Street<br>Hartford, CT 06103-3220<br>(860) 240-4800<br>TTY Number: (860) 240-4665 | **HUD - BUFFALO HUB**<br><br>**BUFFALO OFFICE**<br>Lafayette Court Building<br>465 Main Street, 2nd Floor<br>Buffalo, NY 14203-1780<br>(716) 551-5755, ext. 5000<br>TTY Number: (716) 551-5787 |
| **BOSTON OFFICE**<br>Thomas P. O'Neill, Jr. Federal Building<br>10 Causeway Street, Room 301<br>Boston, MA 02222-1092<br>(617) 994-8500<br>TTY Number: (617) 565-5453 | **HUD - PHILADELPHIA HUB**<br><br>**PHILADELPHIA OFFICE**<br>The Wanamaker Building<br>100 Penn Square East<br>Philadelphia, PA 19107-3380<br>(215) 656-0609<br>TTY Number: (215) 656-3452 |
| **MANCHESTER OFFICE**<br>1000 Elm Street<br>8th Floor<br>Manchester, NH 03101<br>(603) 666-7510<br>TTY Number: (603) 666-7518 | **CHARLESTON OFFICE**<br>405 Capitol Street, Suite 708<br>Charleston, WV 25301-1795<br>(304) 347-7000<br>TTY Number: (304) 347-5332 |
| **PROVIDENCE OFFICE**<br>121 S. Main Street, Sixth Floor<br>Providence, RI 02903-2808<br>(401) 528-5230<br>TTY Number: (401) 528-5403 | **NEWARK OFFICE**<br>Thirteenth Floor<br>1085 Raymond Boulevard<br>Newark, NJ 07102-5260<br>(973) 622-7900<br>TTY Number: (973) 645-3298 |

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| **HUD - NEW YORK HUB**<br><br>**NEW YORK OFFICE**<br>26 Federal Plaza, Room 3200<br>New York, NY 10278-0068<br>(212) 264-8000<br>TTY Number: (212) 264-0927 | **PITTSBURGH OFFICE**<br>339 Sixth Avenue, Sixth Floor<br>Pittsburgh, PA 15222-2507<br>(412) 644-6428<br>TTY Number: (412) 644-5747 |
| **HUD - BALTIMORE HUB**<br><br>**BALTIMORE OFFICE**<br>City Crescent Building<br>10 South Howard Street, Fifth Floor<br>Baltimore, MD 21201-2505<br>(410) 962-2520<br>TTY Number: (410) 962-0106 | **HUD - ATLANTA HUB**<br><br>**ATLANTA OFFICE**<br>ATTN: Multifamily Housing<br>40 Marietta Street, 12th Floor<br>Five Points Plaza<br>Atlanta, GA 30303- 2806<br>(404) 331- 4976<br>TTY Number: (404) 730-2654 |
| **RICHMOND OFFICE**<br>600 East Broad Street<br>Richmond, VA 23219<br>(804) 771-2100, ext. 3839<br>TTY Number: (804) 771-2038 | **SAN JUAN OFFICE**<br>Edificio Administracion<br>de Terrenos<br>235 Federico Costa Street, Suite 200<br>San Juan, PR 00918-0903<br>(787) 766-5401<br>TTY Number: (787) 766-5104 |
| **WASHINGTON NE, DC OFFICE**<br>820 First Street, NE, Suite 450<br>Washington, DC 20002-4205<br>(202) 275-9200<br>TTY Number: (202) 275-0772 | |
| **HUD - GREENSBORO HUB**<br><br>**GREENSBORO OFFICE**<br>Asheville Building<br>1500 Pinecroft Road, Suite 401<br>Greensboro, NC 27407-3838<br>(336) 547-4000<br>TTY Number: (336) 547-4020 | **LOUISVILLE OFFICE**<br>601 West Broadway<br>Louisville, KY 40202<br>(502) 582-5251<br>TTY Number: (866) 800-0289 |

