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Contents

Federal Register

Vol. 71, No. 245

Thursday, December 21, 2006

Agricultural Marketing Service
NOTICES
Grade standards:
Pea pods, 76631–76632
National Organic Program:
Noncompliance and adverse action records; release, 76632

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Natural Resources Conservation Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76631

Animal and Plant Health Inspection Service
NOTICES
Meetings:
National Poultry Improvement Plan General Conference Committee, 76633

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76672–76673

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department

Coast Guard
RULES
Drawbridge operations:
Louisiana, 76601–76603
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76676–76677

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
RULES
Grants, other financial assistance, and nonprocurement agreements:
Nonprocurement debarment and suspension; OMB guidance, 76573–76575

Defense Department
See Navy Department

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76640–76642
Grants and cooperative agreements; availability, etc.:
Charter School Program, 76890–76895

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 76642

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
Charleston Hosiery, Inc., 76696
Employment Solutions, 76696–76697
Ford Motor Co., 76697
Hi Specialty America, 76697
Kentucky Derby Hosiery Co., Inc., 76697
Lee Middleton Original Dolls, Inc., 76697–76698
P.H. Precision Products Corp., et al., 76698–76699
QPM Aerospace, Inc., 76699
Senco Products, Inc., 76699
Short Bark Industries, 76699–76700
United Auto Workers, Local 969, 76700
Weyerhaeuser Co., 76700–76701

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Synthetic organic chemical manufacturing industry, 76603–76615
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76643–76644
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Springfield, IL, 76644
Reports and guidance documents; availability, etc.:
Effluent Guidelines Program Plan (2006), 76644–76667
Water pollution control:
National Pollutant Discharge Elimination System—
Gulf of Mexico; western portion of Outer Continental Shelf; general permit reissuance, 76667–76669

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Raytheon; correction, 76575
Stemme GmbH & Co. KG, 76576–76578
IFR altitudes, 76578–76580

Federal Bureau of Investigation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76688–76689

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
New York, 76677
Washington, 76677–76678

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation combined filings, 76642–76643

Federal Motor Carrier Safety Administration
PROPOSED RULES
Motor carrier safety standards:
Intermodal equipment providers, motor carriers, and drivers operating intermodal equipment; safety and maintenance requirements, 76796–76832
New entrant safety assurance process, 76730–76793

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 76669

Fish and Wildlife Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76679–76681
Endangered and threatened species and marine mammals permit applications, 76682–76684
Endangered and threatened species permit applications, 76684–76686
Marine mammal permit applications, determinations, etc., 76686–76687

Food and Drug Administration
RULES
Food for human consumption:
Food labeling—
Uniform compliance date, 76599–76600
NOTICES
Reports and guidance documents; availability, etc.:
Post-approval studies imposed by premarket approval application order; handling procedures, 76673–76674

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Indian Health Service
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76669–76670
Meetings:
American Health Information Community, 76670–76672

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See Transportation Security Administration

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76678–76679
Committees; establishment, renewal, termination, etc.:
Hearings and Appeals Office, 76679

Indian Health Service
RULES
Indian Self-Determination and Education Assistance Act:
Civilian Board of Contract Appeals; address change, 76600–76601

Inspector General Office, Health and Human Services Department
NOTICES
Organization, functions, and authority delegations:
Evaluation and Inspections Office et al., 76674–76676

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Indian Gaming Commission
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Silicon metal from—
Brazil, 76635–76636
China, 76636–76637
Cheese quota; foreign government subsidies:
Quarterly update, 76637–76638

Justice Department
See Federal Bureau of Investigation
See Prisons Bureau
NOTICES
Pollution control; consent judgments:
Blue Tee Corp., 76688
Washington Department of Transportation and Southgate Development Co., Inc., 76688

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76689–76690
Organization, functions, and authority delegations:
Trade and Labor Affairs Office, 76691–76696

Land Management Bureau
NOTICES
Survey plat filings:
Maine, 76687
North Carolina, 76687

Maritime Administration
NOTICES
Environmental statements; availability, etc.:
Northeast Gateway Energy Bridge, L.L.C., Liquefied Natural Gas Deepwater Port, MA; license application, 76718–76722

National Aeronautics and Space Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76701–76705
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Makel Engineering Inc., 76705

National Indian Gaming Commission
PROPOSED RULES
Indian Gaming Regulatory Act:
Electronic, computer, or other technologic aids used with play of Class II games; technical standards, 76618–76619

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic bluefin tuna, 76615–76617
Northeastern United States fisheries—
Summer flounder, 76617
NOTICES
Endangered and threatened species:
Findings on petitions, etc.—
Atlantic white marlin, 76639
Endangered and threatened species permit applications, 76638

National Park Service
NOTICES
Environmental statements; availability, etc.:
Bandelier National Monument, NM, 76687–76688

Natural Resources Conservation Service
NOTICES
Environmental statements; record of decision:
Cape Cod Water Resources Restoration Project, MA, 76633–76634
Federal tax determinations:
Commonwealth of Massachusetts' Small Renewables Initiative Program, 76635

Navy Department
NOTICES
Environmental statements; notice of intent:
Southern California Range Complex including San Clemente Island Range Complex, CA; naval readiness activities, 76639–76640

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Dominion Nuclear North Anna, LLC, 76705–76706
PPL Susquehanna, LLC; correction, 76706
Vermont Yankee Nuclear Power Station, 76706–76707
Meetings:
Reactor Safeguards Advisory Committee, 76707–76708

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards, etc.:
Standards Improvement Project (Phase III), 76623–76630

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
Combined Federal Campaign:
Charitable organizations coding procedure change, 76709–76710

Pipeline and Hazardous Materials Safety Administration
PROPOSED RULES
Hazardous materials transportation:
Rail transportation safety and security; enhancement, 76834–76850

Presidential Documents
ADMINISTRATIVE ORDERS
Migration and Refugee Assistance Act of 1962; availability of funds (Presidential Determination)
No. 2007-8 of December 14, 2006, 76571

Prisons Bureau
PROPOSED RULES
Inmate control, custody, care, etc.:
Reduction in sentence for medical reasons, 76619–76623

Securities and Exchange Commission
RULES
Securities, etc.:
Sarbanes-Oxley Act of 2002; implementation—
Exchange Act periodic reports; inclusion of management's report on internal control over financial reporting and certification disclosure; compliance dates, 76580–76599
PROPOSED RULES
Investment companies:
Investment company governance practices, 76618
NOTICES
Investment Company Act of 1940:
ProFunds, et al, 76710–76714
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange LLC, 76714–76715

Small Business Administration
NOTICES
Disaster loan areas:
Alaska, 76716
Missouri, 76716–76717
New York, 76717
Small business size standards:
Nonmanufacturer rule; waivers—
Demountable cargo containers manufacturing, 76717
Applications, hearings, determinations, etc.:
Gefus SBIC, L.P., 76715–76716
Housatonic Equity Investors SBIC, L.P., 76716

State Department
NOTICES
Foreign Operations, Export Financing, and Related Program Appropriations Act:
Serbia, Bosnia, and Herzegovina; proposed European Bank for reconstruction and development projects; U.S. position determination, 76717–76718

Surface Transportation Board
NOTICES
Rail carriers:
Control exemptions—
Indiana Boxcar Corp., 76722–76723
Railroad operation, acquisition, construction, etc.:
Columbiana County Port Authority, 76723
Eastern States Railroad, LLC, 76723–76724
Norfolk Southern Railway Co., 76724
Railroad services abandonment:
High Point, Randleman, Asheboro & Southern Railroad Co., 76724–76725

Trade Representative, Office of United States
NOTICES
Harmonized Tariff Schedule:
Chile et al.; sugar and syrup goods and sugar containing products; trade surplus determination, 76708–76709

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Maritime Administration
See Pipeline and Hazardous Materials Safety Administration

See Surface Transportation Board

Transportation Security Administration
PROPOSED RULES
Rail transportation security; sensitive security information protection, 76852–76888

Treasury Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76725

Veterans Affairs Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 76725–76728

Separate Parts In This Issue

Part II
Transportation Department, Federal Motor Carrier Safety Administration, 76730–76793

Part III
Transportation Department, Federal Motor Carrier Safety Administration, 76796–76832

Part IV
Transportation Department, Pipeline and Hazardous Materials Safety Administration, 76834–76850

Part V
Homeland Security Department, Transportation Security Administration, 76852–76888

Part VI
Education Department, 76890–76895

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

2 CFR
1326.....76573

3 CFR
Administrative Orders:
Presidential
Determinations No. 2007-8 of December 14, 2006.....76571

14 CFR
39 (2 documents).....76575, 76576
95.....76578

15 CFR
14.....76573
26.....76573

17 CFR
210.....76580
228.....76580
229.....76580
240.....76580
249.....76580
Proposed Rules:
270.....76618

21 CFR
101.....76599

25 CFR
900.....76600
Proposed Rules:
547.....76618

28 CFR
Proposed Rules:
571.....76619
572.....76619

29 CFR
Proposed Rules:
1910.....76623
1915.....76623
1917.....76623
1918.....76623
1919.....76623
1926.....76623

33 CFR
117.....76601

40 CFR
63.....76603

49 CFR
Proposed Rules:
172.....76834
174.....76834
365.....76730
385 (2 documents).....76730, 76796
386.....76796
387.....76730
390 (2 documents).....76730, 76796
392.....76796
393.....76796
396.....76796
1520.....76852
1580.....76852

50 CFR
635.....76615
648.....76617

Federal Register
Vol. 71, No. 245
Thursday, December 21, 2006

Presidential Documents

Title 3—

The President

Presidential Determination No. 2007–8 of December 14, 2006

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $5.215 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund for the purpose of meeting unexpected urgent refugee and migration needs resulting from conflicts in Somalia and Sri Lanka. These funds may be used, as appropriate, to provide contributions to international, governmental, and nongovernmental organizations and, as necessary, for administrative expenses of the Bureau of Population, Refugees, and Migration.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this determination in the **Federal Register**.

GWBOLD.EPS

THE WHITE HOUSE,
Washington, December 14, 2006.

[FR Doc. 06–9836
Filed 12–20–06; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 71, No. 245
Thursday, December 21, 2006

DEPARTMENT OF COMMERCE

2 CFR Part 1326

15 CFR Parts 14 and 26

[Docket No. 060830228–6311–02]

RIN 0605–AA23

Department of Commerce Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (Department) removes its regulations implementing the government-wide common rule on nonprocurement debarment and suspension, currently codified at Title 15, and adopts the Office of Management and Budget's (OMB) guidance at Title 2 of the Code of Federal Regulations (CFR) published as interim final guidance in the **Federal Register** on August 31, 2005, as revised by the issuance of a final rule in the **Federal Register** on November 15, 2006. This regulatory action implements the OMB's initiative to streamline and consolidate all federal regulations on nonprocurement debarment and suspension into one part of the CFR. The Department does not intend to modify any of its current policy.

DATES: This rule is effective January 22, 2007.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Gary Johnson at (202) 482–1679 or by e-mail at *gjohnso3@doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2005, the Office of Management and Budget (OMB) issued an interim final guidance that implemented its Guidance for Governmentwide Debarment and Suspension (Nonprocurement), codified in Part 180 of title 2 of the Code of Federal Regulations (70 FR 51862, August 31, 2005). In addition to restating and updating its guidance on nonprocurement debarment and suspension, the interim final guidance requires all federal agencies to adopt a new approach to federal agency implementation of the guidance. OMB requires each agency to issue a brief rule that: (1) Adopts the guidance, giving it regulatory effect for that agency's activities; and (2) states any agency-specific additions, clarifications, and exceptions to the government-wide policies and procedures contained in the guidance. That guidance also requires agencies to implement the OMB guidance by February 28, 2007.

On November 15, 2006, OMB issued a final rule (71 FR 66431) revising its government-wide guidance on nonprocurement debarment and suspension. The revisions were necessary to conform a few unintended changes in the content of the interim final guidelines to the substance of the Federal agencies' most recent update to the common rule (68 FR 66534, November 26, 2003). The revisions also made needed technical corrections.

Pursuant to the requirements in OMB's final guidance, the Department of Commerce (Department) in this action: (1) Removes 15 CFR Part 26; (2) revises the Department's debarment and suspension common rule to implement OMB's guidance and includes specific provisions to the Department; (3) co-locates the Department's part with OMB's guidance in 2 CFR along with other agencies' regulations in that title; and (4) revises references in 15 CFR Part 14 to include the citation to the Department's regulations located in Title 2, Part 1326.

This regulatory action implements the OMB's initiative to streamline and consolidate all federal regulations on nonprocurement debarment and suspension into one part of the CFR, and does not intend to modify any of the Department's current policy.

Public comment on this action was solicited as a proposed rule in a **Federal Register** notice dated September 22, 2006 (71 FR 55354). No comments were received; therefore the Department adopts OMB's final guidance, and the provisions specific to the Department contained in the proposed rule without change.

Executive Order 12866

This regulatory action has been determined to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification is found in the proposed rule and is not repeated here. No comments were received on the economic impacts of this rule therefore a final Regulatory Flexibility Act analysis was not prepared.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

2 CFR Part 1326

Administrative practice and procedure, Debarment and suspension,

Grant programs, Reporting and recordkeeping requirements.

15 CFR Part 26

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

Michael S. Sade,

Director for Acquisition Management and Procurement Executive.

■ Accordingly, under the authority of 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); and E.O. 12689 (3 CFR, 1989 Comp., p. 235) the Department of Commerce amends the Code of Federal Regulations, Title 2, Subtitle B, Title 15 Part 14 and Title 15 Part 26, as follows:

Title 2—Grants and Agreements

■ 1. Add Chapter 13, consisting of Part 1326 to Subtitle B to read as follows:

CHAPTER 13—DEPARTMENT OF COMMERCE

PART 1326—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

§ 1326.10 What does this part do?
§ 1326.20 Does this part apply to me?
§ 1326.30 What policies and procedures must I follow?

Subpart A—General

§ 1326.137 Who in the Department of Commerce may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

§ 1326.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?
§ 1326.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1326.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1326.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–H [Reserved]

Subpart I—Definitions

§ 1326.970 Nonprocurement transaction (Department of Commerce supplement to government-wide definition at 2 CFR 180.970).

Subpart J [Reserved]

Authority: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

§ 1326.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Commerce policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 1326.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see Subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970, as supplemented by by Subpart B and § 1326.970 of this part).

(b) Respondent in a Department of Commerce suspension or debarment action.

(c) Department of Commerce debarment or suspension official;

(d) Department of Commerce grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

§ 1326.30 What policies and procedures must I follow?

The Department of Commerce policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 1326.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, Department of Commerce policies and procedures are those in the OMB guidance.

Subpart A—General

§ 1326.137 Who in the Department of Commerce may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Commerce, the Secretary of Commerce or designee has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 1326.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

(a) For purposes of the Department of Commerce, a transaction that the Department needs to respond to a national or agency-recognized emergency or disaster includes the Fisherman's Contingency Fund.

(b) For purposes of the Department of Commerce, an incidental benefit that results from ordinary governmental operations includes:

(1) Export Promotion, Trade Information and Counseling, and Trade policy.

(2) Geodetic Surveys and Services (Specialized Services).

(3) Fishery Products Inspection Certification.

(4) Standard Reference Materials.

(5) Calibration, Measurement, and Testing.

(6) Critically Evaluated Data (Standard Reference Data).

(7) Phoenix Data System.

(8) The sale or provision of products, information, and services to the general public.

(c) For purposes of the Department of Commerce, any other transaction if the application of an exclusion to the transaction is prohibited by law includes:

(1) The Administration of the Anti-dumping and Countervailing Duty Statutes.

(2) The export Trading Company Act Certification of Review Program.

(3) Trade Adjustment Assistance Program Certification.

(4) Foreign Trade Zones Act of 1934, as amended.

(5) Statutory Import Program.

§ 1326.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to a

subcontract that is awarded by a participant in a procurement transaction covered under 2 CFR 180.220(a), if the amount of the subcontract exceeds or is expected to exceed $25,000. This extends the coverage of the Department of Commerce nonprocurement suspension and debarment requirements to one additional tier of contracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180).

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1326.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR Part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1326.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by Subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–H [Reserved]

Subpart I—Definitions

§ 1326.970 Nonprocurement transaction (Department of Commerce supplement to government-wide definition at 2 CFR 180.970).

For purposes of the Department of Commerce, nonprocurement transaction includes the following:

(a) Joint project Agreements under 15 U.S.C. 1525.

(b) Cooperative research and development agreements.

(c) Joint statistical agreements.

(d) Patent licenses under 35 U.S.C. 207.

(e) NTIS joint ventures, 15 U.S.C. 3704b.

Subpart J [Reserved]

Title 15, Commerce and Foreign Trade

PART 14—[AMENDED]

■ 2. The authority citation for Part 14 continues to read as follows:

Authority: 5 U.S.C. 301: OMB Circular A–110 (64 FR 54926, October 8, 1999).

§ 14.13 [Amended]

■ 3. Section 14.13 is amended by removing the citation ''15 CFR Part 26'' and adding in its place the citation ''2 CFR Part 1326''.

PART 26—[REMOVED AND RESERVED]

■ 4. Remove and reserve Part 26.

[FR Doc. E6–21846 Filed 12–20–06; 8:45 am]

BILLING CODE 3510–FA–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25157; Directorate Identifier 2006–CE–34–AD; Amendment 39–14814; AD 2006–23–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models C90A, B200, B200C, B300, and B300C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2006–23–02, which was published in the **Federal Register** on November 8, 2006 (71 FR 65390), and applies to certain Raytheon Aircraft Company (RAC) (formerly Beech) Models C90A, B200, B200C, B300, and B300C airplanes. AD 2006–23–02 requires you to inspect the flight controls for improper assembly or damage, and if any improperly assembled or damaged flight controls are found, take corrective action. We proposed in the notice of proposed rulemaking (NPRM) ''unless already done'' credit if the actions were already accomplished. However, we inadvertently left that language out of paragraph (e) of AD 2006–23–02. This document corrects that paragraph by inserting the phrase ''unless already done.''

DATES: The effective date of this AD (2006–23–02) remains December 13, 2006.

FOR FURTHER INFORMATION CONTACT: Chris B. Morgan, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4154; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On October 26, 2006, the FAA issued AD 2006–23–02, Amendment 39–14814 (71 FR 65390, November 8, 2006), which applies to certain RAC Models C90A, B200, B200C, B300, and B300C airplanes. AD 2006–23–02 requires you to inspect the flight controls for improper assembly or damage, and if any improperly assembled or damaged flight controls are found, take corrective action. We proposed in the NPRM ''unless already done'' credit if the actions were already accomplished. However, we inadvertently left that language out of paragraph (e) of AD 2006–23–02.

Need for the Correction

This correction is needed to allow credit for already completed actions required by this AD. This document corrects that paragraph by inserting the phrase ''unless already done'' in paragraph (e) of AD 2006–23–02 as was proposed in the NPRM.

Correction of Publication

■ Accordingly, the publication of November 8, 2006 (71 FR 65390), of Amendment 39–14814; AD 2006–23–02, which was the subject of FR Doc. E6–18727, is corrected as follows:

Section 39.13 [Corrected]

■ On page 65391, in section 39.13 [Amended], in paragraph (e), change the text to read: ''To address this problem, you must do the following, unless already done:''

Action is taken herein to correct this reference in AD 2006–23–02 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains December 13, 2006.

Issued in Kansas City, Missouri, on December 12, 2006.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–21748 Filed 12–20–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[FAA–2006–26557; Directorate Identifier 2006–CE–85–AD; Amendment 39–14860; AD 2006–26–02]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Model S10, S10–V, and S10–VT Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

a leaking brass fuel connection (part no. 10AB–75) was found during maintenance check.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective January 10, 2007.

The Director of the Federal Register approved the incorporation by reference of Stemme F&D Service Bulletin Document Number A31–10–077, Am.-Index: 01.a, dated October 6, 2006, listed in this AD as of January 10, 2007.

We must receive comments on this AD by January 22, 2007.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Glider Program Manager, Small Airplane Directorate, FAA, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2006–0310–E, dated October 11, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

A leaking brass fuel connection (part no. 10AB–75) was found during maintenance check.

This brass fuel connection was for the first time introduced with the SB A31–10–061, ''Additional Measures—Fire Protection S10–VT'' and with the SB A31–10–063, ''Additional Measures—Fire Protection for S10 and S10–V'' (US mandatory). These brass connections were used later in serial production as spare parts.

The leaking brass connector was in accordance with design modification index 01.a. It was installed starting February 2002 until April 2002. A modified version of the hose connector was introduced in April 2002 after the old version resulted to be susceptible to improper assembly and maintenance. The modified version has design modification index 02.a and its installation has been proved to avoid any possible leakage.

The MCAI requires inspections on both sides of the fuel connection between the wing and the fuselage to identify any installed brass hose connector having design modification index 01.a and replacing those connectors with the modified version of connectors having design modification index 02.a. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Stemme GmbH & Co. KG has issued Stemme F&D Service Bulletin A31–10–077 Am.-Index: 01.a, dated October 6, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

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

Differences Between This AD and the MCAI or Service Information

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

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a leaking brass fuel connection (part no. 10AB–75) was found during maintenance check. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26557; Directorate Identifier 2006–CE–85–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–26–02 Stemme GmbH & Co. KG: Amendment 39–14860; Docket No. FAA–2006–26557; Directorate Identifier 2006–CE–85–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 10, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following model and serial number gliders, certificated in any category.