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| **COLUMBIA OFFICE**<br>Strom Thurmond Federal Building<br>1835-45 Assembly Street, 13th Floor<br>Columbia, SC 29201-2480<br>(803) 765-5592<br>TTY Number: (803) 253-3209 | **KNOXVILLE OFFICE**<br>John J. Duncan Federal Building<br>Third Floor, Room 315<br>710 Locust Street<br>Knoxville, TN 37902-2526<br>(423) 545-4384<br>TTY Number: (423) 545-4559 |
| | **NASHVILLE OFFICE**<br>235 Cumberland Bend, Suite 200<br>Nashville, TN 37228-1803<br>(615) 736-5213<br>TTY Number: (866) 503-0267 |
| **HUD - JACKSONVILLE HUB**<br><br>**JACKSONVILLE OFFICE**<br>Charles E. Bennett Federal Building<br>400 W. Bay Street, Suite 1015<br>Jacksonville, FL 32202-5121<br>(904) 232-2626<br>TTY Number: (904) 232-2631 | **HUD - DETROIT HUB**<br><br>**DETROIT OFFICE**<br>Patrick V. McNamara Federal Building<br>477 Michigan Avenue, Suite 1635<br>Detroit, MI 48226-2592<br>(313) 226-7900<br>TTY Number: (313) 226-6899 |
| **BIRMINGHAM OFFICE**<br>Medical Forum Building<br>950 22nd Street, North, Suite 900<br>Birmingham, AL 35203-5301<br>(205) 731-2630<br>TTY Number: (205) 731-2624 | **HUD - COLUMBUS HUB**<br><br>**COLUMBUS OFFICE**<br>200 North High Street, 7th Floor<br>Columbus, OH 43215-2499<br>(614) 469-5737<br>TTY Number: (614) 469-6694 |
| **JACKSON OFFICE**<br>Doctor A.H. McCoy Federal Building<br>100 West Capitol Street, Suite 910<br>Jackson, MS 39269-1096<br>(601) 965-4700<br>TTY Number: (601) 965-4171 | **CLEVELAND OFFICE**<br>U.S. Bank Centre<br>1350 Euclid Avenue, Suite 500<br>Cleveland, OH 44115-1815<br>(216) 522-4058<br>TTY Number: (216) 522-2261 |

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| **HUD - CHICAGO HUB**<br><br>**CHICAGO OFFICE**<br>Ralph H. Metcalfe Federal Building<br>77 West Jackson Boulevard, 23rd Floor<br>Chicago, IL 60604-3507<br>(312) 353-5680<br>TTY Number: (312) 353-5944 | **HUD - MINNEAPOLIS HUB**<br><br>**MINNEAPOLIS OFFICE**<br>920 Second Avenue South, Suite 1300<br>Minneapolis, MN 55402-4012<br>(612) 370-3000<br>TTY Number: (612) 370-3186 |
| **INDIANAPOLIS OFFICE**<br>151 North Delaware Street<br>Indianapolis, IN 46204-2526<br>(317) 226-6482, 6831, or 7183<br>TTY Number: (317) 226-7081 | **MILWAUKEE OFFICE**<br>Henry S. Reuss Federal Plaza<br>310 West Wisconsin Avenue, Suite 1380<br>Milwaukee, WI 53203-2289<br>(414) 297-3214, ext. 8673<br>TTY Number: (414) 297-1423 |
| **HUD - FORT WORTH HUB**<br><br>**LITTLE ROCK OFFICE**<br>TCBY Tower<br>425 West Capitol Avenue, Suite 900<br>Little Rock, AR 72201-3488<br>(501) 324-5931<br>TTY Number: (501) 324-5931 | **HUD – KANSAS CITY HUB**<br><br>**DES MOINES OFFICE**<br>Federal Building<br>210 Walnut Street, Room 239<br>Des Moines, IA 50309-2155<br>(515) 284-4583<br>TTY Number: (515) 284-4728 |
| | **KANSAS CITY OFFICE**<br>Gateway Tower II<br>400 State Avenue, Room 200<br>Kansas City, KS 66101-2406<br>(913) 551-5462<br>TTY Number: (913) 551-6972 |
| **FORT WORTH OFFICE**<br>801 Cherry Street<br>PO Box 2905<br>Fort Worth, TX 76113-2905<br>(817) 978-5965<br>TTY Number: (817) 978-5595 | **OMAHA OFFICE**<br>Executive Tower Centre<br>10909 Mill Valley Road, Suite 100<br>Omaha, NE 68154-3955<br>(402) 492-3122<br>TTY Number: (402) 492-3183 |
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| **HOUSTON OFFICE**<br>1301 Fannin, Suite 2200<br>Houston, TX 77002<br>(713) 718-3199<br>TTY Number: (713) 718-3289 | **ST. LOUIS OFFICE**<br>Third Floor<br>Robert A. Young Federal Building<br>1222 Spruce Street, Room 3207<br>St. Louis, MO 63103-2836<br>(314) 539-6583<br>TTY Number: (314) 539-6331 |
| **SAN ANTONIO OFFICE**<br>106 South St. Mary's, Suite 405<br>San Antonio, TX 78205<br>(210) 475-6800<br>TTY Number: (210) 475-6885 | **OKLAHOMA CITY OFFICE**<br>301 NW 6th Street, Suite 200<br>Oklahoma City, OK 73102<br>(405) 609-8410<br>TTY Number: (405) 609-8480 |
| **HUD - DENVER HUB**<br><br>**DENVER OFFICE**<br>UMB Bank Building<br>1670 Broadway, 23rd Floor<br>Denver, CO 80202<br>(303) 672-5343<br>TTY Number: (303) 672-5113 | **HUD - LOS ANGELES HUB**<br><br>**LOS ANGELES OFFICE**<br>611 West 6th Street<br>Suite 800<br>Los Angeles, CA 90017-3106<br>(213) 894-8000<br>TTY Number: (213) 894-8133 |
| **HUD - SAN FRANCISCO HUB**<br><br>**PHOENIX OFFICE**<br>One North Central #600<br>Phoenix, AZ 85004<br>(602) 379-7149<br>TTY Number: (602) 379-4557 | **HUD - SEATTLE HUB**<br><br>**PORTLAND OFFICE**<br>400 Southwest Sixth Avenue<br>Suite 700<br>Portland, OR 97204-1632<br>(503) 326-3228<br>TTY Number: (503) 326-2568 |
| **SAN FRANCISCO OFFICE**<br>Philip Burton Federal Building and U.S. Courthouse<br>600 Harrison Street, 3rd Floor<br>PO Box 36003<br>San Francisco, CA 94102-3448<br>(415) 436-8356<br>TTY Number: (415) 436-6594 | **ANCHORAGE OFFICE**<br>3000 C Street, Suite 401<br>Anchorage, AK 99503<br>(503) 326-3228<br>TTY Number: (503) 326-2568 |

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| **HONOLULU OFFICE**<br>500 Ala Moana Boulevard, Suite 3A<br>Honolulu, HI 96813<br>(808) 522-8185<br>TTY Number: (808) 522-8193 | **SEATTLE OFFICE**<br>909 First Avenue, Suite 200<br>Seattle, WA 98104-5254<br>(503) 326-3228<br>TTY Number: (503) 326-2568 |

Appendix III

## FIELD OFFICE RECOMMENDATION

Project Name: _____
Project Number: _____
Program Center: _____
Hub: _____
Amount Requested: _____

I recommend that the referenced project be considered for funding. Based upon a review of the application and the project files, the use of Emergency Capital Repair Grant funds for the referenced project falls within the statutory guidance and the assistance is necessary to make emergency capital repairs at the property. Attached is a brief narrative describing the emergency capital repair needs.

Attachment

| | |
|---|---|
| _____ | _____ |
| Project Manager | Date |
| _____ | _____ |
| Program Center Director | Date |
| _____ | _____ |
| Hub Director | Date |

Appendix IV

## REVIEW CHECK LIST

REVIEW CHECK LIST instructions may be found in Section VB. 4 of the notice. If the answer to any of the questions in the Table below is "No," please provide comments in the comments space in the table or in the space available on this page for additional comments.

**Project Name:** _____
**Project Number:** _____
**Program Center:** _____

| CATEGORY | YOU ARE LOOKING FOR... | ANSWER | COMMENTS |
|---|---|---|---|
| **Analysis of an Emergency Situation** | Is this an emergency situation requiring the immediate use of these funds? | Yes __<br>No __ | |
| **Project meets the requirement of 24 CFR 50.19(b)(10) and is not subject to National Environmental Policy Act or other laws and authorities specified at 24 CFR 50.4** | Is assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety, including those resulting from physical deterioration? | Yes __<br>No __<br><br>If no, perform and attach herein appropriate environ-mental review using form HUD- 4128. | |
| **Flood Insurance Requirements** | Are any project structures in Federal Emergency Management Agency-designated special flood hazard areas? | Yes __<br>No __<br><br>If yes, flood insurance is required for the life of the proposed project. | |
| **Project Plan** | Are the specifications for capital repairs sufficiently detailed? | Yes __<br>No __ | |
| **Physical Inspection** | Provide the score and the date of the most recent REAC physical inspection. | _____<br>(score)<br>_____<br>(date) | |