Models	Serial Nos.
S10	10–03 through 10–56.
S10–V	14–001 through 14–030 and all converted variants 14–003M through 14–056M.
S10–VT	11–001 through 11–100.

Reason

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

A leaking brass fuel connection (part no. 10AB–75) was found during maintenance check.

Actions and Compliance

(e) Prior to further flight as of January 10, 2007 (the effective date of this AD), unless already done, do the following actions.

(1) Inspect both sides of the connection between the wing and the fuselage to identify any installed brass hose connector having design modification index 01.a.

(2) Replace connectors identified as design modification index 01.a with the modified version of connectors having design modification index 02.a.

(3) Do the actions required in this AD in accordance with the requirements of Stemme F&D Service Bulletin A31–10–077 Am.-Index: 01.a, dated October 6, 2006.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, Small Airplane Directorate, ATTN: Greg Davison, Glider Program Manager, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4130; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to European Aviation Safety Agency (EASA) AD No.: 2006–0310–E, dated October 11, 2006, and Stemme F&D Service Bulletin A31–10–077 Am.-Index: 01.a, dated October 6, 2006, for related information.

Material Incorporated by Reference

(h) You must use Stemme F&D Service Bulletin A31–10–077 Am.-Index: 01.a, dated October 6, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact STEMME GmbH & Co. KG, Flugplatzstraβe F2, Nr. 7, D–15344 Strausberg, Germany; telephone: + 49.33 41/36 12–0; fax: +49.33 41/36 12–30; e-mail: *P.Ellwanger@stemme.de.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri on December 14, 2006.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–21749 Filed 12–20–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30529; Amdt. No. 465]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, January 18, 2007.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on December 15, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, January 18, 2007.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 465 effective date January 18, 2007]

From	To	MEA
§ 95.1001 Direct Routes—U.S. Color Routes § 95.511 Green Federal Airway G11 Is Added to Read		
Campbell Lake, AK NDB	Glennallen, AK NDB	10000
Glennallen, AK NDB	Nabesna, AK NDB	10000
§ 95.4 Green Federal Airway G8 is Amended to Delete		
Campbell Lake, AK NDB	Glennallen, AK NDB	10000
Glennallen, AK NDB	Nabesna, AK NDB	10000
§ 95.11 Amber Federal Airway A15 is Amended to Delete		
Chena, AK NDB	Chandalar Lake, AK NDB	7000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 465 effective date January 18, 2007]

From	To	MEA
Chandalar Lake, AK NDB *10000—MCA CHANDALAR LAKE, AK NDB, NW BND	Put River, AK NDB	10000
§ 95.1117 Amber Federal Airway A17 is Added to Read		
Chena, AK NDB *Chandalar Lake, AK NDB *10000—MCA CHANDALAR LAKE, AK NDB, NW BND	Chandalar Lake, AK NDB Put River, AK NDB	7000 10000
§ 95.10 Amber Federal Airway A2 is Amended to Delete		
Chena, AK NDB Evansville, AK NDB *9100—MOCA	Evansville, AK NDB Browerville, AK NDB	5500 10000
§ 95.10 Amber Federal Airway A9 is Added to Read		
Chena, AK NDB Evansville, AK NDB *9100—MOCA	Evansville, AK NDB Browerville, AK NDB	5500 *10000
§ 95.6001 Victor Routes—U.S. **§ 95.6016 VOR Federal Airway V16 is Amended to Read in Part**		
Bowie, TX VORTAC	Bonham, TX VORTAC	4000
§ 95.6044 VOR Federal Airway V44 is Amended to Read in Part		
Paleo, MD FIX *1600—MOCA *2000—GNSS MEA	Agard, MD FIX	*13500
Agard, MD FIX *1400—MOCA *2000—GNSS MEA	Speak, MD FIX	*13000
Speak, MD FIX *1500—MOCA *2000—GNSS MEA	Sea Isle, NJ VORTAC	*7000
Sea Isle, NJ VORTAC *1500—MOCA *2000—GNSS MEA	Karrs, NJ FIX	*6000
Karrs, NJ FIX *6000—MRA **1300—MOCA **2000—GNSS MEA	*Gamby, NJ FIX	**5000
Gamby, NJ FIX *6000—MRA **1300—MOCA **2000—GNSS MEA	*Sates, NJ FIX	**5000
Sates, NJ FIX *1600—MOCA *2000—GNSS MEA	Deer Park, NY VOR/DME	*5000
§ 95.6072 VOR Federal Airway V72 is Amended to Read in Part		
Razorback, AR VORTAC Eduge, AR FIX *2900—MOCA	Eduge, AR FIX Reeds, MO FIX	3500 *4000
Reeds, MO FIX *2900—MOCA	Dogwood, MO VORTAC	*3400
§ 95.6106 VOR Federal Airway V106 is Amended to Read in Part		
Johnstown, PA VORTAC *4400—MOCA	Hudon, PA FIX	*5000
Hudon, PA FIX *3900—MOCA *5000—GNSS MEA	Rashe, PA FIX	*7000
Rashe, PA FIX *3800—MOCA *5000—GNSS MEA	Selinsgrove, PA VORTAC	*14000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 465 effective date January 18, 2007]

From	To	MEA
§ 95.6195 VOR Federal Airway V195 is Amended to Read in Part		
Burrs, CA FIX *7000—MRA *7000—MCA TOMAD, CA FIX, W BND	*Tomad, CA FIX	6000
§ 95.6278 VOR Federal Airway V278 is Amended to Read in Part		
Bowie, TX VORTAC	Bonham, TX VORTAC	4000
§ 95.6573 VOR Federal Airway V573 is Amended to Read in Part		
*Alexx, OK FIX *7000—MRA **2900—MOCA	Ardmore, OK VORTAC	**4000

From	To	MEA	MAA
§ 95.7001 Jet Routes **§ 95.7510 Jet Route J510 is Amended to Delete**			
Emmonak, AK VOR/DME Unalakleet, AK VOR/DME	Unalakleet, AK VOR/DME Galena, AK VORTAC	18000 18000	45000 45000
§ 95.7512 Jet Route J512 is Added to Read			
Emmonak, AK VOR/DME Unalakleet, AK VOR/DME	Unalakleet, AK VOR/DME Galena, AK VORTAC	18000 18000	45000 45000

From	To	Changeover Points	
		Distance	From
§ 95.8003 VOR Federal Airway Changeover Points **Airway Segment Points V162 Is Amended to Add Changeover Point**			
Allentown, PA VORTAC Allentown	Huguenot, NY VOR/DME	10	Allentown
V285 is Amended to Add Changeover Point			
White Cloud, MI VOR/DME White Cloud	Manistee, MI VOR/DME	17	White Cloud
V290 is Amended to Delete Changeover Point			
Tar River, NC VORTAC Tar River	Pamlico NC NDB/DME	44	Tar River

[FR Doc. E6–21836 Filed 12–20–06; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 210, 228, 229, 240 and 249

[RELEASE NOS. 33–8760; 34–54942; File No. S7–06–03]

RIN 3235–AJ64

Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance dates; request for comment on Paperwork Reduction Act burden estimates.

SUMMARY: We are extending further for smaller public companies the dates that were published on September 29, 2005, in Release No. 33–8618 [70 FR 56825], for their compliance with the internal control reporting requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002. Under the extension, a non-accelerated filer is not required to provide management's report on internal control over financial reporting until it files an annual report for its first fiscal year ending on or after December 15, 2007. If we have not issued additional guidance for management on how to complete its

assessment of internal control over financial reporting in time to be of sufficient assistance in connection with annual reports filed for fiscal years ending on or after December 15, 2007, we will consider whether we should further postpone this date. A non-accelerated filer is not required to file the auditor's attestation report on internal control over financial reporting until it files an annual report for its first fiscal year ending on or after December 15, 2008. We will consider further postponing this date after we consider the anticipated revisions to Auditing Standard No. 2. Management's report included in a non-accelerated filer's annual report during the filer's first year of compliance with the Section 404(a) requirements will be deemed ''furnished'' rather than filed. Management's report for foreign private issuers filing on Form 20–F or 40–F that are accelerated filers (but not large accelerated filers) also will be deemed furnished rather than filed for the year that such issuers are only required to provide management's report. Companies that only provide management's report during their first year of compliance in accordance with our rules must state in the annual report that the report does not include the auditor's attestation report and that the company's registered public accounting firm has not attested to management's report on the company's internal control over financial reporting.

We also are adopting amendments that provide for a transition period for a newly public company before it becomes subject to the internal control over financial reporting requirements. Under the new amendments, a company will not become subject to these requirements until it either had been required to file an annual report for the prior fiscal year with the Commission or had filed an annual report with the Commission for the prior fiscal year. A newly public company is required to include a statement in its first annual report that the annual report does not include either management's assessment on the company's internal control over financial reporting or the auditor's attestation report.

DATES: *Effective Date:* The effective date published on June 18, 2003, in Release No. 33–8238 [68 FR 36636], remains August 14, 2003. The effective date of this document is February 20, 2007 except Temporary § 210.2–02T(c), Temporary § 228.308T, Temporary § 229.308T, Temporary Item 15T of Form 20–F (§ 249.220f), Temporary Instruction 3T of General Instruction B(6) of Form 40–F (§ 249.240f), Temporary Item 4T of Form 10–Q (§ 249.308a), Temporary Item 3A(T) of Form 10–QSB (§ 249.308b), Temporary Item 9A(T) of Form 10–K (§ 249.310), and Temporary Item 8A(T) of Form 10–KSB (§ 249.310b) are effective from February 20, 2007 to June 30, 2009. Temporary § 210.2–02T(a) remains effective from September 14, 2006 to December 31, 2007.

Compliance Dates: The compliance dates are extended as follows: A company that does not meet the definition of either an ''accelerated filer'' or a ''large accelerated filer,'' as these terms are defined in Rule 12b–2 under the Securities Exchange Act of 1934, is not required to comply with the requirement to provide management's report on internal control over financial reporting until it files an annual report for its first fiscal year ending on or after December 15, 2007. Non-accelerated filers must begin to comply with the provisions of Exchange Act Rule 13a–15(d) or 15d–15(d), whichever applies, requiring an evaluation of changes to internal control over financial reporting requirements with respect to the company's first periodic report due after the first annual report that must include management's report on internal control over financial reporting. The extended compliance also applies to the amendments of Exchange Act Rule 13a–15(a) or 15d–15(a) relating to the maintenance of internal control over financial reporting. We also are extending the compliance date to permit a non-accelerated filer to omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification required by Exchange Act Rules 13a–14(a) and 15d–14(a) that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the company, until it files an annual report that includes a report by management on the effectiveness of the company's internal control over financial reporting.

A company that does not meet the definition of either an accelerated filer or a large accelerated filer is not required to comply with the requirement to provide the auditor's attestation report on internal control over financial reporting until it files an annual report for its first fiscal year ending on or after December 15, 2008. Furthermore, until this type of company becomes subject to the auditor attestation report requirement, the registered public accounting firm retained by the company need not comply with the obligation in Rule 2–02(f) of Regulation S–X. Rule 2–02(f) requires every registered public accounting firm that issues or prepares an accountant's report that is included in an annual report filed by an Exchange Act reporting company (other than a registered investment company) containing an assessment by management of the effectiveness of the company's internal control over financial reporting to attest to, and report on, such assessment.

Comment Date: Comments regarding the collection of information requirements within the meaning of the Paperwork Reduction Act of 1995 should be received on or before January 22, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/final.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–06–03 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–06–03. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/final.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Sean Harrison, Steven G. Hearne, or Katherine Hsu, Special Counsels, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are amending certain internal control over financial reporting requirements in

Rules 13a–14,[1] 13a–15,[2] 15d–14,[3] and 15d–15[4] under the Securities Exchange Act of 1934,[5] Item 308 of Regulations S–K[6] and S–B,[7] Item 15 of Form 20–F,[8] General Instruction B(6) of Form 40–F,[9] and Rule 2–02(f)[10] of Regulation S–X.[11] We also are adding the following temporary provisions: Rule 2–02T of Regulation S–X, Item 308T of Regulations S–K and S–B, Item 3A(T) of Form 10–QSB, Item 4T of Form 10–Q, Item 8A(T) of Form 10–KSB, Item 9A(T) of Form 10–K, Item 15T of Form 20–F, and Instruction 3T of General Instruction B(6) of Form 40–F.

I. Background

On June 5, 2003,[12] the Commission adopted several amendments to its rules and forms implementing Section 404 of the Sarbanes-Oxley Act of 2002.[13] Among other things, these amendments require companies, other than registered investment companies, to include in their annual reports filed with us a report of management, and an accompanying auditor's attestation report, on the effectiveness of the company's internal control over financial reporting, and to evaluate, as of the end of each fiscal quarter, or year in the case of a foreign private issuer filing its annual report on Form 20–F or Form 40–F, any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

Under the compliance dates that we originally established, companies meeting the definition of an ''accelerated filer'' in Exchange Act Rule 12b–2[14] would have become subject to the internal control reporting requirements with respect to the first annual report that they filed for a fiscal year ending on or after June 15, 2004. Non-accelerated filers[15] would not have become subject to the requirements until they filed an annual report for a fiscal year ending on or after April 15, 2005. The Commission provided a lengthy compliance period for these requirements in light of the substantial time and resources needed by companies to implement the rules properly.[16] In addition, we believed that a corresponding benefit to investors would result from an extended transition period that allowed companies to implement the new requirements carefully, and noted that an extended period would provide additional time for the Public Company Accounting Oversight Board (the PCAOB) to consider relevant factors in determining and implementing new attestation standards for registered public accounting firms.[17]

In February 2004, we extended the compliance dates for accelerated filers to fiscal years ending on or after November 15, 2004, and for non-accelerated filers and for foreign private issuers to fiscal years ending on or after July 15, 2005.[18] The primary purpose of this extension was to provide additional time for companies' auditors to implement Auditing Standard No. 2, which the PCAOB had issued in final form in June 2004.[19]

In March 2005, we approved a further one-year extension of the compliance dates for non-accelerated filers and for all foreign private issuers filing annual reports on Form 20–F or 40–F in view of the efforts by the Committee of Sponsoring Organizations of the Treadway Commission (''COSO'') to provide more guidance on how the COSO framework on internal control can be applied to smaller public companies.[20] We also acknowledged the significant efforts being expended by many foreign private issuers to apply the International Financial Reporting Standards.

Most recently, in September 2005, we again extended the compliance dates for the internal control over financial reporting requirements applicable to companies that are non-accelerated filers.[21] Based on the September 2005 extension, domestic and foreign non-accelerated filers were scheduled to comply with the internal control over financial reporting requirements beginning with annual reports filed for their first fiscal year ending on or after July 15, 2007. This extension was based primarily on our desire to have the additional guidance in place that COSO had begun to develop to assist smaller companies in applying the COSO framework. In addition, the extension was consistent with a recommendation made by the SEC Advisory Committee on Smaller Public Companies.

Since we granted that extension last year, a number of events related to internal control over financial reporting assessments have occurred. Most recently, on July 11, 2006, COSO and its Advisory Task Force issued *Guidance for Smaller Public Companies Reporting on Internal Control over Financial Reporting*.[22] The guidance is intended to assist the management of smaller companies in understanding and applying the COSO framework. It outlines 20 fundamental principles associated with the five key components of internal control described in the COSO framework, defines each principle, describes a variety of approaches that smaller companies can use to apply the principles to financial reporting, and includes examples of how smaller companies have applied the principles.

In addition, on April 23, 2006, the SEC Advisory Committee on Smaller Public Companies submitted its final report to the Commission.[23] The final report includes recommendations designed to address the potential impact of the internal control reporting requirements on smaller public companies. Specifically, the Advisory Committee recommended that certain smaller public companies be provided exemptive relief from the management report requirement and from external auditor involvement in the Section 404 process under certain conditions unless and until a framework for assessing internal control over financial reporting is developed that recognizes the

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[1] 17 CFR 240.13a–14.

[2] 17 CFR 240.13a–15.

[3] 17 CFR 240.15d–14.

[4] 17 CFR 240.15d–15.

[5] 15 U.S.C. 78a *et seq.*

[6] 17 CFR 229.10 *et seq.*

[7] 17 CFR 228.10 *et seq.*

[8] 17 CFR 249.220f.

[9] 17 CFR 249.240f.

[10] 17 CFR 210.2–02(f).

[11] 17 CFR 210.1–01 *et seq.*

[12] See Release No. 33–8238 (June 5, 2003) [68 FR 36636].

[13] 15 U.S.C. 7262.

[14] 17 CFR 240.12b–2.

[15] Although the term ''non-accelerated filer'' is not defined in our rules, we use it throughout this release to refer to an Exchange Act reporting company that does not meet the Exchange Act Rule 12b–2 definitions of either an ''accelerated filer'' or a ''large accelerated filer.''

[16] See Release No. 33–8238.

[17] Under the Sarbanes-Oxley Act, the PCAOB was granted authority to set auditing and attestation standards for registered public accounting firms.

[18] See Release No. 33–8392 (Feb. 24, 2004) [69 FR 9722].

[19] See Release No. 34–49884 File No. PCAOB 2004–03 (June 17, 2004) [69 FR 35083]. Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Connection with an Audit of Financial Statements*, provides the professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of companies' internal control over financial reporting.

[20] Release No. 33–8545 (Mar. 2, 2005) [70 FR 11528].

[21] See Release No. 33–8618 (Sept. 22, 2005) [70 FR 56825].

[22] See SEC Press Release No. 2006–114 (July 11, 2006) at *http://www.sec.gov/news/press/2006/2006–114.htm.*

[23] See *Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission* (Apr. 23, 2006), available at *http://www.sec.gov/info/smallbus/acspc.shtml.*

characteristics and needs of these companies.

In April 2006, the U.S. Government Accountability Office (GAO) issued a report entitled *Sarbanes-Oxley Act, Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies*.[24] This report recommended that the Commission consider whether the currently available guidance, particularly the guidance on management's assessment, is sufficient or whether additional action is needed to help companies comply with the internal control over financial reporting requirements. The report indicates that management's implementation and assessment efforts were largely driven by Auditing Standard No. 2 because guidance at a similar level of detail was not available for management's implementation and assessment process. Furthermore, the report recommended that the Commission coordinate its efforts with the PCAOB so that the Section 404-related audit standards and guidance are consistent with any additional guidance applicable to management's assessment of internal control over financial reporting.[25]

Finally, on May 10, 2006, the Commission and the PCAOB sponsored a roundtable to elicit feedback from companies, their auditors, board members, investors, and others regarding their experiences during the accelerated filers' second year of compliance with the internal control over financial reporting requirements.[26] Several of the comments provided at, and in connection with, the roundtable suggested that additional management guidance would be useful, particularly for smaller public companies, and also expressed support for revisions to the PCAOB's Auditing Standard No. 2.[27]

II. Extension of Internal Control Reporting Compliance Dates for Non-Accelerated Filers

On May 17, 2006, the Commission and the PCAOB each announced a series of actions that they intended to take to improve the implementation of the Section 404 internal control over financial reporting requirements.[28] These actions included:

- Issuance of a concept release [29] soliciting comment on a variety of issues that might be included in future Commission guidance for management to assist in its performance of a top-down, risk-based assessment of internal control over financial reporting;
- Consideration of additional guidance from COSO;
- Revisions to Auditing Standard No. 2;
- Reinforcement of auditor efficiency through PCAOB inspections and Commission oversight of the PCAOB's audit firm inspection program;
- Development, or facilitation of development, of implementation guidance for auditors of smaller public companies;
- Continuation of PCAOB forums on auditing in the small business environment; and
- Provision of an additional extension of the compliance dates of the internal control reporting requirements for non-accelerated filers.

Consistent with this announcement, on August 9, 2006, we proposed to extend further the date for complying with the internal control over financial reporting requirements for domestic and foreign non-accelerated filers.[30] Approximately 44% of domestic companies filing periodic reports are non-accelerated filers, and an estimated 38% of the foreign private issuers subject to Exchange Act reporting are non-accelerated filers.[31] Prior to today's actions, non-accelerated filers were scheduled to begin complying with the management report requirement in Item 308(a) of Regulations S–K and S–B and the auditor attestation requirement in Item 308(b) of Regulations S–K and S–B for their fiscal years ending on or after July 15, 2007. We proposed to postpone for five months (from fiscal years ending on or after July 15, 2007 to fiscal years ending on or after December 15, 2007) the date by which non-accelerated filers must begin to include management's report. We also proposed to extend the compliance date for a non-accelerated filer regarding the auditor attestation report requirement for 17 months—until it files an annual report for a fiscal year ending on or after December 15, 2008.[32]

Furthermore, in a separate release also issued on August 9, 2006, we adopted an extension of the date for complying with the auditor attestation requirement for foreign private issuers that meet the Exchange Act definition of an accelerated filer, but not a large accelerated filer, and that file their annual reports on Form 20–F or 40–F, so that such issuers would not be subject to the auditor attestation requirement until a year after they first begin complying with the management report requirement.[33]

We received letters from a total of 36 commenters on the proposed extension of the internal control over financial reporting compliance dates for non-accelerated filers.[34] Thirty-five of these commenters generally supported the proposed extension.[35] Many of these commenters believed that the extension would reduce compliance costs for smaller companies and provide them

[24] U.S. Govt. Accountability Office, Report to the Committee on Small Business and Entrepreneurship, U.S. Senate: *Sarbanes-Oxley Act: Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies* (April 2006).

[25] See GAO Report at 52–53, 58.

[26] Materials related to the roundtable, including an archived broadcast and a transcript of the roundtable, are available on-line at *http://www.sec.gov/spotlight/soxcomp.htm.*

[27] See, for example, letters from the Biotech Industry Association, American Electronics Association, Emerson Electric Institute, U.S. Chamber of Commerce and Joseph A. Grundfest. These letters are available in File No. 4–511, at *http://www.sec.gov/news/press/4–511.shtml.*

[28] See SEC Press Release 2006–75 (May 17, 2006), ''SEC Announces Next Steps for Sarbanes-Oxley Implementation'' and PCAOB Press Release (May 17, 2006), ''Board Announces Four-Point Plan to Improve Implementation of Internal Control Reporting Requirements.''

[29] Release No. 34–54122 (July 11, 2006) [71 FR 40866].

[30] Release No. 33–8731 (Aug. 9, 2006) [71 FR 47060].

[31] The percentage of domestic filing companies, excluding Investment Company Act of 1940 filers, that is categorized as non-accelerated filers is based on public float where available (or market capitalization, otherwise) from Datastream as of December 31, 2005. The estimated percentage of foreign private issuers that are non-accelerated filers is based on market capitalization data from Datastream as of December 31, 2005.

[32] We also proposed and are extending the compliance dates for the auditor attestation report requirement appearing in Item 15(c) of Form 20–F and General Instruction B(6) of Form 40–F with respect to foreign private issuers that are non-accelerated filers.

[33] Release No. 33–8730A (Aug. 9, 2006) [71 FR 47056].

[34] The public comments we received are available for inspection in the Commission's Public Reference Room at 100 F Street, NE., Washington DC 20549 in File No. S7–06–03. They are also available on-line at *http://www.sec.gov/rules/proposed/s70603.shtml.*

[35] See letters from American Bar Association (ABA), American Bankers Association, America's Community Bankers (ACB), American Institute of Certified Public Accountants (AICPA), BDO Seidman, LLP (BDO), Biotechnology Industry Organization and eight other commenters (BIO), Callidus Software Inc. (Callidus), Calix Networks, Inc. (Calix), Core-Mark International, Inc. (Core-Mark), Cravath, Swaine & Moore LLP (Cravath), Davis Polk & Wardwell (Davis Polk), Deloitte Touche LLP (Deloitte), Ernst & Young (E&Y), Financial Executives International (FEI), James Finn (J. Finn), Grant Thornton LLP (Grant Thorton), Graybar Electric (Graybar), Hermes Equity Ownership Services Ltd. (Hermes), Independent Community Bankers of America (ICBA), Idaho Independent Bank (IIB), IncrediMail Ltd., Institute of Public Auditors of Germany (IDW), Key Technology (Key), KPMG LLP (KPMG), LaCrosse Footwear, Inc. (LaCrosse), Congressman Stephen F. Lynch (Congressman Lynch), George Merkl (G. Merkl), MOCON, Inc. (MOCON), National Venture Capital Association (NVCA), PricewaterhouseCoopers LLP (PwC), Priority Fulfillment Services, Inc. (PFS), The Office of Advocacy of the Small Business Administration (SBA), Telecommunications Industry Association (TIA), Village Super Market, Inc. (Village) and Washington Legal Foundation.

with additional time to develop best practices for compliance and greater efficiencies in preparing management reports.[36] Some commenters suggested that the Commission extend the compliance date associated with the management report requirement for an even longer period of time than proposed.[37] The commenter that did not express support for the proposed extension opposed, in particular, the 17-month extension of the auditor attestation compliance date.[38]

We are adopting the extension of the compliance dates substantially as proposed. In response to public comment, we are adding a requirement that a non-accelerated filer clearly disclose in management's report that management's assessment of internal control has not been attested to by the auditor, if it is providing only management's report during its first year of compliance with the Section 404 requirements.[39]

Some commenters suggested that the Commission broaden the scope of relief so that the extended compliance dates would still cover companies that currently are non-accelerated filers even if they become accelerated filers or large accelerated filers before December 15, 2008.[40] We are not adopting this relief as proposed. Consistent with the Exchange Act Rule 12b–2 definition of an accelerated filer and of a large accelerated filer, companies should determine their accelerated filing status at the end of the fiscal year in order to determine whether the extension is applicable to them.

Pursuant to the extension, a non-accelerated filer must begin to provide management's report on internal control over financial reporting in an annual report it files for its first fiscal year ending on or after December 15, 2007.[41] Non-accelerated filers must begin to comply with the provisions of Exchange Act Rule 13a–15(d) or 15d–15(d),[42] whichever applies, requiring an evaluation of changes to internal control over financial reporting requirements with respect to the company's first periodic report due after the first annual report that must include management's report on internal control over financial reporting. The extended compliance date also applies to the amendments of Exchange Act Rule 13a–15(a) or 15d–15(a)[43] relating to the maintenance of internal control over financial reporting. Under the extension, a non-accelerated filer must begin to provide the auditor attestation report in the annual report it files for its first fiscal year ending on or after December 15, 2008. We believe that these changes will make the internal control reporting process more efficient and effective, while preserving the intended benefits of the internal control over financial reporting provisions to investors.

We estimate that fewer than 15% of all non-accelerated filers will have a fiscal year ending between July 15, 2007 and December 15, 2007.[44] Therefore, the extension of the compliance date of the management report requirement to December 15, 2007 will not impact the majority of non-accelerated filers in 2007, including those with a calendar year-end. Our intention is to provide all non-accelerated filers, none of which is yet required to comply with the Section 404 requirements, with the benefit of the management guidance that the Commission plans to issue and the recently issued COSO guidance on understanding and applying the COSO framework, before planning and conducting their internal control assessments. We expect that extending the implementation of the management report requirement for another five months will provide sufficient time for the Commission to issue final guidance to assist in management's performance of a top-down, risk-based and scalable assessment of controls over financial reporting.[45] If such guidance is not finalized in time to be of assistance to management of non-accelerated filers in connection with their assessments as of the end of the fiscal year for the annual reports filed for fiscal years ending on or after December 15, 2007, we will consider further postponing this compliance date.

The extension of the date for complying with the management report requirement permits non-accelerated filers to complete only management's report on internal control over financial reporting in the first year of compliance. As noted in the Proposing Release, we have several reasons for deferring the implementation of the auditor attestation report requirement for an additional year after the implementation of the management report requirement. First, we believe that the deferred implementation affords non-accelerated filers and their auditors the benefit of anticipated changes by the PCAOB to Auditing Standard No. 2, subject to Commission approval, as well as any implementation guidance that the PCAOB plans to issue for auditors of smaller public companies. We will consider further postponing this date after we consider the anticipated revisions to Auditing Standard No. 2.

Second, we believe that the deferred implementation of the auditor attestation requirement should save non-accelerated filers the full potential costs associated with the initial auditor's attestation to, and report on, management's assessment of internal control over financial reporting during the period that changes to Auditing Standard No. 2 are being considered and implemented, and the PCAOB is formulating guidance that will be specifically directed to auditors of smaller companies. Public commenters previously have asserted that the internal control reporting compliance costs are likely to be disproportionately higher for smaller public companies than larger ones, and that the auditor's fee represents a large percentage of those costs. Furthermore, we have learned from public comments, including our roundtables on implementation of the internal control

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[36] See, for example, letters from Core-Mark, FEI, J. Finn, Graybar, and Village.

[37] See, for example, letters from ABA, ACB, Davis Polk, ICBA, and MOCON.

[38] See letter from Council of Institutional Investors (CII). This commenter indicated that it would not oppose one additional modest extension of the compliance date for the internal control over financial reporting requirements for non-accelerated filers.

[39] See paragraph 4 of Item 308T of Regulations S–K and S–B, paragraph 4 of Item 15T of Form 20–F, and Instruction 3T of General Instruction B(6) of Form 40–F.

[40] See letters from Callidus, Core-Mark, IIB, PFS, and Village.

[41] While the definition of an accelerated filer in Exchange Act Rule 12b–2 previously has had applicability only for a foreign private issuer that files its Exchange Act periodic reports on Forms 10–K and 10–Q, the definition by its terms does not exclude foreign private issuers. A foreign private issuer that is a large accelerated filer under the Exchange Act Rule 12b–2 definition, and that files its annual reports on Form 20–F or Form 40–F, must begin to comply with the internal control over financial reporting and related requirements in the annual report for its first fiscal year ending on or after July 15, 2006. A foreign private issuer that is an accelerated filer, but not a large accelerated filer, under the definition in Rule 12b–2 of the Exchange Act, and that files its annual report on Form 20–F or Form 40–F, must begin to comply with the requirement to provide the auditor's attestation report on internal control over financial reporting in the annual report filed for its first fiscal year ending on or after July 15, 2007. A foreign private issuer that is not an accelerated filer under the Exchange Act Rule 12b–2 definition is required, under this extension, to begin to comply with the management report requirement in its annual report for its first fiscal year ending on or after December 15, 2007.

[42] 17 CFR 240.13a–15(d) and 17 CFR 240.15d–15(d).

[43] 17 CFR 240.13a–15(a) and 17 CFR 240.15d–15(a).

[44] The percent of all non-accelerated filers is categorized using float where available (or market capitalization, otherwise) using Datastream as of December 31, 2005 and excludes 1940 Act filers. Fiscal year ends are also from Datastream.

[45] We anticipate issuing the proposed guidance for management by mid-December 2006. See SEC Press Release No. 2006–172 (Oct. 11, 2006) at *http://www.sec.gov/news/press/2006/2006–172.htm*.

reporting provisions,[46] that while companies incur increased internal costs in the first year of compliance as well due to ''deferred maintenance'' items (*e.g.*, documentation, remediation, etc.), these costs may decrease in the second year. Therefore, postponing the costs that result from the auditor's attestation report until the second year may help non-accelerated filers to smooth the significant cost spike that many accelerated filers experienced in their first year of compliance with the Section 404 requirements.

One commenter that opposed the 17-month extension of the compliance date for the auditor attestation requirement noted that there is anecdotal evidence that smaller companies have not taken advantage of the previous extensions for non-accelerated filers.[47] Unlike the previous extensions, however, which provided for an extension for both the management report requirement and the auditor attestation requirement, the extension that we are adopting now requires management of non-accelerated filers to examine their companies' internal control over financial report reporting (and to permit investors to see and evaluate the results of management's first compliance efforts) while enabling management to more gradually prepare for full compliance with the Section 404 requirements and to gain some efficiencies in the process of reviewing and evaluating the effectiveness of internal control over financial reporting before becoming subject to the auditor attestation requirement. Finally, deferred implementation should provide the Commission and the PCAOB with additional time to consider the public comments we received in response to the questions we raised in the Concept Release [48] on management guidance related to the appropriate role of the auditor in evaluating management's internal control assessment process.[49]

Several commenters supported the sequential implementation of the management assessment and auditor attestation requirements, which we are adopting.[50] Some agreed that the deferred implementation of the auditor report requirement would help smaller companies reduce the overall cost of compliance with the internal control over financial reporting requirements.[51] Some commenters opposed the deferred implementation of the auditor attestation requirement,[52] while some other commenters expressed concerns over the proposal without expressly opposing it.[53] For example, commenters questioned whether during the year in which management's report is not attested to by the auditor, there will be a greater risk that management will fail to report material weaknesses,[54] or whether there will be a lack of meaningful disclosure provided by management's assessment of internal control over financial reporting.[55] We acknowledge that investors will not receive the full assurance that a management assessment that has been attested to by an auditor would provide. Nevertheless, we believe that the graduated introduction of the 404 requirements will provide more meaningful benefit to investors more quickly than either the immediate introduction of both requirements or further delays in implementing the management report requirement.[56] This graduated approach will allow management to gain efficiencies in reporting without the full cost of an attestation and allow investors to review important information that would be otherwise unavailable.

We received some comments noting that the different schedules for implementing the two requirements on internal control over financial reporting might cause confusion to investors and the capital markets.[57] Also, several commenters, in response to a specific request for comment, expressed support for a requirement that non-accelerated filers disclose in its annual report that management's assessment has not been attested to by the auditor during the year that the auditor's attestation is not required.[58] In response to these comments that we received, we are adopting an additional disclosure requirement to Item 308 of Regulations S–K and S–B, Item 15 of Form 20–F, and General Instruction B(6) of Form 40–F.[59] Non-accelerated filers will be now required to include a statement in management's report on internal control over financial reporting in substantially the following form:

> This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.

In the Proposing Release, we indicated that we had issued a separate release to extend the date by which a foreign private issuer that is an accelerated filer (but not a large accelerated filer) and that files its annual report on Form 20–F or 40–F must begin to comply with the auditor attestation report portion of the Section 404 requirements. We requested comment on whether we should consider taking additional actions specifically with respect to foreign private issuers. Like non-accelerated filers, these foreign private issuers will provide only management's report during their first year of compliance with the internal control over financial reporting requirements.[60] Some commenters expressed support for the delayed audit report compliance date for these issuers and thought it was appropriate for us to take similar action with respect to both non-accelerated filers and the foreign private issuers.[61] To maintain consistency among the revised requirements, we are adopting the same type of disclosure requirement for foreign private issuers that are accelerated filers that we are adopting for the non-accelerated filers.

One commenter noted that disagreements over whether management failed to report a material

[46] Materials related to the Commission's 2005 Roundtable Discussion on Implementation of Internal Control Reporting Provisions and 2006 Roundtable on Second-year Experiences with Internal Control Reporting and Auditing Provisions, including the archived roundtable broadcasts, are available at *http://www.sec.gov/spotlight/soxcomp.htm.*

[47] See letter from CII.

[48] Release No. 34–54122. The comment period for the Concept Release closed on September 18, 2006, and the letters that we received on the Concept Release are available in File No. S7–11–06, at *http://www.sec.gov/comments/s7–11–06/s71106.shtml.*

[49] Six commenters agreed that an extension will provide the Commission with additional time to consider the comments to the questions raised in the Concept Release. See letters from FEI, Hermes, ICBA, G. Merkl, NVCA, and ICBA.

[50] See letters from ACB, Cravath, FEI, J. Finn, Hermes, ICBA, LaCrosse, G. Merkl, MOCON, and SBA.

[51] See, for example, letters from FEI, Hermes, and SBA.

[52] See, for example, letters from ABA, CII, IDW, and PwC.

[53] See, for example, letters from AICPA, BDO, Davis Polk, Deloitte, and E&Y.

[54] See, for example, letters from AICPA, Grant Thorton, IDW, PwC, and Deloitte. The letter from CII, which also opposed the deferred implementation of the auditor attestation requirement, stated, in general, that smaller companies are prone to more misstatements and restatements of financial information, and make up the bulk of accounting fraud cases.

[55] See, for example, letters from IDW.

[56] See also letter from KPMG.

[57] See, for example, letters from CII and PwC.

[58] See letters from AICPA, BDO, Deloitte, E&Y, Grant Thorton, and KPMG.

[59] See paragraph 4 of Item 308T of Regulations S–K and S–B, paragraph 4 of Item 15T of Form 20–F, and Instruction 3T of General Instruction B(6) of Form 40–F.

[60] Release No. 33–8730A.

[61] See, for example, letters from E&Y and FEI.

weakness could create conflict between management and the auditor,[62] and two other commenters noted that disagreements could also arise if the auditor does not agree with management's approach or methodology for testing internal control over financial reporting.[63] As noted in the Proposing Release, during the year that non-accelerated filers are only required to provide management's report, we encourage frequent and frank dialogue among management, auditors and audit committees to improve internal controls and the financial reports upon which investors rely. We believe that management should not fear that a discussion of internal controls with, or a request for assistance or clarification from, the company's auditor will itself be deemed a deficiency in internal control or constitute a violation of our independence rules as long as management determines the accounting to be used and does not rely on the auditor to design or implement its controls.[64] We believe that open dialogue between management and auditors may help to ameliorate some of the concerns of commenters regarding disagreements between these parties in the second year of compliance with the internal control reporting provisions.

Nevertheless, as noted in the Proposing Release, we acknowledge that a company that files only a management report during its first year of compliance with the Section 404 requirements may become subject to more second-guessing as a result of separating the management and auditor reports than under the current requirements. For example, management may conclude that the company's internal control over financial reporting is effective when only management's report is filed in the first year of compliance, but the auditor may come to a contrary conclusion in its report filed in the subsequent year, and as a result, the company's previous assessment may be called into question. To further address this, we proposed a temporary amendment whereby the management report included in the non-accelerated filer's annual report during the first year of compliance would be deemed ''furnished'' rather than ''filed.'' [65]

Almost all of the commenters remarking on this aspect of the proposal supported it.[66] We are adopting this provision as proposed. Commenters also supported our corresponding proposal [67] to afford similar relief to foreign private issuers that are accelerated filers (but not large accelerated filers), that like non-accelerated filers, will only provide management's report during their first year of compliance with the internal control over financial reporting requirements. We are adopting that provision as well.[68]

We also are extending the compliance date to permit a non-accelerated filer to omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification required by Exchange Act Rules 13a–14(a) and 15d–14(a) [69] that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the company, until it files an annual report that includes a report by management on the effectiveness of the company's internal control over financial reporting. This language is required to be provided in the first annual report required to contain management's internal control report and in all periodic reports filed thereafter.

Finally, we are clarifying that, until a non-accelerated filer becomes subject to the auditor attestation report requirement, the registered public accounting firm retained by the non-accelerated filer need not comply with the obligation in Rule 2–02(f) of Regulation S–X. Rule 2–02(f) requires every registered public accounting firm that issues or prepares an accountant's report that is included in an annual report filed by an Exchange Act reporting company (other than a registered investment company) containing an assessment by management of the effectiveness of the company's internal control over financial reporting to attest to, and report on, such assessment.

The extended compliance periods do not, in any way, alter requirements regarding internal control that already are in effect with respect to non-accelerated filers, including, without limitation, Section 13(b)(2) of the Exchange Act [70] and the rules thereunder.

III. Transition Period for Compliance With the Internal Control Over Financial Reporting Requirements by Newly Public Companies

A. Proposed Amendment and Public Comments

In the Proposing Release, we also proposed to add a transition period for newly public companies before they become subject to compliance with the internal control over financial reporting requirements. Under the rules existing prior to the amendments, after all Exchange Act reporting companies have been phased-in and are required to comply fully with the internal control reporting provisions, any company undertaking an initial public offering or registering a class of securities under the Exchange Act for the first time would have been required to comply with those provisions as of the end of the fiscal year in which it became a public company.

For many companies, preparation of the first annual report on Form 10–K, 10–KSB, 20–F or 40–F is a comprehensive process involving the audit of financial statements, compilation of information that is responsive to many new public disclosure requirements and review of the report by the company's executive officers, board of directors and legal counsel. Requiring a newly public company and its auditor to complete the management report and auditor attestation report on the effectiveness of the company's internal control over financial reporting within the same timeframe imposes an additional burden on newly public companies.

The Proposing Release also specifically recognized the burden that preparing the reports imposed on companies, including foreign companies, that become subject to Section 15(d) after filing a registration statement under the Securities Act of 1933 [71] but may be eligible to terminate their periodic filing obligations after filing just one annual report.[72] In light

[62] See letter from IDW.

[63] See, for example, letters from Davis Polk and G. Merkl.

[64] See *Commission Statement on Implementation of Internal Control Requirements*, Press Release No. 2005–74 (May 16, 2005), available at *http://www.sec.gov/news/press/2005–74.htm.*

[65] Management's report is not be deemed to be filed for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r] or otherwise subject to the liabilities of that section, unless the issuer specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act.

[66] Eight commenters supported the proposed revision to deem the management's report on internal control over financial reporting to be ''furnished'' rather than ''filed'' during the first year that non-accelerated filers are required to complete only management's report on internal control over financial reporting. See letters from ACB, Cravath, Deloitte, E&Y, FEI, Hermes, LaCrosse, and G. Merkl. But see letter from IDW.

[67] See, for example, letters from E&Y, FEI, Hermes, and G. Merkl.

[68] See paragraph (b) of Item 15T of Form 20–F and Instruction 3T to General Instruction B(6) of Form 40–F.

[69] 17 CFR 240.13a–14(a) and 240.15d–14(a).

[70] 15 U.S.C. 78m(b)(2).

[71] 15 U.S.C. 77a *et seq.*

[72] A transition period also would provide relief for foreign companies that become subject to the Exchange Act reporting requirements by virtue of

of the compliance burden of these requirements, we proposed to provide a transition period for newly public companies.

Specifically, we proposed that a newly public company would not need to comply with our internal control over financial reporting requirements in the first annual report that it files with the Commission.[73] Rather, the company would begin to comply with these requirements in the second annual report that it is required to file with the Commission. We stated our belief in the Proposing Release that providing additional time for a newly public company to conduct its first assessment of internal control over financial reporting would benefit investors by making implementation of the internal control reporting requirements more effective and efficient and reducing the costs that a company faces in its first year as a public company. We also expressed a belief that the proposed transition period would limit any interference by our rules with a company's business decision regarding the timing and use of resources relating to its initial U.S. listing or public offering.

We received 22 comment letters addressing our proposal on newly public companies.[74] Most of these commenters supported our efforts to reduce the burden of compliance with our internal control over financial reporting requirements by providing a transition period for those companies.[75]

B. Discussion of Final Amendment

After consideration of the public comments that were received, we are adopting the newly public company amendments substantially as proposed. We are therefore amending the rules to provide that a newly public company does not need to comply with our internal control over financial reporting requirements in the first annual report that it files with the Commission.[76] As noted, there was broad support from commenters for a transition period postponing compliance with these requirements until the second annual report filed with the Commission.[77] One commenter suggested that the transition period was of ''critical importance'' for effective and meaningful compliance with Section 404 requirements by newly public companies.[78]

Two commenters objected to the proposed relief, noting the importance of the internal control over financial reporting requirements to the Sarbanes-Oxley Act reforms.[79] We believe that the one-year transition period strikes an appropriate balance by requiring newly public companies to develop and implement effective internal controls and procedures, while allowing management some time to more cost-effectively conduct their entry into the public markets and gain efficiencies in preparation for compliance with our internal control over financial reporting requirements. As noted below, we are also requiring clear disclosure by newly public companies that they are not required to include either a report by management or an auditor's attestation report on internal control over financial reporting in their first annual report so that investors can consider that information when making their investing decisions.