| | | | |
|---|---|---|---|
| **Presence of Flags** | Has the owner or the management agent been "flagged" in the Active Partner Performance System (APPS)?<br><br>If either the owner or agent has a "flag," the normal form-2530 clearance processes are required.<br><br>Since time is of the essence, the form-2530 clearance process request should indicate that this information is for the Emergency Capital Repairs Grant program and identify the request as URGENT. | Yes __<br>No __ | |
| **Repair Costs** | Are the costs for the repairs reasonable and appropriate to the needs identified in the submission and the repairs being made? | Yes __<br>No __ | |
| **HUD Agreements** | Is the owner in compliance with the Mortgage, Regulatory Agreement, and Assistance contract, if applicable, etc.? | Yes __<br>No __ | |
| **Management** | Is current management satisfactory to HUD based upon review of financial statements, as well as management and occupancy reviews?<br><br>When was the last management review conducted? | Yes ___<br>No ___<br><br>_____ | |

| | | | |
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| **Annual Operating Expenses** | Can the repairs be completed with the current funds available in the project?<br><br>If not, what is the basis for the judgment that the repairs cannot be completed with existing funds and reserves or with other non-HUD/non-project resources?<br><br>Are the annual operating expenses reasonable? | Yes __<br>No __<br><br><br><br><br><br><br>Yes __<br>No __ | |
| **Age of the Project** | What is the date of the final closing? | _____ | |
| **Replacement Reserve Requirements** | Have deposits been made each month to the project's reserve account?<br><br>What is the balance in the Reserve for Replacement Account?<br><br>What is the required balance? | Yes __<br>No __<br><br>$ _____<br><br>$_____ | |
| **Residual Receipts Balance** | What is the balance in the Residual Receipts Account? | $_____ | |

| | | | |
|---|---|---|---|
| **Audited Financial Statement** | Is the owner current with filing of the audited financial statements?<br><br>Were all findings, if any, resolved within 30 days? | Yes __<br>No __<br><br>Yes __<br>No __ | |
| **Excess Income** | If the project is a Section 236, is the owner in compliance with the excess income requirements? | Yes __<br>No __ | |
| **Tenant Participation** | Did the owner notify the tenants? | Yes __<br>No __ | |
| **Civil Rights Compliance** | Does the owner have an approved Affirmative Fair Housing Marketing Plan that is less than 5 years old? | Yes __<br>No __ | |

| | | | |
|---|---|---|---|
| | Has the owner resolved any systemic charge of discrimination, noncompliance findings alleging systemic or ongoing violations under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act; or resolved any pattern and practice fair housing lawsuit filed against it by the Department of Justice with a HUD-approved conciliation agreement, voluntary compliance agreement, or consent decree or order? | Yes __<br>No __ | |
| | Is the owner in compliance with the civil rights requirements set forth in Section IV A.12 of the Notice? | Yes __<br>No __ | |

Appendix V

EMERGENCY CAPITAL REPAIRS PROGRAM GRANT AGREEMENT

Grant Number: _____ Grant Amount: _____

Project Name: _____

Project Address: _____

Project Number: _____ Section 8/PRAC Number: _____

Number or Units: _____

Effective Dates: _____ to _____

LOCCS Program Area: ALCP PAS Program Code: ECR

LOCCS 3-Digit Program Identifier: 115

Owner: _____

This Grant Agreement between the Secretary of Housing and Urban Development (HUD) and _____ (Grantee), whose 9-Digit Tax I.D. number is _____, is made pursuant to the Notice providing funding published in the Federal Register on _____.