One commenter sought clarification on the transition period,[80] and others suggested expanding the transition period for newly public companies to allow them more time to comply with the requirements.[81] We are adopting amendments to provide that a registrant need not comply with the internal control over financial reporting requirements ''until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year.'' [82] The amendments require a newly public company to fully comply with the internal control over financial reporting requirements when filing its second annual report with the Commission, allowing a company at least one annual reporting period from the time it becomes a public company to prepare for compliance. A newly public company also need not comply with the provisions of Exchange Act Rule 13a–15(d) or 15d–15(d), requiring an evaluation of changes to internal control over financial reporting requirements, or comply with the provisions of Exchange Act Rule 13a–15(a) or 15d–15(a) relating to the maintenance of internal control over financial reporting until the first periodic report due after the first annual report that must include management's report on internal control over financial reporting.[83]

The amendments also permit a newly public company, during the transition period, to omit the portion of the

Exchange Act Rule 12g–3 [17 CFR 240.12g–3] in connection with a transaction which is not registered under the Securities Act that constitutes an exchange offer for the securities of, or business combination with, a company that has reporting obligations under the Exchange Act. The relief, as adopted, would thus apply to an unregistered foreign company that succeeds to the reporting obligations of a registered foreign company under Rule 12g–3 in connection with an acquisition transaction effected under, for example, Securities Act Section 3(a)(10) [15 U.S.C. 77c(a)(10)] or Securities Act Rule 802 [17 CFR 230.802].

[73] See Release No. 33–8731 (Aug. 9, 2006) [71 FR 47060].

[74] See letters from ABA, ACB, AICPA, BDO, BIO, Calix, CII, Core Mark, Cleary, Cravath, Davis Polk, Deloitte, E&Y, Grant Thornton, Graybar, Hermes, G. Merkl, NVCA, PFS, PwC, SBA and TIA.

[75] See, for example, letters from ABA, ACB, AICPA, BDO, BIO, Calix, Cravath, Cleary, Davis Polk, Grant Thornton, Graybar, Hermes, NVCA, PFS, SBA, and TIA.

[76] Instruction 1 to Item 308 of Regulations S–B and S–K, Item 15 of Form 20–F, and General Instruction B(6) of Form 40–F, and Exchange Act Rules 13a–15(a), (c) and (d) and 15d–15(a), (c) and (d). The definition of an accelerated filer was based, in part, on the requirements for registration of primary offerings for cash on Form S–3. See Section II.B.3 in Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480] and Section I in Release No. 33–8644 (Dec. 21, 2005) [70 FR 76626]. In some situations, a newly formed public company may seek to use another entity's reporting history for purposes of using Form S–3. For example, a spun-off entity may attempt to use its parent's reporting history or a newly formed holding company may seek to use its predecessor's reporting history. Because of the inter-relationship between Form S–3 eligibility and accelerated filer status, we believe that, to the extent a newly formed public company seeks to use and is deemed eligible to use Form S–3 on the basis of another entity's reporting history, that company would also be an accelerated filer and therefore required to comply with Items 308(a) and 308(b) of Regulation S–K in the first annual report that it files.

[77] See n. 75 above.

[78] See letter from Cleary.

[79] See, for example, letters from CII and Deloitte.

[80] See letter from BDO. BDO sought clarification in the commentary regarding the application of the transition rules to a company that becomes an Exchange Act registrant after its year-end but before it is required to file financial statements for the year that just ended.

[81] See, for example, letters from ACB, Core-Mark and Davis Polk. Davis Polk suggested slightly expanding the deferral to require compliance after the filing of an annual report other than for a fiscal year ending before the company went public. ACB more broadly suggested extending the transition period to correspond to the timeframe for non-accelerated filers, not requiring compliance until the second annual report beginning with fiscal years ending on or after December 31, 2008. Core-Mark suggested expanding the deferral to apply to the first two annual reports filed.

[82] See n. 76 above. This transition period applies to companies conducting an initial public offering (equity or debt) or a registered exchange offer or that otherwise become subject to the Exchange Act reporting requirements. For these purposes, a newly public company that has filed a special financial report under Exchange Act Rule 15d–2 [17 CFR 240.15d–2] or that has filed a transition report on Form 10–K, 10–KSB, 20–F, or 40–F under Exchange Act Rule 13a–10 [17 CFR 240.13a–10] or Rule 15d–10 [17 CFR 240.15d–10] will have filed an annual report. As a result, a newly public company that files a special financial report or a transition report will be required to fully comply with the internal control over financial reporting requirements when filing an annual report for its next fiscal year.

[83] SEC staff provided its views on the disclosure of changes or improvements to controls made as a result of preparing for the registrant's first management report on internal control over financial reporting. See Question 9 in Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports Frequently Asked Questions (revised October 6, 2004), at *http://www.sec.gov/info/accountants/controlfaq1004.htm.*

introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification required by Exchange Act Rules 13a–14(a) and 15d–14(a) that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the company, until it files an annual report that includes a report by management on the effectiveness of the company's internal control over financial reporting. This language is required to be provided in the first annual report required to contain management's internal control report and in all periodic reports filed thereafter.

One commenter suggested that if the Commission decides to provide for a transition period, prominent disclosure by the company and the auditor should be required indicating that the company is not yet required to comply with and there has been no management assessment or audit of the company's internal control over financial reporting.[84] We agree that newly public companies should include a statement in their annual report alerting investors about the company's obligations with respect to the internal control over financial reporting provisions. Therefore, we are adding a requirement that newly public companies that are relying on the transition rules must include a statement in the first annual report that they file that the report does not include management's assessment report or the auditor's attestation report.[85] This disclosure is consistent with the disclosure that non-accelerated filers and foreign private issuers will have to include in their annual reports during the year that they are not required to comply with the auditor attestation requirement.

IV. Paperwork Reduction Act

As discussed in the Proposing Release, we submitted a request for approval of the ''collection of information'' requirements contained in the amendments to the Office of Management and Budget (''OMB'') in accordance with the Paperwork Reduction Act of 1995 (''PRA'')[86] in connection with our original proposal and adoption of the rule and form amendments implementing the Section 404 requirements.[87] OMB approved these requirements. The new disclosure amendments that we are adopting today contain collection of information requirements within the meaning of PRA.

The titles for the collections of information are:[88]

(1) ''Regulation S–B'' (OMB Control No. 3235–0417);

(2) ''Regulation S–K'' (OMB Control No. 3235–0071);

(3) ''Form 10–K'' (OMB Control No. 3235–0063);

(4) ''Form 10–KSB'' (OMB Control No. 3235–0420);

(5) ''Form 20–F'' (OMB Control No. 3235–0288); and

(6) ''Form 40–F'' (OMB Control No. 3235–0381).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information such as Form 10–K or Form 20–F unless it displays a currently valid OMB control number.

The amendments to Regulation S–B, Regulation S–K, Form 10–K, Form 10–KSB, Form 20–F and Form 40–F adopted in this release require non-accelerated filers and foreign private issuers that are accelerated filers (but not large accelerated filers) to include a statement in management's report on the company's internal control over financial reporting in the annual report in which the company is not required to include the auditor attestation requirement. The statement should disclose that the annual report does not contain a report by the company's registered public accounting firm on management's report of the company's internal control over financial reporting, and management's report was not subject to attestation by the accounting firm pursuant to temporary rules of the Commission that permit the company to provide only management's report in the annual report. The amendments we are adopting also require newly public companies to provide a similar statement in their first annual report to reflect the transition schedule we are adopting for those companies. We are requesting comment in this release with regard to the collections of information requirements for these amendments.

The requirements are designed to avoid investor confusion regarding application of the internal control over financial reporting requirements to non-accelerated filers for their fiscal years ending on or after December 15, 2007 but before December 15, 2008; to foreign private issuers that are accelerated filers (but not large accelerated filers) for their fiscal years ending on or after July 15, 2006 but before July 15, 2007; and to newly public companies for the first annual report that they are required to file. The requirements are mandatory. The respondents to the collection of information requests here will be: (1) Non-accelerated filers that do not file an auditor's attestation report for a fiscal year ending on or after December 15, 2007 but before December 15, 2008; (2) foreign private issuers filing on Form 20–F or Form 40–F that are accelerated filers (but not large accelerated filers) that do not file an auditor's attestation report for a fiscal year ending on or after July 15, 2006 but before July 15, 2007; and (3) newly public companies that do not comply with the internal control over financial reporting requirements in the first annual report filed with the Commission in accordance with the new rules.

Form 10–K prescribes information that registrants must disclose annually to the market about its business. Form 10–KSB prescribes information that registrants that are ''small business issuers'' as defined under our rules must disclose annually to the market about its business. Form 20–F is used by foreign private issuers to either register a class of securities under the Exchange Act or provide an annual report required under the Exchange Act. Form 40–F is used by foreign private issuers to file reports under the Exchange Act after having registered securities under the Securities Act and by certain Canadian registrants.

For the purposes of the Paperwork Reduction Act, we estimate that, over a 3-year period, the annual incremental burden imposed by the disclosure amendments will average 15 minutes per form. We have based our estimates of the effects that these additional disclosure requirements would have on the Forms 10–K, 10–KSB, 20–F and 40–F primarily based on our review of the most recently completed PRA submissions for those collections of information, and those requirements in those Regulations and Forms.

Form 10–K

For purposes of the PRA, we estimate that the amendments affecting the Form 10–K collection of information requirements will increase the annual paperwork burden by approximately 1,289 hours of company personnel time and a cost of approximately $171,294 for the services of outside

[84] See letter from Deloitte.

[85] See Instruction 1 to Item 308 of Regulations S–B and S–K, Item 15 of Form 20–F, and General Instruction B(6) of Form 40–F.

[86] 44 U.S.C. 3501 *et seq.* and 5 CFR 1320.11.

[87] See Section IV. of Release No. 33–8238.

[88] The paperwork burden from Regulations S–K and S–B is imposed through the forms that are subject to the requirements in those Regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burdens imposed by each of Regulations S–K and S–B to be a total of one hour.

professionals.[89] Based on our research into the number of non-accelerated filers in 2004 and 2005, we estimate that approximately 6,025 annual reports filed on Form 10–K would be filed by non-accelerated filers that could be subject to the additional disclosure requirement that we are adopting for non-accelerated filers. This estimate is based on the assumption that the number of annual responses on Form 10–K is 10,041.[90] Based on our review of the number of newly public companies in 2005, we estimate that approximately 853 companies filing on Form 10–K would be subject to the additional disclosure requirement that we are adopting for newly public companies. We estimate that the incremental burden for the newly public company amendments for Form 10–K is 213 hours.

Form 10–KSB

For purposes of the PRA, we estimate that the amendments affecting the Form 10–KSB collection of information requirements will increase the annual paperwork burden by approximately 980 hours of company personnel time and a cost of approximately $130,709 for the services of outside professionals. Based on our research into the number of non-accelerated filers in 2004 and 2005, we estimate that all (4,819) of the annual reports filed on Form 10–KSB would be filed by non-accelerated filers that could be subject to the additional disclosure requirement that we are adopting for non-accelerated filers. This estimate is based on the assumption that the number of annual responses on Form 10–KSB is 4,819.[91] Based on our review into the number of newly public companies in 2005, we estimate that approximately 409 companies filing on Form 10–KSB would be subject to the additional disclosure requirement that we are adopting for newly public companies. We estimate that the incremental burden for the newly public company amendments for Form 10–KSB is 102 hours.

Form 20–F

For purposes of the PRA, we estimate that the amendments affecting the Form 20–F collection of information requirements will increase the annual paperwork burden by approximately 36 hours of company personnel time and a cost of approximately $42,809 for the services of outside professionals.[92] Based on our review into the percentage of total foreign private issuers that were non-accelerated filers in 2005, we estimate that 40% (or 471) of the annual reports filed on Form 20–F would be filed by non-accelerated filers that could be subject to the additional disclosure requirement that we are adopting for non-accelerated filers. Based on our review into the percentages of foreign private issuers that were accelerated filers (but not large accelerated filers) in 2005, we estimate that 21% (or 247) of the annual reports filed on 20–F would be accelerated filers and not large accelerated filers. These estimates are based on the assumption that the number of annual responses on Form 20–F is 1177.[93] Based on our review of the number of newly public companies in 2005, we estimate that approximately 100 companies filing on Form 20–F would be subject to the additional disclosure requirement that we are adopting for newly public companies. We estimate that the incremental burden for the newly public company amendments for Form 20–F is 25 hours.

Form 40–F

For purposes of the PRA, we estimate that the amendments affecting the Form 40–F collection of information requirements will increase the annual paperwork burden by approximately 27 hours of company personnel time and a cost of approximately $8,002 for the services of outside professionals. Based on recent research into the percentage of total foreign private issuers that are non-accelerated filers, we estimate that 40% (or 88) of the annual reports filed on Form 40–F would be filed by non-accelerated filers that could be subject to the additional disclosure requirement that we are adopting for non-accelerated filers. Based on our review into the percentages of foreign private issuers that were accelerated filers (but not large accelerated filers) in 2005, we estimate that 21% (or 46) of the annual reports filed on 40–F would be accelerated filers and not large accelerated filers. These estimates are based on the assumption that the number of annual responses on Form 40–F is 220.[94] Based on our review of the number of newly public companies in 2005, we estimate that approximately 19 companies filing on Form 40–F would be subject to the additional disclosure requirement that we are adopting for newly public companies. We estimate that the incremental burden for the newly public company amendments for Form 40–F is 5 hours.

Request for Comment

We solicit comment on the expected effects of the amendments on Regulations S–B and S–K, Form 20–F and Form 40–F under the PRA. In particular, we solicit comment on:

- How accurate are our burden and cost estimates for Forms 10–K, 10–KSB, 20–F and 40–F;
- Whether the amendments are necessary to avoid investor confusion regarding the internal control over financial reporting requirements for non-accelerated filers and newly public companies;
- Whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Whether there are ways to minimize the burden of the additional disclosure requirements on non-accelerated filers and newly public companies.

Any member of the public may direct to us any comments concerning these burden and cost estimates and any suggestions for reducing the burdens and costs. Persons who desire to submit comments on the collections of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, or send an e-mail to *David_Rostker@omb.eop.gov*, and send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–06–03. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–06–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. Because the OMB is required to make a decision

[89] This estimate is based on the assumed 75% and 25% split of the burden hours between internal staff and external professionals, and an hourly rate of $400 for external professionals. The hourly cost estimate is based on consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing periodic reports with the Commission.

[90] This number is based on the number of responses made in the period from October 1, 2005 through September 30, 2006.

[91] This number is based on the number of responses made in the period from October 1, 2005 through September 30, 2006.

[92] The burden allocation for Forms 20–F and 40–F, however, use a 25% internal to 75% outside professional allocation to reflect the fact that foreign private issuers rely more heavily on outside professionals for the preparation of these forms.

[93] This number is based on the number of responses made in the period from October 1, 2005 through September 30, 2006.

[94] This number is based on the number of responses made in the period from October 1, 2005 through September 30, 2006.

concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

V. Cost-Benefit Analysis

A. Benefits

The extension of the compliance dates is intended to make implementation of the internal control reporting requirements more efficient and cost-effective for non-accelerated filers. First, the extension postpones for 5 months (from fiscal years ending on or after July 15, 2007 until fiscal years ending on or after December 15, 2007) the date by which non-accelerated filers must begin to include a report by management assessing the effectiveness of the company's internal control over financial reporting. Based on our estimates, we believe that fewer than 15% of all non-accelerated filers have a fiscal year ending between July 15, 2007 and December 15, 2007.[95] In addition, under the extension, a non-accelerated filer is not required to include an auditor attestation report on management's assessment of internal control over financial reporting until it files an annual report for its first fiscal year ending on or after December 15, 2008. As a result, all non-accelerated filers are required to complete only management's assessment in their first year of compliance with the Section 404 requirements.

We believe that the following benefits will flow from an additional postponement of the dates by which non-accelerated filers must comply with the internal control reporting requirements:

- Auditors of non-accelerated filers will have more time to conform their initial attestation reports on management's assessment of internal control over financial reporting to the changes to the auditing attestation standard and other actions that the PCAOB determines to take;
- Non-accelerated filers will save opportunity costs associated with their initial audit of internal control over financial reporting while changes to the auditing standard are being considered and implemented and the PCAOB is developing, or facilitating the development of, additional guidance that will be specifically directed to auditors of smaller public companies;
- Management of non-accelerated filers are able to begin the process of assessing the effectiveness of internal control over financial reporting before their auditors attest to such assessment (and investors can begin to see and evaluate the results of their initial efforts); and
- Non-accelerated filers with a fiscal year ending between July 15, 2007 and December 15, 2007 have additional time to consider the management guidance to be issued by the Commission and the recently issued COSO guidance on understanding and applying the COSO framework, before planning and conducting their first internal control assessment.

Many public commenters on the Proposing Release and on previous occasions have asserted that the internal control reporting compliance costs are likely to be disproportionately higher for smaller public companies than larger ones, and that the audit fee represents a large percentage of those costs.[96] We acknowledge that some non-accelerated filers may incur audit fee costs in the first year that they provide management's report due to the fact that management may engage in a dialogue with their auditors regarding their assessment of the company's internal control over financial reporting. Nevertheless, we believe that the potential cost savings derived from the year that the non-accelerated filers are not required to include an auditor's attestation report on management's assessment of the effectiveness of their internal control over financial reporting will likely be substantial. The cost that a non-accelerated filer will save as a result of the extension of the auditor attestation report is likely to vary significantly.[97]

Additionally, we have previously learned from public comments, including our roundtables on implementation of the internal control reporting provisions,[98] that while companies incur increased internal costs in the first year of compliance in part due to ''deferred maintenance'' items (*e.g.*, documentation, remediation, etc.), these costs may decrease in the second year. Therefore, we believe that postponing many of the auditor costs until the second year will help non-accelerated filers smooth the significant cost spike that many accelerated filers have experienced in their first year of compliance. Many commenters agreed that the deferred implementation of the auditor attestation requirement would relieve smaller companies from regulatory costs.[99] One commenter noted that the additional time will provide time for smaller companies to not only learn from the guidance that the Commission and PCAOB plan to issue but also the experiences of larger public companies.[100]

We also are adopting amendments that provide for a transition period before a newly public company is required to comply with Section 404 requirements. We think that the benefits of the transition period for newly public companies include the following:

- Companies that are going public are able to concentrate on their initial securities offering without the additional burden of becoming subject to the Section 404 requirements soon after the offering;
- Newly public companies are able to prepare their first annual report without the additional burden of having to comply with the Section 404 requirements at the same time;
- The quality of newly public companies' first compliance efforts may improve due to the additional time that the companies have to prepare to satisfy the Section 404 requirements; and
- The transition period reduces the incentive that the previous rules created for a company that plans to go public to time its initial public offering to defer compliance with the Section 404 requirements for as long as possible after the offering.

The comments that we received generally supported the transition period for newly public companies and our rationale for adopting the amendments. Several commenters agreed that the Section 404 requirements act as a barrier to becoming a public company and increase the cost of going public.[101] Because 404 compliance costs vary by size and complexity of the company, it is difficult to quantify precisely the cost-

[95] See n. 44 above.

[96] See, for example, letters on the Proposing Release from FEI and SBA.

[97] Numerous cost surveys have been made public citing the high cost of compliance with the Section 404 requirements. For a sampling, see surveys from CRA International (Apr. 2006), FEI (Mar. 2006), Foley & Lardner LLP (June 2006), ICBA (Mar. 2005), NASDAQ and American Electronics Association (Oct. 2005), and the Business Roundtable (Mar. 2006). Note that many of these studies do not isolate the cost of the auditor's attestation; some studies discuss full audit costs or other fees. The Commission has not independently verified the reliability or accuracy of the survey data.

[98] Materials related to the Commission's 2005 Roundtable Discussion on Implementation of Internal Control Reporting Provisions and 2006 Roundtable on Second-year Experiences with Internal Control Reporting and Auditing Provisions, including the archived roundtable broadcasts, are available at *http://www.sec.gov/spotlight/soxcomp.htm*.

[99] See, for example, letters from Cravath, Hermes, LaCrosse, and SBA.

[100] See, for example, letter from FEI.

[101] See letters from ABA, Calix, Core-Mark, Cravath, Davis Polk, E&Y, and SBA.

savings that these amendments may afford to newly public companies.[102]

One commenter offered a study on companies with internal control deficiencies disclosures and their cost of capital, which we have considered in our analysis.[103] While we note that the potential costs due to a lack of assurance, we believe the counterbalancing benefits and clear disclosure to investor regarding the internal control requirements justify our actions. Another venture capital association did not anticipate a major change in the cost and effort of an initial public offering to diminish until ''the overall 404 cost-benefit ratio'' is brought into balance, as venture-backed companies would still begin the process of obtaining a clean opinion from the auditor long before the public offering.[104] While we recognize that newly public companies will still incur costs in preparation for the implementation of the internal control requirements, we believe that the savings from the transition period for these companies may still be substantial, as the newly public companies will not be required to include either management's report on the company's internal control over financial reporting or the auditor's attestation on management's report in their first annual report.

We also are adopting a requirement that requires a newly public company to disclose in the first annual report that it files that it has not included either management's report on internal control or the auditor's attestation report. Our intention is that this requirement will provide clarity to investors and the capital markets regarding the Section 404 requirements of a newly public company.

B. Costs

Under the extension, investors in companies that are non-accelerated filers will have to wait longer to review an attestation report by the companies' auditor on management's assessment of internal control over financial reporting. The extension may create a risk that, without the auditor's attestation to management's assessment process, some issuers may conclude that the company's internal control over financial reporting is effective without conducting an assessment that is as thorough, careful and as appropriate to the issuers' circumstances as they would conduct if the auditor were involved.

We received many comments on these potential costs. Several commenters believed that management's assessment of internal control would provide useful disclosure to investors even without the auditor's attestation report; [105] however, other commenters expressed concern whether management's report, absent the auditor's attestation, would provide meaningful disclosure [106] or would fail to identify a material weakness in the company's internal control over financial reporting.[107] One accounting firm noted that even though there is an increased risk that a material weakness will go undetected, the benefit that furnishing management's report provides to investors outweighs that risk.[108] One commenter also noted that if standards are revised between the first and second year of compliance with the internal control reporting requirements for non-accelerated filers, the deferred implementation of the audit attestation requirement could result in overlapping expenditures and misallocation of resources.[109] On balance, we believe that the graduated introduction of the 404 requirements will give investors more useful information at lower overall costs.

Some commenters questioned whether the sequential implementation of the management report requirement and the auditor attestation requirement would cause confusion to investors and the capital markets.[110] Several commenters, in response to the Commission's request for public comment, supported a requirement that a non-accelerated filer, during its first year of compliance with the management report requirement, should clearly disclose that management's report has not been attested to by the auditor.[111] In response to comment, we have adopted this disclosure requirement for the year that non-accelerated filers and foreign private issuers that are accelerated filers (but not large accelerated filers) are only required to provide management's report.

Another potential cost of the extension in the form of increased litigation risk may be created by the phasing-in of the auditor's attestation report on management's assessment if, in year one, management concludes that the company's internal control over financial reporting is effective, but the auditor comes to a contrary conclusion the following year, thereby calling into question management's earlier conclusion. We have mitigated the risk by adopting an amendment that the management report be furnished to, rather than filed with, the Commission in the first year of compliance.

A potential cost of the transition period for newly public companies is that investors may be subject to uncertainty as to the effectiveness of a newly public company's internal control over financial reporting for a longer period of time than under previous requirements. One commenter argued that the safeguard provided by the Section 404 requirements could be of increased importance for newly public companies and their investors, because those companies are often less sophisticated and lack the market following that provide safeguards.[112] As we noted, we are also requiring clear disclosure by newly public companies that they are not required to include either a report by management or an auditor's attestation report on internal control over financial reporting in their first annual report so that investors can consider that information when making their investing decisions.

The additional disclosure requirements that we are adopting for non-accelerated filers and foreign private issuers that are accelerated filers (but not large accelerated filers) during the year that they are only required to provide management's report on internal control and for newly public companies during the transition period may increase costs for companies, but we believe the increase should be minimal.

[102] In its comment letter, the SBA cites various data regarding Section 404 compliance costs.

[103] See letter from CII (citing Hollis Ashbaugh-Skaife *et al., The Effect of Internal Control Deficiencies on Firm Risk and Cost of Equity Capital* (April 2006)). The study found that companies with internal control deficiencies exhibit higher costs of capital and those that subsequently receive an unqualified auditor attestation report on the company's internal control over financial reporting exhibit a decrease to their market-adjusted cost of capital. Another study cited by the Hollis study found no evidence of an effect on the cost of capital for internal control disclosures. See Ogneva, Subramanyam, and Reaghunandan, *Internal Control Weaknesses and Cost of Equity: Evidence from SOX Section 404 Disclosures* (2006).

[104] See letter from NVCA.

[105] See letters from Deloitte, E&Y, FEI, Hermes, KPMG and G. Merkl.

[106] See, for example, letter from IDW.

[107] See letters from AICPA, Deloitte, Grant Thorton, IDW, and PwC.

[108] See letter from KPMG. This commenter noted that the formality and discipline that will be introduced after non-accelerated filers begin to comply with the requirement for management's report will lead to more effective management evaluations and more meaningful management disclosures.

[109] See letter from ABA.

[110] See, for example, letters from ABA, CII, and PwC.

[111] See letters from AICPA, BDO, Deloitte, E&Y, Grant Thorton, and KPMG.

[112] See letter from Deloitte.

VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [113] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b) of the Securities Act [114] and Section 3(f) of the Exchange Act [115] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

We expect that the extension of compliance dates will increase efficiency and enhance capital formation, and thereby benefit investors, by providing more time for non-accelerated filers to prepare for compliance with the Section 404 requirements and by affording these filers the opportunity to consider implementation guidance that is specifically tailored to smaller public companies. We further expect a more gradual phase-in of the management assessment and auditor attestation report requirements over a two-year period, rather than requiring non-accelerated filers to fully comply with both requirements in their first compliance year, to make the implementation process more efficient and less costly for non-accelerated filers. Some commenters on the Proposing Release argued that the sequential implementation of the management report requirement and auditor attestation requirement could make the application of the revised Auditing Standard No. 2 less efficient.[116] We have encouraged management to confer with their auditors to minimize any inefficiencies. Other commenters, however, supported the extension and believed that it would reduce compliance costs for smaller companies and provide them with additional time to develop best practices for compliance and greater efficiencies in preparing management reports.[117]

It is possible that a competitive impact could result from the differing treatment of non-accelerated filers and larger companies that already have been complying with the Section 404 requirements, but we do not expect that the extension will have any measurable effect on competition. We did not receive any comments specifically addressing the effect of the extension on competition.

The transition period for newly public companies should also increase efficiency and enhance capital formation by enabling these companies to concentrate on the initial securities offering process, if they are becoming subject to the Exchange Act reporting requirements by virtue of a public securities offering, and to prepare their first annual reports without the additional burden of complying with the Section 404 requirements. The provision of additional time for newly public companies to prepare for compliance with the internal control over financial reporting requirements may lead to increased quality of the companies' initial compliance efforts.[118] One commenter noted that given that the commitment of resources and expenditures in preparation for an initial public offering is enormous, the immediate imposition of Section 404 requirements is overly burdensome and does not provide sufficient time for careful establishment of internal control over financial reporting.[119] One commenter asserted that deferral of the Section 404 requirements may diminish the U.S. market premium based on an article that noted a study demonstrating that companies listing on U.S. markets enjoyed a valuation premium but also acknowledged that the benefits of Section 404 ''are difficult to quantify.'' [120] We believe that with the disclosure newly public companies must include in their first annual reports explaining that the management and auditor attestation reports on internal control over financial reporting are not required in the company's annual report, investors can better incorporate this information into their investing decisions. Also, a company that wishes to comply with Section 404 in their first year of reporting is not prevented from doing so under our rules.

In addition, the previous requirements would have provided an incentive for private companies to time their public offerings so as to maximize the length of time that they would have after going public before having to comply with the Section 404 requirements. The amendments we are adopting today that allow newly public companies to defer compliance with these requirements until they file their second annual report with the Commission reduce this incentive. As a result, capital formation should be enhanced by allowing companies to time their offerings to raise capital rather than to avoid a compliance requirement. In reducing regulatory burdens for newly public companies, we may also increase the attractiveness of the U.S. markets to foreign companies.[121]

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act [122] for amendments to rules and forms under the Securities Act and the Exchange Act that: (1) extend the compliance dates applicable to non-accelerated filers for certain internal control over financial reporting requirements and (2) provide a transition period for newly public companies before they become subject to compliance with the internal control over financial reporting requirements. Non-accelerated filers previously were scheduled to begin to comply with the management's assessment and auditor attestation report requirements on the company's internal control over financial reporting for their annual report filed for the first fiscal year ending on or after July 15, 2007. We are extending this compliance date with respect to the management's assessment portion so that a non-accelerated filer is required to begin including management's assessment in an annual report for its first fiscal year ending on or after December 15, 2007. We are extending the compliance date with respect to the auditor attestation report so that a non-accelerated filer is required to begin including an auditor's attestation report on management's assessment in the annual report that it files for its first fiscal year ending on or after December 15, 2008. In addition, we are also adopting amendments for newly public companies so that a newly public company need not comply with our internal control over financial reporting requirements until after it either had been required to file an annual report pursuant to the requirements of Section

[113] 15 U.S.C. 78w(a)(2).

[114] 15 U.S.C. 77b(b).

[115] 15 U.S.C. 78c(f).

[116] See, for example, letters from ABA, IDW, G. Merkl and PwC.

[117] See, for example, letters from Core-Mark, FEI, J. Finn, Graybar, Congressman Lynch, and Village.

[118] See also letters from ABA and Calix.

[119] See letter from ABA.

[120] See letter from CII (citing article in CFO magazine).

[121] See also letters from ACB, Cravath and Davis Polk.

[122] 5 U.S.C. 603.

13(a) or 15(d) of the Exchange Act for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year.

A. Reasons for and Objectives of the Amendments

The Commission and the PCAOB plan a series of actions that will result in the issuance of new guidance to aid companies and auditors in performing their evaluations of internal control over financial reporting. These amendments are designed to provide additional time for non-accelerated filers and newly public companies to comply with the internal control over financial reporting requirements as modified. We believe that the additional time will enhance the quality of public company disclosure concerning internal control over financial reporting.

For non-accelerated filers, we expect that extending the implementation of the management report requirement for five months will provide sufficient time for the Commission to issue final guidance to assist in management's performance of a top-down, risk-based and scalable assessment of controls over financial reporting. We are deferring the implementation of the auditor attestation report requirement for an additional year after the implementation of the management report requirement for the following reasons:

- To afford non-accelerated filers and their auditors the benefit of any changes or additional guidance regarding application of the COSO Framework;
- To both save and postpone costs associated with the auditor's attestation during the period that changes to Auditing Standard No. 2 are being considered and implemented;
- To enable management more time to prepare and gain efficiencies in the review and evaluation of the effectiveness of internal control over financial reporting; and
- To provide the Commission with additional time to consider public comment on the questions we raised on management guidance related to the appropriate role of the auditor in evaluating management's internal control assessment process.[123]

For newly public companies, we expect that the transition period which eliminates the requirement to provide management's report and the auditor's attestation report in the first annual report filed with the Commission will alleviate some of the burdens of going public. The implementation of the transition period will:

- Provide additional time and defer costs for a newly public company, allowing it to focus on its assessment of internal control over financial reporting without the additional focus of the initial public offering; and
- Allow companies, including foreign issuers, that become subject to Section 15(d) after filing a Securities Act registration statement but who may then be eligible to terminate their periodic filing obligations after filing just one annual report, to avoid the cost of preparing internal control reports.

B. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on the number of small entity issuers that may be affected, the existence or nature of the potential impact and how to quantify the impact of the amendments. One commenter provided some data on general costs of compliance related to the Section 404 requirements.[124] For example, this commenter noted one survey included in the GAO report issued in April 2006 that surveyed 128 companies and found that fees paid by smaller companies to ''external consultants'' ranged from $3,000 to $1.4 million. These external consultants provided various forms of assistance, including assistance with developing methodologies to comply with Section 404, documenting and testing internal controls, and helping management assess the effectiveness of internal controls and remediate identified internal control weaknesses. This commenter also noted that surveys of actual Section 404 costs indicate that annual small company compliance costs approach $1,000,000 and then cited a survey from Financial Executives International showing that non-accelerated filers would each spend approximately $935,000 to comply with Section 404 requirements. Some companies provided estimates for their own compliance costs for the Section 404 requirements.[125]

C. Small Entities Subject to the Final Amendments

Exchange Act Rule 0–10(a)[126] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. The amendments affect most issuers that are small entities. We estimate that there are approximately 2,500 issuers, other than registered investment companies, that may be considered small entities. The extension for non-accelerated filers and the transition period for newly public companies apply to any small entity that is subject to Exchange Act reporting requirements.

D. Reporting, Recordkeeping, and Other Compliance Requirements

Our amendments are designed to alleviate reporting and compliance burdens. The compliance date extension for non-accelerated filers postpones the date by which non-accelerated filers with a fiscal year end between July 15, 2007 and December 15, 2007 must begin to comply with the internal control over financial reporting requirements. In addition, for non-accelerated filers, the amendments eliminate the requirement to include an auditor's report on internal control over financial reporting in the annual report during the initial year of compliance with the internal control over financial reporting requirements. During this year, however, non-accelerated filers are required to provide a statement in their annual reports, explaining that the annual report does not include the auditor's attestation report.

The transition for newly public companies also alleviates reporting and compliance burdens by relieving a newly public company from compliance with our internal control over financial reporting requirements in the first annual report that it files with the Commission. This amendment provides all newly public companies with at least one annual reporting period before they are required to conduct the first assessment of internal control over financial reporting and allows companies that are not required to file a second annual report to exit the system without filing management or auditor reports regarding internal control over financial reporting. During the transition period, however, newly public companies are required to provide a statement in their annual reports explaining that the annual report does not include either management's report on internal control or the auditor's attestation report.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the

[123] Release No. 34–54122. The comment period closed on September 18, 2006, and the letters that we received on the Concept Release are available in File No. S7–11–06, at *http://www.sec.gov/comments/s7-11-06/s71106.shtml.*

[124] See letter from SBA.

[125] See, for example, letters from Core-Mark and LaCrosse.

[126] 17 CFR 240.0–10(a).

amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

We have considered a variety of reforms to achieve our regulatory objectives and, where possible, have taken steps to minimize the effects of the rules and amendments on small entities without proposing a complete and permanent exemption for small entities from coverage of the Section 404 requirements. The amendments establish a different compliance and reporting timetable for non-accelerated filers and provide additional time for newly public companies to prepare to comply with the internal control over financial reporting requirements.

We received some comments suggesting alternatives to the amendments that we are adopting. For example, one commenter recommended that the Commission explore ways to provide further flexibility to smaller companies.[127] This commenter recommended that the Commission, as an alternative, exempt smaller companies from outside audit requirements. Some commenters suggested that the Commission extend the compliance date associated with the management report requirement for an even longer period of time than proposed.[128] As discussed above, the amendments are designed to provide companies that are non-accelerated filers with time to consider any guidance issued by us and other entities, such as COSO, before planning and conducting their internal control assessments, and to consider the anticipated revisions to Auditing Standard No. 2 that the PCAOB and Commission are considering. The amendments, our forthcoming management guidance, and the revisions to Auditing Standard No. 2 should make implementation of the internal control reporting requirements more effective and efficient for non-accelerated filers and newly public companies. As we implement these changes, we will consider the available information to determine whether additional flexibility is warranted, consistent with investor protection.

[127] See, for example, letter from SBA.

[128] See, for example, letters from ABA, ACB, Davis Polk, ICBA, and MOCON.

VIII. Statutory Authority and Text of the Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 12, 13, 15 and 23 of the Exchange Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, the Commission amends title 17, chapter II, of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

■ 2. Section 210.2–02T is amended by:
■ a. Adding the phrase ''(but not a large accelerated filer)'' after the phrase ''that is an accelerated filer'' in paragraph (a);
■ b. Revising paragraph (b); and
■ c. Adding paragraphs (c) and (d).

The additions and revision read as follows:

§ 210.2–02T Accountants' reports and attestation reports on management's assessment of internal control over financial reporting.

* * * * *

(b) Paragraph (a) of this temporary section will expire on December 31, 2007.

(c) The requirements of § 210.2–02(f) shall not apply to a registered public accounting firm that issues or prepares an accountant's report that is included in an annual report filed by a registrant that is neither a ''large accelerated filer'' nor an ''accelerated filer,'' as those terms are defined in § 240.12b–2 of this chapter, for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(d) Paragraph (c) of this temporary section will expire on June 30, 2009.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 3. The authority citation for Part 228 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq*., and 18 U.S.C. 1350.

* * * * *

■ 4. Section 228.308 is amended by:
■ a. adding an ''s'' to the word ''instruction'' in the descriptive heading at the end of the section;
■ b. redesignating the existing instruction to Item 308 as Instruction 2; and
■ c. adding new Instruction 1.

The addition reads as follows:

§ 228.308 (Item 308) Internal control over financial reporting.

* * * * *

1. A small business issuer need not comply with paragraphs (a) and (b) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. A small business issuer that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

* * * * *

■ 5. Section 228.308T is added to read as follows:

§ 228.308T (Item 308T) Internal control over financial reporting.

Note to Item 308T: This is a special temporary section that applies only to an annual report filed by the small business issuer for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(a) *Management's annual report on internal control over financial reporting.* Provide a report of management on the small business issuer's internal control over financial reporting (as defined in § 240.13a–15(f) or § 240.15d-15(f) of this chapter). This report shall not be deemed to be filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the small business issuer specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. The report must contain:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the small business issuer;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the small business issuer's internal control over financial reporting as required by paragraph (c) of § 240.13a–15 or § 240.15d–15 of this chapter; and

(3) Management's assessment of the effectiveness of the small business issuer's internal control over financial reporting as of the end of the small business issuer's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the small business issuer's internal control over financial reporting identified by management. Management is not permitted to conclude that the small business issuer's internal control over financial reporting is effective if there are one or more material weaknesses in the small business issuer's internal control over financial reporting.

(4) A statement in substantially the following form: ''This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.''

(b) *Changes in internal control over financial reporting.* Disclose any change in the small business issuer's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a–15 or § 240.15d–15 of this chapter that occurred during the small business issuer's last fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting.

Instructions to paragraphs (a) and (b) of Item 308T.

1. A small business issuer need not comply with paragraph (a) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. A small business issuer that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

2. The small business issuer must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the small business issuer's internal control over financial reporting.

(c) This temporary Item 308T, and accompanying note and instructions, will expire on June 30, 2009.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 6. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 7. Section 229.308 is amended by:

■ a. Adding an ''s'' to the word ''instruction'' in the descriptive heading at the end of the section;

■ b. Redesignating the existing instruction to Item 308 as Instruction 2; and

■ c. Adding new Instruction 1.

The addition reads as follows:

§ 229.308 (Item 308) Internal control over financial reporting.

* * * * *

1. A registrant need not comply with paragraphs (a) and (b) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. A registrant that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

* * * * *

■ 8. Section 229.308T is added to read as follows:

§ 229.308T (Item 308T) Internal control over financial reporting.

Note to Item 308T: This is a special temporary section that applies only to a registrant that is neither a ''large accelerated filer'' nor an ''accelerated filer'' as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report filed by the registrant for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(a) *Management's annual report on internal control over financial reporting.* Provide a report of management on the registrant's internal control over financial reporting (as defined in § 240.13a–15(f) or § 240.15d–15(f) of this chapter). This report shall not be deemed to be filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the registrant specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. The report must contain:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the registrant;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the registrant's internal control over financial reporting as required by paragraph (c) of § 240.13a–15 or § 240.15d–15 of this chapter; and

(3) Management's assessment of the effectiveness of the registrant's internal

control over financial reporting as of the end of the registrant's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the registrant's internal control over financial reporting identified by management. Management is not permitted to conclude that the registrant's internal control over financial reporting is effective if there are one or more material weaknesses in the registrant's internal control over financial reporting.

(4) A statement in substantially the following form: ''This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.''

(b) *Changes in internal control over financial reporting.* Disclose any change in the registrant's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a-15 or § 240.15d–15 of this chapter that occurred during the registrant's last fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

Instructions to paragraphs (a) and (b) of Item 308T.

1. A registrant need not comply with paragraph (a) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for the prior fiscal year or previously had filed an annual report with the Commission for the prior fiscal year. A registrant that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

2. The registrant must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the registrant's internal control over financial reporting.

(c) This temporary Item 308T, and accompanying note and instructions, will expire on June 30, 2009.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 10. Section 240.13a–14 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

(a) * * * The principal executive and principal financial officers of an issuer may omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the issuer until the issuer becomes subject to the internal control over financial reporting requirements in § 240.13a–15 or 240.15d–15.

* * * * *

■ 11. Section 240.13a–15 is amended by:

■ a. Revising paragraph (a); and

■ b. Revising the first sentences in paragraphs (c) and (d).

The revisions read as follows:

§ 240.13a–15 Controls and procedures.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*), other than an Asset-Backed Issuer (as defined in § 229.1101 of this chapter), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined in section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in paragraph (e) of this section) and, if the issuer either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year, internal control over financial reporting (as defined in paragraph (f) of this section).

* * * * *

(c) The management of each such issuer that either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or previously had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's internal control over financial reporting. * * *

(d) The management of each such issuer that either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, any change in the issuer's internal control over financial reporting, that occurred during each of the issuer's fiscal quarters, or fiscal year in the case of a foreign private issuer, that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting. * * *

* * * * *

■ 12. Section 240.15d–14 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

(a) * * * The principal executive and principal financial officers of an issuer may omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the issuer until the issuer becomes subject to the internal control over financial reporting requirements in § 240.13a–15 or 240.15d–15 of this chapter.

* * * * *

■ 13. Section 240.15d–15 is amended by:

■ a. Revising paragraph (a); and

■ b. Revising the first sentences of paragraphs (c) and (d).

The revisions read as follows:

§ 240.15d–15 Controls and procedures.