The assistance, which is the subject of this Grant Agreement, is authorized by Section 202b of the Housing Act of 1959, as amended (P.L. 106-74, approved Oct. 20, 1999, and the Consolidated Appropriations Act, 2005 (Public Law 108-447, approved December 8, 2004), and the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act,

2006 (Public Law 109-115, approved November 30, 2005). The term "grant" or "grant funds" means the assistance provided under this Grant Agreement. The term "Application" means the application submission on the basis of which this grant was approved by HUD, including the certifications and assurances and any information or documentation required to meet the grant award conditions. The Application is incorporated herein as part of this Agreement; however, in the event of a conflict between any part of the Application and any part of this Agreement, the latter shall control. HUD agrees, subject to the terms and conditions of this Agreement, to provide grant funds in the amount specified for the approved project described in the Application.

HUD's maximum funds awarded for this project is $_____ to enable the Grantee to make emergency capital repairs that present an immediate threat to the health, safety, and quality of life of the tenants. Funds will be obligated and made available upon execution of the Grant Agreement. As with all programs, these funds are subject to the availability of appropriations.

**ARTICLE I. HUD REQUIREMENTS**

A. The grant funds will be used only for activities described in the Application, as approved by HUD. Eligible costs will include the repair or replacement of systems, but not limited to (1) major building and structural components that are in critical condition, and (2) repairs or replacements to mechanical equipment, to the extent they are necessary for health and safety reasons.

B. Grantees are required to expend grant funds according to the approved budget and timetable, unless HUD approves a change.

C. The accounting systems of all grantees must ensure that grant funds are not commingled with any other funds. Where a grantee's accounting system cannot comply with this requirement, it is required that the grantee establish an auditable system to provide adequate accountability for the funds that are awarded.

D. The grantee has the responsibility to assure that there is no duplication of federal funds.

E. The Grantee must provide a Rental Use Agreement, which will be recorded, covering the project and requiring that the project serve low-income or very low-income elderly persons if the mortgage has less than 10 years to run.

F. The emergency capital repairs funded under this agreement must pose a threat to the immediate health and safety needs that have an impact upon the quality of life of the tenants if the repairs are not made.

**ARTICLE II. APPLICABLE EQUAL OPPORTUNITY REQUIREMENTS**

A. The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107.

B. The requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1.

C. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against persons with

disabilities under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

D. The requirements of 24 CFR 5.105(a) regarding equal opportunity, as well as the requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60.

E. For those grants funding construction covered by 24 CFR part 135, the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) that require that economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be given to low- and very low-income persons and to businesses that provide economic opportunities for these persons.

F. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise) and 12138 (concerning Women's Business Enterprise). Consistent with HUD's responsibilities under these orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with the grant-funded activities.

G. The grantee, where applicable, shall maintain records of its efforts to comply with requirements cited in paragraphs E and F.

**ARTICLE III. OTHER HUD REQUIREMENTS**

A. Administrative Requirements of OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations."

B. Administrative requirements of 24 CFR part 84, including the procurement requirements of 24 CFR 84.44, and the requirements of OMB Circular A-122 regarding Cost Principles for Non-Profit Institutions.

C. The regulations at 24 CFR part 87, relating to lobbying, including the requirement that the Grantee obtain certifications and disclosures from all covered persons.

D. Restrictions on participation by ineligible, debarred, or suspended persons or entities as described in Executive Order 12549 and 24 CFR 5.105(c).

E. The Grantee will comply with all accessibility requirements under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, where applicable.

F. Compliance with the Davis-Bacon requirements and the Contract Work Hours and Safety Standards Act as applied to this program.

**ARTICLE IV. CONDITIONS PRECEDENT TO DRAWDOWN**

A. The Grantee has received and approved any certifications and disclosures required by 24 CFR 87.100 concerning lobbying and by 24 CFR 24.510(b) regarding ineligibility, suspension, and debarment.

B. Compliance with any and all conditions precedent to the receipt of grant funds.

**ARTICLE V. DRAWDOWNS**

A. A request by the Grantee to draw down grant funds under the Voice Response Access system or any other payment system constitutes a representation by the Grantee that it and all participating parties are complying with the terms of this Grant Agreement.

B. The Grantee will be paid on an advance basis, provided that the Grantee minimizes the time elapsing between transfer of the grant funds and disbursement for project purposes and otherwise follows the requirements of 24 CFR part 84 and Treasury Circular 1079 (32 CFR part 205).