(a) Every issuer that files reports under section 15(d) of the Act (15 U.S.C. 78o(d)), other than an Asset Backed Issuer (as defined in § 229.1101 of this chapter), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined in section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in paragraph (e) of this section) and, if the issuer either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year, internal control over financial reporting (as defined in paragraph (f) of this section).

* * * * *

(c) The management of each such issuer that either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's internal control over financial reporting.

* * *

(d) The management of each such issuer that previously either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or previously had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, any change in the issuer's internal control over financial reporting, that occurred during each of the issuer's fiscal quarters, or fiscal year in the case of a foreign private issuer, that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

* * *

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 14. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

■ 15. Form 20–F (referenced in § 249.220f), Part II, is amended by:

■ a. Adding an ''s'' to the word ''Instruction'' in the descriptive heading at the end of Item 15;

■ b. Redesignating the existing Instruction to Item 15 as Instruction 2;

■ c. Adding new Instruction 1 to Item 15; and

■ d. revising Item 15T.

The additions and revision read as follows.

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Part II

* * * * *

Item 15. Controls and Procedures

* * * * *

Instructions to Item 15

1. An issuer need not comply with paragraphs (b) and (c) of this Item until it either had been required to file an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. An issuer that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

* * * * *

Item 15T. Controls and Procedures

Note to Item 15T: This is a special temporary section that applies instead of Item 15 only to: (1) an issuer that is an ''accelerated filer,'' but not a ''large accelerated filer,'' as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report that the issuer is required to file for a fiscal year ending on or after July 15, 2006 but before July 15, 2007; or

(2) an issuer that is neither a ''large accelerated filer'' nor an ''accelerated filer'' as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report that the issuer is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(a) *Disclosure Controls and Procedures.* Where the Form is being used as an annual report filed under section 13(a) or 15(d) of the Exchange Act, disclose the conclusions of the issuer's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the issuer's disclosure controls and procedures (as defined in 17 CFR 240.13a–15(e) or 240.15d–15(e)) as of the end of the period covered by the report, based on the evaluation of these controls and procedures required by paragraph (b) of 17 CFR 240.13a–15 or 240.15d–15.

(b) *Management's annual report on internal control over financial reporting.* Where the Form is being used as an annual report filed under section 13(a) or 15(d) of the Exchange Act, provide a report of management on the issuer's internal control over financial reporting (as defined in § 240.13a–15(f) or 240.15d–15(f) of this chapter). The report shall not be deemed to be filed for purposes of section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the issuer specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. The report must contain:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the issuer;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the issuer's internal control over financial reporting as required by paragraph (c) of § 240.13a–15 or 240.15d–15 of this chapter;

(3) Management's assessment of the effectiveness of the issuer's internal control over financial reporting as of the end of the issuer's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the issuer's internal control over financial reporting identified by management. Management

is not permitted to conclude that the issuer's internal control over financial reporting is effective if there are one or more material weaknesses in the issuer's internal control over financial reporting; and

(4) A statement in substantially the following form: ''This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.''

(c) *Changes in internal control over financial reporting.* Disclose any change in the issuer's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a–15 or 240.15d–15 of this chapter that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

(d) This temporary Item 15T, and accompanying note and instructions, will expire on June 30, 2009.

Instructions to Item 15T

1. An issuer need only comply with paragraph (b) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. An issuer that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

2. The registrant must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the issuer's internal control over financial reporting.

* * * * *

■ 16. Form 40–F (referenced in § 249.240f) is amended by revising the ''Instructions to paragraphs (b), (c), (d) and (e) of General Instruction B.(6).'' as follows:

■ a. Redesignating existing Instruction 1 as Instruction 2;

■ b. Adding new Instruction 1; and

■ c. Redesignating existing Instruction 2T as Instruction 3T;

■ d. Revising newly redesignated Instruction 3T.

The addition and revision read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form

* * * * *

(6) * * *

Instructions to Paragraphs (b), (c), (d) and (e) of General Instruction B.(6)

1. An issuer need not comply with paragraphs (c) and (d) of this Instruction until it either had been required to file an annual report pursuant to the requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. An issuer that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

* * * * *

3T. Paragraphs (c)(4) and (d) of this General Instruction B.6 do not apply to: (1) an issuer that is an ''accelerated filer,'' but not a ''large accelerated filer,'' as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report that the issuer is required to file for a fiscal year ending on or after July 15, 2006 but before July 15, 2007; or (2) an issuer that is neither a ''large accelerated filer'' nor an ''accelerated filer,'' as those terms are defined in § 240.12b–2 of this chapter, with respect to an annual report that the issuer is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008. Management's report on internal control over financial reporting that is included in an annual report filed by the type of issuer and within the period set forth in (1) or (2) above in this Instruction 3T shall not be deemed to be filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the issuer specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. An issuer to which this instruction applies should provide a statement in substantially the following form: ''This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.''

This temporary Instruction 3T will expire on June 30, 2009.

* * * * *

■ 17. Form 10–Q (referenced in § 249.308a) is amended by adding temporary Item 4T to Part I following Item 4.

The addition reads as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part I—Financial Information

* * * * *

Item 4T. Controls and Procedures.

(a) If the registrant is neither a large accelerated filer nor an accelerated filer as those terms are defined in § 240.12b–2 of this chapter, furnish the information required by Items 307 and 308T of Regulation S–K (17 CFR 229.307 and 229.308T) with respect to a quarterly report that the registrant is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(b) This temporary Item 4T will expire on June 30, 2009.

* * * * *

■ 18. Form 10–QSB (referenced in § 249.308b) is amended by adding temporary Item 3A(T) to Part I after Item 3A.

The addition reads as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part I—Financial Information

Item 3A(T). Controls and Procedures

(a) Furnish the information required by Items 307 and 308T of Regulation S–B (17 CFR 228.307 and 228.308T) with respect to a quarterly report that the small business issuer is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(b) This temporary Item 3A(T) will expire on June 30, 2009.

* * * * *

■ 19. Form 10–K (referenced in § 249.310) is amended by adding temporary Item 9A(T) to Part II following Item 9A.

The addition reads as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

Part II

* * * * *

Item 9A(T). Controls and Procedures

(a) If the registrant is neither a large accelerated filer nor an accelerated filer as those terms are defined in § 240.12b–2 of this chapter, furnish the information required by Items 307 and 308T of Regulation S–K (17 CFR 229.307 and 229.308T) with respect to an annual report that the registrant is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(b) This temporary Item 9A(T) will expire on June 30, 2009.

* * * * *

■ 20. Form 10–KSB (referenced in § 249.310b) is amended by adding temporary Item 8A(T) to Part II after Item 8A.

The addition reads as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part II

* * * * *

Item 8A(T). Controls and Procedures

(a) Furnish the information required by Items 307 and 308T of Regulation S–B (17 CFR 228.307 and 228.308T) with respect to an annual report that the small business issuer is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(b) This temporary Item 8A(T) will expire on June 30, 2009.

* * * * *

Dated: December 15, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21781 Filed 12–20–06; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2000N–1596]

Uniform Compliance Date for Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing January 1, 2010, as the uniform compliance date for food labeling regulations that are issued between January 1, 2007, and December 31, 2008. FDA periodically announces uniform compliance dates for new food labeling requirements to minimize the economic impact of label changes. On March 14, 2005, FDA established January 1, 2008, as the uniform compliance date for food labeling regulations that issued between March 14, 2005, and December 31, 2006.

DATES: This rule is effective December 21, 2006. Submit written or electronic comments by March 6, 2007.

ADDRESSES: You may submit comments, identified by Docket No. 2000N–1596, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

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

• Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

• FAX: 301–827–6870.

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

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

Instructions: All submissions received must include the agency name and Docket No. 2000N–1596 for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Louis B. Brock, Center for Food Safety and Applied Nutrition (HFS–24), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2378.

SUPPLEMENTARY INFORMATION: FDA periodically issues regulations requiring changes in the labeling of food. If the effective dates of these labeling changes were not coordinated, the cumulative economic impact on the food industry of having to respond separately to each change would be substantial. Therefore, the agency periodically has announced uniform compliance dates for new food labeling requirements (see, e.g., the **Federal Register**s of October 19, 1984 (49 FR 41019), December 24, 1996 (61 FR 67710), December 27, 1996 (61 FR 68145), December 23, 1998 (63 FR 71015), November 20, 2000 (65 FR 69666), and December 31, 2002 (67 FR 79851)). Use of a uniform compliance date provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. This policy serves consumers' interests as well because the cost of multiple short-term label revisions that would

otherwise occur would likely be passed on to consumers in the form of higher prices.

The agency has determined under 21 CFR 25.30(k) 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.

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

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 agency believes that this final rule is not a significant regulatory action under the Executive order.

The establishment of a uniform compliance date does not in itself lead to costs or benefits. We will assess the costs and benefits of the uniform compliance date in the regulatory impact analyses of the labeling rules that take effect at that date.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Because the final rule does not impose compliance costs on small entities, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' 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.

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

This action is not intended to change existing requirements for compliance dates contained in final rules published before January 1, 2007. Therefore, all final FDA regulations published in the **Federal Register** before January 1, 2007, will still go into effect on the date stated in the respective final rule.

The agency generally encourages industry to comply with new labeling regulations as quickly as feasible, however. Thus, when industry members voluntarily change their labels, it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

In rulemaking that began with publication of a proposal on April 15, 1996 (61 FR 16422), and ended with a final rule on December 24, 1996, FDA provided notice and an opportunity for comment on the practice of establishing uniform compliance dates by issuance of a final rule announcing the date. Receiving no comments objecting to this practice, FDA finds any further rulemaking unnecessary for establishment of the uniform compliance date. Nonetheless, under 21 CFR 10.40(e) (1), FDA is providing an opportunity for comment on whether this uniform compliance date should be modified or revoked.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

The new uniform compliance date will apply only to final FDA food labeling regulations that require changes in the labeling of food products and that publish after January 1, 2007, and before December 31, 2008. Those regulations will specifically identify January 1, 2010, as their compliance date. All food products subject to the January 1, 2010, compliance date must comply with the appropriate regulations when initially introduced into interstate commerce on or after January 1, 2010. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 2010, the agency will determine for that regulation an appropriate compliance date, which will be specified when the final regulation is published.

Dated: December 13, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–21902 Filed 12–20–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

25 CFR Part 900

Contracts Under the Indian Self-Determination and Education Assistance Act; Change of Address for the Civilian Board of Contract Appeals

AGENCY: Indian Health Service, HHS.

ACTION: Final rule; change of address.

The Indian Health Service is revising its regulations governing contracts under the Indian Self-Determination and Education Assistance Act to reflect a change of address due to a move for the Civilian Board of Contract Appeals (CBCA).

DATES: This rule change is effective December 21, 2006.

FOR FURTHER INFORMATION CONTACT: Hankie Ortiz, Director, Division of Regulatory Affairs, Records Access, and Policy Liaison, Indian Health Service, 801 Thompson Avenue, Suite 450, Rockville, Maryland 20852, Telephone (301) 443–1116.

SUPPLEMENTARY INFORMATION:

I. Background

Regulations promulgated by the Indian Health Service to govern the administration of contracts under the Indian Self-Determination and Education Assistance Act reference an address for the Interior Board of Contract Appeals (IBCA). Effective January 6, 2007, the Interior Board of Contract Appeals will be consolidated

into the Civilian Board of Contract Appeals (CBCA). *See* 71 FR 65825 (Nov. 9, 2006). This action reflects the change in name and provides the CBCA's new street address.

II. Procedural Requirements

A. Determination To Issue Final Rule Effective in Less than 30 Days

IHS has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b) do not apply to this rulemaking. The changes being made relate solely to matters of agency organization, procedure and practice. They therefore satisfy the exemption from notice and comment in 5 U.S.C. 553(b)(A).

B. Review Under Procedural Statutes and Executive Orders

IHS has reviewed this rule under the following statutes and Executive Orders governing rulemaking procedures: The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.;* the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.;* the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.;* the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.;* Executive Order 12630 (Takings); Executive Order 12866 (Regulatory Planning and Review); Executive Order 12988 (Civil Justice Reform); Executive Order 13132 (Federalism); Executive Order 13175 (Tribal Consultation); and Executive Order 13211 (Energy Impacts). IHS has determined that this rule does not trigger any of the procedural requirements of those statutes and Executive Orders, since this rule merely changes the street address for the CBCA.

List of Subjects in 25 CFR Part 900

Administrative practice and procedure, Buildings and facilities, Claims, Government contracts, Government property management, Grant programs—Indians, Health care, Indians, Indians—business and finance.

■ For the reasons stated in the preamble, IHS amends its regulations in 25 CFR Part 900 as follows:

PART 900—[AMENDED]

■ 1. The authority citation for part 900 continues to read as follows:

Authority: 25 U.S.C. 450f *et seq.*

■ 2. Section 900.222, paragraph (e) is amended by removing ''Interior Board of Contract Appeals (IBCA)'' and adding in its place ''Civilian Board of Contract Appeals (CBCA)'' and by removing ''801 North Quincy Street, Arlington, VA 22203'' and adding in its place ''1800 M Street, NW., 6th Floor, Washington, DC 20036''.

■ 3. Section 900.229, paragraphs (a) and (b)(4) are amended by removing ''IBCA'' and adding in its place ''CBCA''.

Dated: December 14, 2006.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 06–9810 Filed 12–20–06; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–028; CGD08–06–034]

RIN 1625–AA09

Drawbridge Operation Regulation; Bayou Lafourche, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing six bridges across Bayou Lafourche, south of the Gulf Intracoastal Waterway (GIWW), and one bridge across Bayou Lafourche, north of the GIWW, in Lafourche Parish, Louisiana. The Lafourche Parish Council has requested that the six bridges below the GIWW remain closed to navigation at various times on weekdays during the school year and the one bridge north of the GIWW open on four hours advanced notification at night. These closures will facilitate the safe, efficient movement of staff, students and other residents within the parish.

DATES: This rule is effective January 22, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of dockets [CGD08–06–034] and [CGD08–06–034] and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 500 Poydras Street, New Orleans, Louisiana 70130–3310, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone 504–671–2128.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 20, 2006, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Bayou Lafourche, LA,'' in the **Federal Register** (71 FR 54944) under docket number [CGD08–06–028] for the modification of the operation regulations for six bridges across Bayou Lafourche below the Gulf Intracoastal Canal. We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Additionally, on September 20, 2006, we published another notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Bayou Lafourche, LA,'' in the **Federal Register** (71 FR 54946) under docket number [CGD08–06–034] to establish an advanced notification requirement for a bridge across Bayou Lafourche above the Gulf Intracoastal Canal. We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The U.S. Coast Guard, at the request of the Lafourche Parish Council, is modifying the existing operating schedules of six bridges across Bayou Lafourche south of the Gulf Intracoastal Waterway in Lafourche Parish, Louisiana. The six bridges include: Golden Meadow Vertical Lift Bridge, mile 23.9; the Galliano Pontoon Bridge, mile 27.8; the South Lafourche (Tarpon) Vertical Lift Bridge, mile 30.6; the Cote Blanche Pontoon Bridge, mile 33.9; the Cutoff Vertical Lift Bridge, mile 36.3; and the Larose Pontoon Bridge, mile 39.1. The modification of the existing regulations allows these bridges to remain closed to navigation from 7 a.m. to 8:30 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m., Monday through Friday from August 15 through May 31. At all other times, the bridges shall open on signal for the passage of vessels.

Presently, the draws of these bridges shall open on signal; except that, from August 15 through May 31, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 7 a.m. to 8 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m.

The existing regulations for the bridges went into effect on January 27, 2006. The original request by the petitioner was that the bridges be closed to navigation from 7 a.m. to 8:30 a.m.; however, due to a clerical error, the rule was codified with the morning hours of

7 a.m. to 8 a.m. This rule will correct the discrepancy.

Additionally, the U. S. Coast Guard, at the request of the Lafourche Parish Council, is modifying the existing operating schedule of the Valentine Pontoon Bridge across Bayou Lafourche, mile 44.7, in Lafourche Parish, Louisiana. The majority of the bridge's openings occur between the hours of 6 a.m. and 6 p.m. The bridge owner will continue to open the bridge on signal during these hours and will open the bridge on signal if at least four hours advance notification is given between the hours of 6 p.m. and 6 a.m. Presently, the draw of the bridge opens on signal for the passage of traffic.

Several large shipyards are located on Bayou Lafourche upstream of the Valentine Bridge. No letters of objection to the advanced notification requirement were received regarding the proposed changes. Additionally, no letters of objections were received from any waterway users regarding the advanced notification requirements.

Discussion of Comments and Changes

No letters were received with regards to either NPRM; therefore no changes to the proposed regulations were made.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule allows vessels ample opportunity to transit this waterway with proper notification before and after the peak vehicular traffic periods or with advanced notification. Based upon the vehicle traffic surveys, the public at large is better served by the additional closure times.

Small Entities

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

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

No comments were received from any small entities with regards to any effects that the modification of the regulations will have on them.

Assistance for Small Entities

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

No small entities requested Coast Guard assistance and none was given.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule

List of Subjects in 33 CFR Part 117 Bridges.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.465, paragraphs (b), (c), (d), (e), and (f) are redesignated paragraphs (c), (d), (e), (f) and (g). A new paragraph (b) is added and paragraph (a) introductory text is revised to read as follows:

§ 117.465 Lafourche Bayou.

(a) The draws of the following bridges shall open on signal; except that, from August 15 through May 31, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 7 a.m. to 8:30 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m.:

* * * * *

(b) The draw of the Valentine bridge, mile 44.7 at Valentine, shall open on signal; except that, from 6 p.m. to 6 a.m., the draw shall open on signal if at least four hours advance notification is given. During the advance notification period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in water traffic occur.

* * * * *

Dated: December 8, 2006.

Joel R. Whitehead,

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

[FR Doc. E6–21834 Filed 12–20–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2005–00475; FRL–8259–6]

RIN 2060–AK14

National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In 1994, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for the synthetic organic chemical manufacturing industry. This rule is commonly known as the hazardous organic NESHAP (HON) and established maximum achievable control technology standards to regulate the emissions of hazardous air pollutants from production processes that are located at major sources.

The Clean Air Act directs EPA to assess the risk remaining (residual risk) after the application of the maximum achievable control technology standards and to promulgate additional standards if required to provide an ample margin of safety to protect public health or prevent an adverse environmental effect. The Clean Air Act also requires us to review and revise maximum achievable control technology standards, as necessary, every 8 years, taking into account developments in practices, processes, and control technologies that have occurred during that time.

On June 14, 2006, EPA proposed two options regarding whether to amend the current emission standards for synthetic organic chemical manufacturing industry units. This action finalizes one of those options, and reflects our decision not to impose further controls and not to revise the existing standards based on the residual risk and technology review. It also amends the existing regulations in certain aspects.

DATES: This final rule is effective on December 21, 2006.

ADDRESSES: *Docket:* EPA has established a docket for the final rule under Docket ID No. EPA–HQ–OAR–2005–0475. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Randy McDonald, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711, telephone (919)541–5402, fax (919) 541–0246, e-mail *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by the final rule are synthetic organic chemical manufacturing industry (SOCMI) facilities that are major sources of hazardous air pollutant (HAP)

emissions. The final rule affects the following categories of sources:

Category	NAICS* Code	Examples of potentially regulated entities
Industry	325	Chemical manufacturing facilities.

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the final rule.

World Wide Web (WWW). In addition to being available in the docket, electronic copies of the final rule are available on the WWW through the Technology Transfer Network Web site (TTN). Following signature, EPA posted a copy of the final rule on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final rulemaking is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 20, 2007. Under CAA section 307(d)(7)(B), only an objection to the final rulemaking that was raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the rule's requirements may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Organization of this Document. This preamble is organized as follows:

I. Background Information
A. What Is the Statutory Authority for These Actions?
B. What Did We Propose?
II. Risk and Technology Review
A. Final Decision
B. Summary of Changes to the Rule
III. Responses to Significant Comments
A. Data Collection
B. Risk Determination
C. Administrative Requirements
D. Impacts Estimation
E. Clarification Changes
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Background Information

A. What is the statutory authority for these actions?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in CAA section 112(b), CAA section 112(d) calls for us to promulgate national performance or technology-based emission standards for those sources. For ''major sources'' that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year, these technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. We first published the MACT standard for SOCMI on April 22, 1994, at 59 FR 19402 (codified at 40 CFR part 63, subparts F, G, H, and I). EPA is then required to review these technology-based standards and to revise them ''as necessary, taking into account developments in practices, processes, and control technologies,'' no less frequently than every 8 years, under CAA section 112(d)(6).

The second stage in standard-setting is described in CAA section 112(f). This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity to emitting sources, and recommendations as to legislation regarding such remaining risk. EPA prepared and submitted this report (Residual Risk Report to Congress, EPA–453/R–99–001) in March 1999. The Congress did not act on any of the recommendations in the report, thereby triggering the second stage of the standard-setting process, the residual risk phase.

CAA Section 112(f)(2) requires us to determine, for each CAA section 112(d) source category, whether the MACT standards protect public health with an ample margin of safety. If the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million,'' EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety to protect public health. EPA may also adopt more stringent standards, if necessary, to prevent an adverse environmental effect (defined in CAA section 112(a)(7) as ''any significant and widespread adverse effect * * * to wildlife, aquatic life, or natural resources * * *.''), after considering cost, energy, safety, and other relevant factors.

B. What did we propose?

On June 14, 2006 (71 FR 34422), we proposed two options regarding whether to revise the current emission standards for new and existing SOCMI process units. The first proposed option would have imposed no further controls, based on a proposed finding that the existing standards protect public health with an ample margin of safety and prevent adverse environmental effects. Moreover, under the first option, we proposed that no further tightening of current standards was ''necessary'' in

light of developments in practices, processes, and control technologies.