C. The Grantee, to help ensure completion of the repairs, shall obtain from the contractor a copy of plans and specifications; shall assure that grant funds allocated for repair costs will be at a rate not to exceed the percentage of project completion; shall withhold 10 percent of payments of projects from the contractor pending completion; and shall not permit repairs to begin until all funds needed for completion of the repairs have been committed to the project.

D. Grantees should submit the LOCCS/VRS Payment Voucher form HUD-50080-ECRP each time they draw down funds from LOCCS.

**ARTICLE VI. PROGRESS REPORTS**

A. The Grantee shall submit a progress report every 6 months after the effective date of the Grant Agreement. Progress reports shall include reports on both performance and financial progress and shall conform with 24 CFR 84.50 and 84.53. Additional information or increased frequency of reporting may be required by HUD.

B. The performance reports must contain the information required under 24 CFR 84.51(a), including a comparison of actual accomplishment to the objectives indicated in the approved application; the reasons for slippage if established objectives were not met; and additional pertinent information.

C. Financial reports shall be submitted on Standard Form 269 (SF-269) and the following: for repair costs, SF-271; for non-construction costs, a breakdown in costs similar to SF-424A.

D. No grant payments will be approved for projects with overdue progress reports.

## ARTICLE VII. PROJECT CLOSEOUT

A. The Grantee shall initiate project closeout within 30 days of project repair completion. At HUD's option, the Grantee may delay initiation of project closeout until the resolution of any HUD monitoring findings. If HUD exercises this option, the Grantee must promptly resolve the findings.

B. The Grantee recognizes that the closeout process may entail a review by HUD to determine compliance with the Grant Agreement by the Grantee and all participating parties. The Grantee agrees to cooperate with any review in any way possible, including making available records requested by HUD and the project for on-site HUD inspection.

C. The grant term may not exceed one year (measured from date of obligation to completion of repairs), unless otherwise approved by HUD. Any term extension must be preceded by a written narrative justification acceptable to HUD.

D. Within 90 days after HUD's approval to initiate closeout, the Grantee shall provide to HUD the following in the format(s) approved by HUD: (1) a certification of project completion; (2) a certification of compliance with all the requirements of the Grant Agreement; (3) a report giving the amount and types of project costs charged to the grant meeting OMB Circular A-122 standards; (4) a certification of the costs charged to the project and sources of other project funds; and (5) a final performance report providing a comparison of actual accomplishment with each of the project objectives, the reasons for any slippage, and additional pertinent information, including explanation of significant cost overruns.

E. The Grantee agrees that the grant funds are allowable only to the extent that the project costs, meeting the standard of OMB Circular A-122, equal the grant amount plus other sources of project funds provided.

F. At closeout, the Grantee shall provide a performance report that contains a comparison of the actual accomplishment to the original scope of the work.

G. When HUD has determined that the grant funds are allowable, the activity was completed as described by the Grant Agreement, and all federal requirements were satisfied, HUD and the Grantee will sign the Closeout Agreement.

H. The Closeout Agreement will include the Grantee's Agreement to abide by any continuing federal requirements.

**ARTICLE VIII. DEFAULT**

A default under this Grant Agreement shall consist of using grant funds for a purpose other than as authorized by this Agreement and any noncompliance with statutory, regulatory, or other requirements applicable to this Agreement, or any material misrepresentation in the application submission.

IN WITNESS WHEREOF, the parties hereto have executed this Grant Agreement the _____ day of _____, 2006.

United States of America
Secretary of Housing and Urban Development
By _____Name
Signature_____ Date
_____ Official Title
Grantee
By_____Name
Signature_____ Date
_____Official Title

[FR Doc. 06–4745 Filed 5–17–06; 4:35 pm]
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## LIST OF PUBLIC LAWS

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**H.R. 4297/P.L. 109–222**

Tax Increase Prevention and Reconciliation Act of 2005 (May 17, 2006; 120 Stat. 345)

**H.J. Res. 83/P.L. 109–223**

To memorialize and honor the contribution of Chief Justice

William H. Rehnquist. (May 18, 2006; 120 Stat. 374)

**S. 1382/P.L. 109–224**

To require the Secretary of the Interior to accept the conveyance of certain land, to be held in trust for the benefit of the Puyallup Indian tribe. (May 18, 2006; 120 Stat. 376)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

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