The second proposed option would have required further reductions of organic HAP at certain process units, based on a proposed finding that additional controls were reasonable in order to protect public health with an ample margin of safety. This option was also based on a proposed finding that, in order to further reduce risks, tightening of current standards was ''necessary'' after taking into account developments in practices, processes, and control technologies. The second option would have applied additional controls for equipment leaks and controlled some storage vessels and process vents that are not required to be controlled under the current rule. The proposed changes under Option 2 are summarized in the table below:

Emission source	Proposed changes to standards
Storage vessels	A Group 1 storage vessel also includes storage vessels that store one or more HAP listed in table 38 to subpart G of part 63, and has a combined HAP emission rate greater than 4.54 megagrams per year (5.0 tons HAP per year) on a rolling 12-month average.
Process vents	A Group 1 process vent also includes process vents for which the vent stream emits one or more HAP listed in table 38 to subpart G of part 63, and the total resource effectiveness index value is less than or equal to 4.0.
Equipment leaks	For chemical manufacturing process units (CMPU) containing at least one HAP listed in table 38 to subpart G of part 63, monthly monitoring of equipment components is required until the process unit has fewer than 0.5 percent leaking valves in gas/vapor service and in light liquid service.

II. Risk and Technology Review

A. Final Decision

We conclude in this rulemaking that there is no need to revise the HON rule under the provisions of either section 112(f) or 112(d)(6) of the CAA. This conclusion essentially reflects our decision to select Option 1 from the proposal, except for certain minor technical amendments we are adopting that are discussed later.

We are adopting no changes to the current HON rule under CAA section 112(f) because the current level of control called for by the existing MACT both reduces HAP emissions to levels that present an acceptable level of risk and protects public health with an ample margin of safety. The finding regarding an ''ample margin of safety'' is based on a consideration of the additional costs of further control (as represented by Option 2) and the relatively small reductions in health risks that are achieved by that alternative.

As explained at proposal, we judge that the level of risk from the current HON rule is acceptable for the following reasons. The maximum individual lifetime cancer risk is estimated to be 100-in-1 million, and this level of risk occurs at only two facilities. There are no people with estimated cancer risks greater than 100-in-1 million resulting from exposure to HON HAP emissions, which is the presumptively acceptable level of maximum individual lifetime cancer risk under the 1989 Benzene NESHAP criteria. The HON process units at 32 facilities are estimated to pose cancer risks greater than 10-in-1 million, with 9,000 people estimated to be exposed in this risk range. The HON process units at the remaining 206 facilities are estimated to pose cancer risks of 10-in-1 million or less. For the exposed population, total annual cancer incidence is estimated at 0.14 cases per year. The Hazard Index (HI) values (representing long-term noncancer public health risks) barely exceed 1, with only 20 people estimated to be exposed to HI levels greater than 1. We also found minimal concern for noncancer effects from short-term inhalation exposures from HAP. The lifetime cancer risk and noncancer adverse health effects estimated from multipathway exposure are also well below levels generally held to be of concern. Finally, after considering costs, energy, safety, and other relevant factors, it is not necessary to tighten HON requirements in order to prevent adverse environmental effects, or to account for developments in practices, processes, and control technologies.

In determining that the current HON rule protects public health with an ample margin of safety, we have determined that the estimated annual costs of Option 2 ($6 million per year) would be unreasonable given the minor associated improvements in health risks. Baseline cancer incidence under the current HON rule is estimated at 0.14 cases per year. Proposed Option 2 would reduce incidence by about 0.05 cases per year. Statistically, this level of risk reduction means that Option 2 would prevent one cancer case every 20 years. At proposal we estimated costs to be $13 million per year for Option 2. Based on public comments, we revised one of the Option 2 control requirements and the costing procedure for equipment leaks and this resulted in a revised cost estimate $6 million per year. Even at the $6 million per year cost, we consider the cost of Option 2 to be unreasonable given the level of incidence reduction achieved. The changes in the distribution of risks do not warrant the additional costs. The maximum individual cancer risk under Option 2 would be reduced from 100-in-1 million to 60-in-1 million. The cancer risks for 450,000 people would be shifted to levels below 1-in-1 million. Further, changes in the distribution of risk—that is, the aggregate change in risk across the population—reduces risk by only 0.05 cancer cases per year. This result suggests that Option 2 would yield very small changes in individual risk for most of the affected population. For this reason, the estimates of the shift in risk distribution do not serve as particularly effective measures of the change in health risk. Finally, the maximum HI is barely above 1.0 and would be reduced from above 1.0 to below 1.0 for only 20 people. We conclude that this degree of additional public health protection is not warranted in light of the costs to industry of compliance with proposed Option 2. Consequently, we have determined that it is not reasonable to impose any additional controls to provide an ample margin of safety to protect public health.

In the technology review, we did not identify any significant developments in practices, processes, or control technologies since promulgation of the original standards in 1994. We concluded that imposing additional controls under proposed Option 2 would achieve, at best, minimal emission and risk reductions. Option 2 would reduce organic HAP emissions by 1,700 tons per year, reduce cancer incidence by 0.05 cases per year, and reduce HI below 1 for about 20 individuals. We estimate that no one is currently exposed to emissions from HON sources causing cancer risks exceeding 100-in-1 million, the presumptively acceptable level for individual lifetime cancer risk under the Benzene NESHAP. (The relationship

between residual risk and the CAA section 112(d)(6) review is explained in our proposal at 72 FR 34436.) Thus, because of the lack of any significant developments in practices, processes, or technologies, and the limited effect in reducing public health risk, we find that additional controls are not warranted under CAA section 112(d)(6).

B. Summary of Changes to the Rule

While we are making no changes to the control requirements of the existing standards based on the residual risk and technology review, we are publishing three technical amendments under CAA section 112(d)(2) designed to clarify provisions of the existing rule and provide for effective implementation. At proposal, we solicited comments on a list of rule clarifications. After considering public comments, we have decided not to adopt some of the proposed changes at this time. We may consider some of these proposed changes again in the future, in which case we intend to provide an additional opportunity to comment on them. However, we are finalizing one minor change on which we solicited comments. We are also making two minor changes for which we did not solicit comments but which were recommended by commenters. We are also clarifying in this preamble that liquid streams generated from control devices (e.g., scrubber effluent) are wastewater. No rule changes are necessary for this clarification.

1. Group Status Changes for Wastewater

The revised rule clarifies the requirement to redetermine Group status for wastewater streams if process or operational changes occur that could reasonably be expected to change the wastewater stream from a Group 2 to a Group 1 stream. Examples of such process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type; or whenever there is replacement, removal, or addition of recovery equipment. Although 40 CFR 63.100(m) generally applies to Group 2 wastewater streams becoming Group 1, this change clarifies requirements for redetermining group status for wastewater by including provisions analogous to those in 40 CFR 63.115(e), which requires redetermination of total resource effectiveness index value (TRE) for process vents due to process or operational changes.

2. Removal of Methyl Ethyl Ketone (MEK) from HON Tables

In the final rule we have removed MEK from Tables 2 and 4 of 40 CFR part 63, subpart F and tables 9, 34, and 36 of 40 CFR part 63, subpart G. MEK was removed from the HAP list on December 19, 2005 (70 FR 75047). At that time, MEK was not removed from various applicability tables in the HON, 40 CFR part 63, subparts F and G.

3. Vapor Balancing for Storage Tanks

In the final rule we have decided to waive all notification and reporting requirements for owners or operators of facilities where railcars, tank trucks, or barges, which are part of the vapor balancing control option, are reloaded or cleaned. We are also allowing off-site reloading and cleaning operations to comply with monitoring, recordkeeping, and reporting provisions of any other applicable 40 CFR part 63 standards in lieu of the monitoring, recordkeeping, and reporting in the HON. These provisions have been added to other MACT standards because the vapor balancing provisions provide owners and operators flexibility in meeting the requirements of the MACT standards without sacrificing the level of emission reductions being achieved. Further, making these changes provide consistency between similar emission sources being controlled under similar rules.

These amendments reflect a logical outgrowth of our proposed rule, and are reasonable decisions made in response to public comments we received regarding these issues.

III. Responses to Significant Comments

The proposal provided a 60-day comment period ending August 14, 2006. We received comments from 34 commenters. Commenters included State agencies, industry, industry trade groups, environmental groups, and individuals. We have summarized the significant comments below. A complete summary of comments and our responses can be found in the public docket for the promulgated rule, EPA–HQ–OAR–2005–0475.

A. Data Collection

Comment: One commenter stated that a major flaw in the risk assessment is that EPA failed to use its CAA section 114 authority to collect data for the risk assessment and, instead, used ''voluntary, fragmentary, 7-year-old industry-submitted data from well under half of the affected facilities.'' The commenter stated that the 1999 Residual Risk Report to Congress emphasizes the need for site-specific data for more refined assessments, and that EPA has not collected such data in the risk assessment for the HON. The commenter stated that the purpose of the risk assessment was to determine the residual risk from SOCMI facilities, and that the data EPA used to perform the assessment was not of the type and quality to achieve that objective.

Response: The CAA does not specify the type of data, or the method of acquiring it, that EPA must use for conducting residual risk assessments under CAA section 112(f). EPA can use data other than those gained through its CAA section 114 authority, if doing so enables the agency to determine the remaining risks presented after application of MACT standards. At the time EPA was considering options for data collection, the industry trade association (American Chemistry Council) volunteered and prepared questionnaires to member companies. EPA reviewed the questionnaire and determined that the information requested by it would greatly facilitate our conducting a residual risk assessment. The data received through the questionnaire represented a significant fraction of the facilities in the source category (approximately 44 percent), and include site-specific data on emissions sources, locations, and release parameters. Where emission release parameter data were missing, EPA used environmentally protective defaults in the modeling. While it is true that the data are now 7 years old, a significant amount of time was needed to collect and analyze the data, run the models, analyze the results, and prepare the rulemaking package. Moreover, the mere age of the data does not necessarily affect its utility for assessing whether sources that have achieved compliance with MACT continue to present risks of concern, given that the essential question addressed by our assessment is whether the MACT controls themselves are adequately protective of public health with an ample margin of safety.

Comment: One commenter stated that EPA has performed no analysis to determine that the industry data used in the risk assessment are representative of the source category as a whole. The commenter stated that for EPA to adequately satisfy CAA section 112(f), it must be able to accurately identify the risk associated with the most exposed individual and accurately estimate risk more generally from sources within the source category. The commenter stated that, to do this, EPA must have sufficient data regarding all of the important factors for estimating risk (including size, quantity of emissions, the specific characteristics of emission points, proximity, and population density of surrounding communities, important meteorological and

topological data, co-located emission sources, ambient background levels, etc.). The commenter stated that the factor of 2.3 that EPA used to scale up the population risk from the assessed facilities to the entire source category is arbitrary and unreasonable because it assumes constant population density.

Response: The data used in the assessment were obtained from all responses to the industry questionnaire, and include site-specific data on emissions sources, locations, and release parameters. The data represent a significant fraction of the category (approximately 44 percent), and include sources with high and low emissions, sources that are geographically proportional to the entire source category, and sources that emit nearly all organic HAP thought to be emitted from the category.

While the emissions data obtained through the industry questionnaire cannot be proven to be proportional to the emissions from the entire source category, EPA does have whole-facility emissions data for 226 facilities (the entire source category is estimated at 238 facilities) in the National Emissions Inventory (NEI), and we performed a screening-level risk assessment using these data to determine if there were HON facilities posing greater public health risks than those included in the industry data. Although the NEI data were for the whole facility (and not just the HON emission points), we used NEI data codes (MACT codes, Standard Industrial Classification codes, and Source Classification Codes) to judge whether risks estimated using the NEI data could be attributed to the HON source category. We found that the highest risks from using the NEI data were of the same order of magnitude as those estimated using the industry data. Based on this general corroboration with the NEI data, we concluded that the industry data were the most detailed and comprehensive data available that were specific to the source category, and that the data were appropriate for use in conducting the residual risk assessment.

EPA did use a factor of 2.3 to estimate population risk associated with facilities not included in the industry data. This factor is simply the ratio of the total number of HON facilities to the number of facilities in the industry data, and reflects our expectation, based on further comparison to the NEI data, that on average, the population densities around the facilities not in the industry data are similar to the densities around the facilities that were in the industry data. We estimate that there are 61.6 million people living within the 50-kilometer modeling radius of the 105 HON facilities included in the industry data. An estimated 82.8 million people live within the 50-kilometer modeling radius of the 226 HON facilities modeled using the NEI data. Accordingly, the sources in the industry-supplied data are located near 75 percent of the total exposed population, but represent 44 percent of the total number of facilities in the industry. This comparison indicates that many of the facilities not in the industry data are located in less densely populated areas or in the same areas as the facilities included in the industry data. Therefore, the population densities around the modeled facilities appear to be representative.

In the risk assessment, EPA showed that facilities with overlapping modeling domains (facility ''clusters'') did not lead to significantly higher estimated risks to the individual most exposed because such risks are generally driven by the nearest facility. However, facility clusters did increase the numbers of individuals within certain cancer risk ranges. Although the total population around all facilities in the source category is not a factor of 2.3 greater than the total population around the facilities in the industry data, the additional facilities would increase the risks to some of the same segments of the population, resulting in higher risk to individuals in the population.

B. Risk Determination

Comment: One commenter believed that EPA has misinterpreted the CAA by adopting the 1989 Benzene two-step framework to set residual risk standards under the 1990 CAA. The commenter concluded that the proper interpretation is that CAA section 112(f)(2)(A) specifies 1-in-1 million as a bright line and mandates promulgation of standards to reach at least this level of health protection. The commenter believed that CAA section 112(f)(2)(B) merely leaves standing, those relevant rules that were promulgated under section 112 as it existed prior to the 1990 CAA. The commenter disagreed with EPA's position that Congressional inaction ratifies EPA's interpretation of CAA section 112(f)(2)(B). The commenter believed that Congressional failure to respond to the EPA Report to Congress, which provided notification of the intent to utilize the 1989 Benzene two-step approach, does not justify overriding the plain statutory language of CAA section 112(f).

Response: We disagree with the commenter. Our policy on using the Benzene NESHAP for implementing CAA section 112(f) has been fully explained in the Coke Oven Batteries NESHAP (see 70 FR 19992, April 15, 2005) and the Residual Risk Report to Congress, and our approach here is fully consistent with our prior practice. The commenter's argument that the statute requires CAA section 112(f) residual risk standards to reduce cancer risk to the most exposed individual to less than 1-in-1 million lacks a basis in the statutory text or in policy. CAA Section 112(f)(2)(A), in stating that EPA is to conduct residual risk rulemaking if the ''lifetime excess cancer risk to the individual most exposed to emissions from a source in a category or subcategory'' is greater than 1-in-1 million, does not establish what the level of the standard must be other than to require them to ''provide an ample margin of safety to protect public health in accordance with this section (as in effect before the date of enactment of the CAA Amendments of 1990) [* * *].'' Read in light of CAA section 112(f)(2)(B)'s express preservation of EPA's pre-enactment interpretation of CAA section 112, Congress clearly preserved EPA's ability to apply the same two-step formulation established by the Benzene NESHAP in making future ''ample margin of safety'' determinations under CAA section 112(f)(2).

Under that test, there is no single risk level establishing what constitutes an ample margin of safety. Rather, the Benzene NESHAP approach codified in CAA sections 112(f)(2)(A) and (B) is deliberately flexible, requiring consideration of a range of factors (among them estimates of quantitative risk, incidence, and numbers of exposed persons within various risk ranges; scientific uncertainties; and weight of evidence) when determining acceptability of risk (the first step in the ample margin of safety determination (54 FR 38045, September 14, 1989). Determination of an ample margin of safety, the second step in the process, requires further consideration of these factors, plus consideration of technical feasibility, cost, economic impact, and other factors (54 FR 38046, September 14, 1989). As we stated in our ''Residual Risk Report to Congress'' (EPA–453/R–99–001) issued under CAA section 112(f)(1), we do not consider the 1-in-1 million individual cancer risk level as a ''bright line'' mandated level of protection for establishing residual risk standards, but rather as a trigger point to evaluate whether additional reductions are necessary to provide an ample margin of safety to protect public health. This interpretation is supported by the language in the preamble to the Benzene NESHAP, which was

incorporated by Congress in CAA sections 112(f)(2)(A) and (B).

The Report to Congress was intended, among other things, to explain how EPA would implement CAA section 112(f) by investigating the methods available for assessing public health risks after the technology-based standards were applied and explaining any uncertainties in the methods. Congress also asked us to make recommendations for changes to the CAA section 112(f) as a result of the investigation. A plain reading of the CAA section 112(f)(2)(A) indicates that if, based on the report, Congress judged that residual risk standards were unnecessary or that the analytical methods for implementing the provisions were inadequate, then Congress would enact revisions to CAA section 112(f). The choice by Congress not to respond to the report clearly indicates that we should proceed with our general approach as explained in our Report to Congress.

We consequently believe that the commenter's bright line approach is not supported by the statute, and is incorrect as a matter of law. It is true that the Senate version of CAA section 112(f) mandated elimination of lifetime risks of carcinogenic effects greater than 1-in-10 thousand to the individual in the population most exposed to emissions of a carcinogen. (See ''A Legislative History of the Clean Air Act Amendments of 1990,'' pages 7598 and 8518.) However, this version of the legislation was not adopted. We believe that the rejected Senate version of CAA section 112(f) shows that Congress considered mandating a level of risk reduction and chose not to do so.

In any event, EPA has concluded that the flexible approach to risk acceptability and ample margin of safety set forth in the Benzene NESHAP is reasonable and appropriate in light of the complex judgments EPA must make under CAA section 112(f).

Comment: One commenter argued that CAA section 112(f)(2)(A) very clearly prohibits using cost as a consideration for standards promulgated to provide an ample margin of safety to protect public health. CAA Section 112(f)(2)(A) directs EPA to promulgate standards in order to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The commenter maintained that this construction allows cost as a consideration only for standards designed to prevent an adverse environmental effect where such standards are more stringent than necessary to protect human health with an ample margin of safety. As part of their argument, the commenter cited the Supreme Court decision in *American Trucking Associations* v. *Whitman* (2001), which addressed ambient air quality standards established under section 109 of the CAA, as providing precedent that cost cannot be considered in developing regulations to protect public health with a margin of safety. The commenter claimed that this court decision abrogated the District of Columbia Circuit decision on *Vinyl Chloride*, upon which the Benzene two-step policy is based. They also pointed out that the 1990 CAA removed the statutory language that *Vinyl Chloride* relied upon heavily. The commenter pointed out that unlike the previous CAA, section 112(f) of the 1990 CAA does not contain the phrase ''* * * set the standard at the level which in [the Administrator's] judgment provides an ample margin of safety to protect public health.'' The commenter claimed that exclusion of the specific requirement to use judgment invalidates the basis of *Vinyl Chloride*.

Response: The clear reading of CAA section 112(f) allows us to take cost into consideration within the context of the two-step policy of the 1989 Benzene NESHAP. The stipulation in CAA section 112(f)(2)(A) that costs, energy, safety, and other factors can be taken into consideration in setting standards to prevent an adverse environmental effect does not mean that costs cannot be taken into consideration in determining standards to protect public health. To the contrary, CAA section 112(f)(2)(A) states that residual risk standards are to provide an ample margin of safety to protect public health ''in accordance with this section (as in effect before the date of enactment of the Clean Air Act Amendments of 1990).'' This formulation, coupled with CAA section 112(f)(2)(B), which states that nothing in CAA section 112(f)(2)(A) or any other part of CAA section 112 shall be construed as affecting the EPA's interpretation of this section as set forth in the preamble to the 1989 Benzene NESHAP, reflects Congress' endorsement of the Benzene NESHAP approach, including the use of costs in determining an ample margin of safety.

The court decision cited by the commenter, *American Trucking Association* v. *Whitman*, has no relevance to decisions on ample margin of safety made under section 112 of the CAA. That case addressed the consideration of cost in the context of setting national ambient air quality standards under CAA section 109. The *American Trucking Association* v. *Whitman* decision does not specifically address, nor does it apply (nor could it have, as a matter of jurisdiction, since the court was not faced with an issue requiring a ruling on an interpretation of CAA section 112), to the different statutory requirements for regulating HAP under CAA section 112 or to any prior judicial precedent interpreting CAA section 112. Also, we do not read the 1990 CAA as overturning or otherwise disapproving of the court's decision in *Vinyl Chloride*. By directing us under CAA sections 112(f)(2)(A) and (B) to follow the 1989 Benzene NESHAP policy, the 1990 CAA requires the Administrator to use judgment both in establishing risk levels that constitute a safe level of exposure and in balancing costs against remaining risks for determining an ample margin of safety. Therefore, by eliminating the wording in CAA section 112(f)(2)(A) to use ''judgment,'' Congress eliminated a redundant specification and did not remove the legal basis of the *Vinyl Chloride* decision.

Comment: Several commenters contended that revising the HON pursuant to CAA section 112(d)(6) is not necessary and not justified. The commenters stated that EPA's Option 2 would revise the MACT beyond-the-floor decisions, that emission reductions to be gained from Option 2 are significantly overstated, and that the emission reduction does not justify the cost. Several commenters noted that Option 2 alternatives do not represent any ''developments in practices, processes, and control technologies'' but rather simply reflect an apparent decision by EPA that higher cost options that were rejected in the original beyond-the-floor analysis are now somehow acceptable.

Response: We do not agree that in reviewing a standard under CAA section 112(d)(6), the CAA mandates that only the question of whether newly developed emission control measures have been identified since the publication of the MACT standards be addressed. CAA Section 112(d)(6) requires that EPA review and revise standards ''as necessary.'' As we explain later, the instruction to revise ''as necessary'' indicates that EPA should use judgment in this regulatory decision, and is not precluded from considering additional relevant factors, such as risk and the evolution of costs of previously considered measures. At the time of a MACT determination, the beyond-the-floor decision is made without knowledge of the level of risks posed by an industry. In the subsequent reviews of the standards, we have substantial discretion in weighing all of the relevant factors, including all

available control measures that are more stringent than that required by the current NESHAP, emission reductions, public health risk impacts, costs, and any other relevant factors to determine what further controls, if any, are necessary.

Comment: Several commenters contended that the application of CAA section 112(d)(6) should incorporate the framework of CAA section 112(f)(2) because this approach would require the Administrator to weigh the potential for future risk reduction under CAA section 112(d)(6) against the cost of that reduction in the same manner as set forth in the second step of the 1989 Benzene NESHAP rule. One commenter added that technology reviews that focus solely on the cost-per-ton of additional emission controls and do not consider the risk reduction potential could result in the imposition of technology controls that yield very little, if any, benefit. Another commenter stated that when a MACT standard achieves protection of public health with an ample margin of safety and prevents adverse environmental effects, as is the case with the HON, no further revisions are ''necessary'' even if there have been developments in control technologies. The commenter believed that a determination of ample margin of safety and no adverse environmental effects alone is sufficient to determine that revision of the standard is not necessary under CAA section 112(d)(6). The commenter supported EPA's position that risk benefits are appropriate to consider under the CAA section 112(d)(6) decision.

Another commenter rejected EPA's interpretation that the term ''revise as necessary'' allows EPA to import into its 8-year evaluation the consideration of cost and risk. The commenter maintained that emission standards adopted under CAA section 112(d)(2) themselves were the product of a technology-driven evaluation that did not incorporate cost as a factor in the initial stages, and did not permit consideration of risk at all. The commenter continued that EPA has illegally substituted a risk/cost analysis for the requirement to perform an analysis of the technical feasibility of emission controls to establish the level of control of the best performing HON sources.

Response: We have addressed the relationship between CAA sections 112(f) and 112(d) in other recent rulemakings, as well as in the proposal for today's final rule. See, *e.g.,* our response to comments document for the Dry Cleaning Facilities Residual Risk Rule (71 FR 42727, July 27, 2006) (EPA's Summary of Public Comments and Responses to the Proposed Rule is located at docket no. EPA–HQ–OAR–2005–0155). As we explained in our proposal (see 71 FR 34436, June 14, 2006), the findings that underlie a CAA section 112(f) risk determination will often be key factors in making any subsequent CAA section 112(d)(6) technology review determinations. While our action today makes no changes to control requirements under the HON and it is, therefore, not necessary to respond to their individual points, we disagree with the commenters who state that a determination under CAA section 112(f) of an ample margin of safety and no adverse environmental effects alone will, in all cases, necessarily cause us to determine that a revision is not necessary under CAA section 112(d)(6). Our decision today should not be viewed as a departure from our general view, articulated in the proposal, that in some cases, even if risk factors remain the same from one round of CAA section 112(d)(6) review to another, changes in costs of or in the availability of control technology may be sufficient to alter a previous conclusion about whether to impose further controls.

In response to the commenter who claimed we may not consider risks or costs at all under CAA section 112(d)(6), we continue to interpret the use of the phrase ''as necessary'' in that section as conferring discretion on the agency to exercise its judgment as to what factors may drive an evaluation of available practices, processes, and control technologies. The ambiguous term ''as necessary'' inherently requires an EPA comparison between control measures and some goal or end. As the first rounds of both CAA section 112(f) residual risk and CAA section 112(d) technology review occur 8 years following MACT, it is reasonable to interpret these duties as being compatible with and informative of each other, and for the ultimate goal of revising standards as needed to protect public health with an ample margin of safety as influencing what we determine is generally ''necessary,'' in terms of whether to impose further technological controls under CAA section 112(d)(6).

Comment: One commenter contended that, for residual risk assessments, EPA may not rely on actual emissions, which represents ''over-control'' of emissions, with no comparison to allowable emissions. The commenter stated that if sources are being over-controlled as EPA suggests, then EPA's analysis of risk underestimates the risk remaining after implementation of the HON. The commenter added that the assessment required in CAA section 112(f)(2)(A) is of the ''standards'' adopted under CAA section 112(d). If the current ''standards'' are not adequate to protect public health with an ample margin of safety, more stringent standards are necessary. The commenter claimed that, if sources are over-controlling, but nothing in the CAA section 112(d) standards would prevent backsliding, the statute requires EPA to adopt more stringent limits to maintain that over-control. If the over-control occurs because State or local agencies have adopted tighter limits, the commenter concluded that more stringent limits are feasible, and EPA must either (a) adopt those limits nationally to provide uniform protection or (b) explain why such standards would be infeasible.

Several commenters agreed with EPA that, for this source category, the use of 1999 actual emissions data rather than allowable emissions do not lead to an underestimating of risk. The commenters pointed out that the conservatism of the health benchmark values and the exposure estimates outweigh any potential underestimation of emission levels based on using actual emissions, and added that EPA emission data based on actual emissions is conservatively high since the Toxics Release Inventory shows a reduction in emissions since 1999.

Response: EPA's position on the use of both allowable and actual emissions is fully discussed in the final Coke Oven Batteries NESHAP (70 FR 19998–19999, April 15, 2005). There we explained that modeling the allowable levels of emissions is inherently reasonable since they reflect the maximum level sources could emit and still comply with national emission standards. But we also explained that it is reasonable to consider actual emissions, where data on them is available, in both steps of the Benzene NESHAP analysis in order to avoid overestimating emissions and their risks (including incidence) and to account for how sources typically strive to perform better than required by standards to allow for process variability and not exceed standards due to emissions increases on individual days. Failure to consider these data in risk assessments, we said, would unrealistically inflate risk levels.

The preamble to the proposed HON residual risk standards included a discussion of actual versus allowable emissions from HON emission points (71 FR 34428). We explained that, for this source category, using available data on actual emissions enabled us to approximate allowable emissions, and that basing the analysis on actual

emissions here provided an acceptable method for determining the remaining risks to public health and the environment after application of the MACT standards. In the HON proposal preamble, we acknowledged that there is some uncertainty regarding the differences between actual and allowable emissions. For some emission points, it was not possible to estimate allowable emissions from available information. A requirement to determine the applicability of controls for some emission points was intentionally not included in the HON because it was seen as an unnecessary burden for points that would be controlled anyway. For these emission points there is no readily available data that can be used to determine the applicability of control requirements. Without such data, there is no accurate way to determine allowable emissions under the current rule. However, for equipment leaks which represent the most significant impact on the cancer risk at the HON facilities, the standards are work practice standards and the actual emissions and allowable emissions are likely the same for equipment in the leak detection and repair program required by the HON. More frequent monitoring of equipment components (for example, monthly instead of quarterly) could result in actual emissions being lower than allowable emissions, but few, if any, sources monitor more frequently than required by the HON.

We concluded that there is no reason to believe that there is either a substantial amount of overcontrol of Group 1 sources or voluntary control of Group 2 sources such that actual emissions are not a reasonable approximation of allowable emissions. Rather, actual emissions appear to reflect the results of our prior application of MACT (allowing for process variability), and no evidence in the record suggests that sources could make changes that significantly increase their emissions and risks but still comply with MACT control requirements. Consequently, basing the risk analysis on actual emissions in this case enabled us to determine the remaining risks to public health and the environment after application of the specific MACT standards applicable to HON sources.

Comment: One commenter argued that EPA must address inorganic HAP. The Risk Assessment acknowledges that inorganic HAP, such as hydrochloric acid and chlorine, may be emitted from HON sources, but that these compounds were not considered because data were not available to characterize emissions. The commenter argued that EPA cannot rely on the circular justification that the original HON regulated only organic HAP. The commenter argued that the residual risk provisions of CAA section 112(f) direct EPA to estimate the remaining risk for the regulated categories, whatever chemicals that risk may encompass. The commenter added that EPA's attempt to screen out inorganic HAP from further risk assessment by looking at these emissions in isolation is invalid. The commenter contended that EPA must look at the combined target organ specific HI from all emissions allowed under the current standards, including inorganic emissions, to determine if the residual risk is acceptable. Moreover, the commenter stated that EPA cannot avoid the consideration of emission controls for inorganics based only on a screening analysis; such control decisions for both the residual risk and the CAA section 112(d)(6) determination must consider other factors such as costs and feasibility.

Response: We acknowledge that inorganic HAP (such as hydrochloric acid and chlorine) are emitted from some HON sources and that these pollutants require consideration even though they were not regulated HAP in the existing NESHAP. We stated in the preamble to the proposed rule that inorganic HAP were not considered in the primary assessment because data were not available to characterize emissions. However, we conducted an additional analysis using information in the NEI to estimate the risk from the entire plant site at which the HON processes are located. The NEI contains information on both organic and inorganic HAP emitted from each facility. EPA estimated hazard indices (total, not target organ specific) for each of the 226 HON facilities for which NEI data were available. There were many instances where inorganic HAP were responsible for hazard indices exceeding 1, but there were no instances where the inorganic HAP were associated with HON processes. Therefore, EPA concluded that not including inorganic HAP in the primary risk assessment did not affect the results of the analysis, and that no further assessment of inorganic HAP emissions was necessary in order to determine whether remaining risks from HON sources after application of MACT are at acceptable levels. Furthermore, as discussed earlier in the preamble, it is not reasonable to impose any additional controls to provide an ample margin of safety to protect public health.

C. Administrative Requirements

Comment: One commenter argued that EPA has not appropriately addressed impacts on children and other sensitive receptors. The commenter stated that even though EPA acknowledged in the risk assessment that children face greater exposure and are more susceptible to the adverse health effects from airborne contaminants, these factors were not addressed. The commenter stated that EPA determined that ''[t]he proposed rule is not subject to the Executive Order (13045: Protection of Children From Environmental Health Risks and Safety Risks) * * * because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.'' This commenter contended that this conclusion is based on our assessment of the information on the effects on human health and exposures associated with SOCMI operations. The commenter could not find such an assessment referenced in the Risk Assessment. The commenter also stated that EPA ignored the effects on other sensitive receptors, *e.g.*, active adults.

Response: First, since this rulemaking is not economically significant under Executive Order 12866, Executive Order 13045 does not apply to this matter.

EPA acknowledges that population subgroups, including children, may have the potential for risk greater than the general population due to greater relative exposure and/or greater susceptibility to the toxicant. With respect to exposure, the risk assessment implicitly accounts for this greater potential for exposure by assuming lifetime (rather than simply childhood) exposure, which would tend to yield higher estimates of risks. The exposure assessment described the maximum modeled lifetime exposure of residents near HON facilities. The exposed population was conservatively presumed to be exposed to airborne concentrations at their residence continuously, 24 hours per day for a full lifetime, including childhood.

With regard to children's potentially greater susceptibility to non-cancer toxicants emitted by HON facilities, the assessment relied on Agency (or comparable) hazard identification and dose-response values which have been developed to be protective for all subgroups of the general population, including children. For example, a review [1] of the chronic reference value

[1] A Review of the Reference Dose and Reference Concentration Process. U.S. Environmental

process concluded that the Agency's reference concentration (RfC) derivation processes adequately considered potential susceptibility of different subgroups with specific consideration of children, such that the resultant RfC values pertain to the full human population ''including sensitive subgroups,'' a phrase which is inclusive of childhood.

On the issue of cancer dose-response values, our revised cancer guidelines and new supplemental guidance recommend applying default adjustment factors to account for exposures occurring during early-life exposure to those chemicals thought to cause cancer via a mutagenic mode of action. For these chemicals, the supplemental guidance indicates that, in lieu of chemical-specific data on which age or life-stage specific risk estimates or potencies can be determined, default ''age dependent adjustment factors'' can be applied when assessing cancer risk for early-life exposures to chemicals which cause cancer through a mutagenic mode.[2] However, at the present time, we have not determined whether any of the HAP emitted by the HON source category cause cancer via a mutagenic mode of action. While several of the HON pollutants may be carcinogenic by such a mechanism, our policy is not to apply these adjustment factors unless we have completed a peer-reviewed assessment that explicitly makes this determination after consideration of the full scientific literature.

Although we are not yet certain whether or not a childhood potency adjustment is needed, the estimated risks must also be considered in the context of the full set of assumptions used for this risk assessment. For example, we used a health-protective assumption of a 70-year exposure duration in our risk estimates; however, using the national average residency time of 12 years would reduce the estimate of risk by roughly a factor of 6. Our unit risk estimates for HAP are considered a plausible upper-bound estimate; actual potency is likely to be lower and some of which could be as low as zero. After considering these and other factors, we continue to consider the risks from emissions after application of the current HON rule to be acceptable (within the meaning of the Benzene NESHAP decision framework discussed at 69 FR 48339–48340, 48347–48348, August 9, 2004). As mentioned in the recently published cancer guidelines, we will continue to develop and present, to the extent practicable, an appropriate central estimate and appropriate lower and upper-bound estimates of cancer potency. Development of new methods or estimates is a process that will require independent peer review.

Comment: One commenter argued that EPA failed to adequately address environmental effects or to comply with the requirements of the Endangered Species Act (ESA). The commenter objected to EPA's assumption in the ecological assessment that the aquatic and terrestrial communities surrounding HON sources were healthy and unaffected by other stressors. Additionally, the commenter claimed that EPA is on record acknowledging its obligation to comply with the ESA during the residual risk phase of the air toxics program, and yet EPA failed to do so.

Response: The commenter is correct that EPA has publicly agreed that the consultation requirements of the ESA potentially apply to CAA section 112(f) residual risk rulemakings. *See Sierra Club* v. *EPA*. 353 F.3d 976 (District of Columbia Circuit, 2004). This is because CAA section 112(f)(2)(A) provides us with authority to tighten NESHAP, after consideration of costs and other relevant factors, to prevent an ''adverse environmental effect.'' CAA section 112(a)(7) defines this term to mean ''any *significant and widespread* adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on *populations* of endangered or threatened species or significant degradation of environmental quality *over broad areas*'' (emphasis added). Therefore, CAA section 112(f) clearly provides EPA discretion to promulgate a residual risk rule in a manner that inures to the benefit of listed species (see 50 CFR 402.03), at least in cases where adverse environmental effects are of a significant magnitude.

However, under section 7(a)(2) of the ESA and the implementing regulations promulgated by the Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services), an action agency such as EPA has a duty to initiate consultation with the services only where it determines that its action may have an impact (either beneficial or adverse) on listed threatened or endangered species or on their designated critical habitat. Where the action agency determines that its action will have no such effect, the consultation duty is not triggered. For the HON residual risk rulemaking, based on the ecological risk analysis we discuss below, EPA has determined that its action has no effect, either adverse or beneficial, on listed species or their critical habitat.

We conducted a screening-level ecological risk analysis to assess the affects of persistent and bioaccumulative toxic HAP emissions on aquatic and terrestrial receptors. Only two HAP, hexachlorobenzene and anthracene, were estimated to pose any potential for exposures via routes beyond direct inhalation. All ecological hazard quotient (HQ) values are well below levels of concern, with the highest HQ being 0.05 from benthic/sediment exposure by aquatic life to anthracene. The highest hexachlorobenzene HQ is 0.02 from surface water exposure by aquatic life. HQ values of equal to or less than 1.0 are indicative of no effect. EPA concluded that these levels are not high enough to constitute ''significant and widespread'' adverse environmental effects as defined in CAA section 112(a)(7), and that there is not an effect on threatened or endangered species or on their critical habitat within the meaning of the ESA, as implemented at 50 CFR 402.14(a). Therefore, EPA concluded that a consultation with the Services regarding endangered species was not necessary. The statement regarding communities being unaffected by other toxic chemicals or environmental stressors was meant to convey that the assessment considered only the contribution of HON emissions to media concentrations.

D. Impacts Estimation

Comment: One commenter contended that EPA overestimated the costs for controlling process vents, equipment leaks, and storage vessels. The commenter also contended that EPA

Protection Agency. Risk Assessment Forum. EPA/630/P–02/002F. December 2002.

[2] The ''Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens'' recommends applying default adjustment factors to early life stage exposures to carcinogens acting through a mutagenic mode of action. The Supplemental Guidance recommends an integrative approach that can be used to assess total lifetime risk resulting from lifetime or less-than-lifetime exposure during a specific portion of a lifetime. The following adjustments represent the approach suggested in the Supplemental Guidance: (1) For exposures before 2 years of age (i.e., spanning a 2-year time interval from the first day of birth up until a child's second birthday), a 10-fold adjustment; (2) for exposures between 2 and less than 16 years of age (i.e., spanning a 14-year time interval from a child's second birthday up until their sixteenth birthday), a 3-fold adjustment; and (3) for exposures after turning 16 years of age, no adjustment. Assuming a constant lifetime exposure, incorporation of these adjustment factors would increase the estimate of lifetime cancer risk by roughly 60 percent (factor of 1.6). If exposures were from 3 years to 73 years, the adjustment factor would be less than 1.6. If exposures were from 16 years to 86 years, no adjustment would be necessary.

should have selected more stringent control options for these sources, such as lower leak definitions for equipment leaks. Other commenters expressed their view that EPA underestimated costs of controlling each of the sources by using outdated costs and inappropriate assumptions.

Response: Cost algorithms and information used for the cost impacts analysis were based on previous EPA studies and rulemaking actions and are well documented and accepted. Costs from previous years were scaled to 2001 dollars using engineering cost indices to account for inflation. We consider the cost information that we used to estimate impacts to be appropriate for this analysis and are not underestimated. We would also like to clarify that we analyzed control options with more stringent requirements for each source (e.g., requiring lower equipment leak percent leakers and leak definitions), but determined the emission reductions and risk reductions did not warrant the costs.

However, in response to the comments, we re-evaluated Option 2. Before rejecting the option overall, we decided to modify Option 2 to eliminate the high cost sources. We also re-evaluated the assumptions used in the cost analysis to reflect a range of likely costs rather than the most costly results.

At proposal, we estimated that sources having any amount of Table 38 HAP would be required to meet Option 2. We re-analyzed the costs of controlling process vents and equipment leaks assuming a trigger level of 5 percent Table 38 HAP. Additionally, we analyzed the impacts of reducing the TRE from a value of 4 from proposal to a value of 2. At proposal we calculated repair costs for leaking valves on a monthly basis. For the re-analysis, we assumed there would be no additional costs of repairing leaking valves because the frequency of repair would not change from the current HON when sources successfully repair valves on their existing schedule. At proposal, we calculated the annual cost of valve monitoring assuming all sources would have to monitor monthly. This assumption would provide the highest cost estimates. For the re-analysis, we calculated the annual cost of valve monitoring assuming that half of the sources would be able to conduct quarterly monitoring and half would still conduct monthly monitoring.

The resulting total annual cost for a re-evaluated Option 2 was estimated to be $6 million, less than half the $13 million annual cost of Option 2, as proposed. After considering these lower annual costs, EPA decided that the cost of further control still was not justified considering the small reduction in health risk resulting from HAP emission reductions achieved by Option 2.

E. Clarification Changes

Comment: Several commenters argued that many of EPA's proposed clarifications in the solicitation of public comments are significant, will result in additional costs and burdens with no identified environmental benefit, and are inconsistent, in some cases, with current rule language and 12 years of HON implementation. These commenters maintained these changes must be adopted through a formal rulemaking process.

Response: We have decided not to adopt some of the proposed clarifying changes at this time. If we further consider them, we will provide another opportunity to collect public comments on the specific regulatory language. However, we have decided that one of the proposed minor changes will not have any impact on costs of compliance, and are therefore adopting it in this final rule: Re-determining the group status of wastewater streams whenever process or operational changes occur. We are also making two minor changes not specifically discussed in the proposal but for which we received comments urging their adoption: removal of MEK from tables in subparts F and G to 40 CFR part 63, and waiving recordkeeping requirements for off-site reloading or cleaning operations that take part in the vapor balancing compliance option for storage tanks. These changes are discussed in Section II.B of this preamble.

We are also clarifying in this preamble that liquid streams generated from control devices (e.g., scrubber effluent) are wastewater. We notified the public at proposal that we intended to incorporate this clarification in the rule. However, commenters affirmed that the regulatory text already clarifies this and additional rule language is unnecessary. Therefore, no rule clarification language was added.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) deems the final rule to be a ''significant regulatory action'' because it raises novel legal and policy issues. Accordingly, EPA submitted the final rule to OMB for review. Changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The action does not require any further control of sources and the amendatory changes are estimated to have at most minor costs. However, OMB has previously approved the information collection requirements contained in the existing regulations, 40 CFR part 63, subparts F, G, and H, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0443, EPA ICR number 1854.04. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the final rule on small entities, small

entity is defined as: (1) A small business as defined by the Small Business Administration; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

For sources subject to the final rule, the relevant NAICS and associated employee sizes are as follows:

NAICS 32511—Petrochemical Manufacturing—1,000 employees or fewer.

NAICS 325192—Cyclic Crudes and Intermediates Manufacturing—750 employees or fewer.

NAICS 325199—All Other Organic Chemical Manufacturing—1,000 employees or fewer.

After considering the economic impacts of the final rule on small entities, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. This action finalizes our decision not to impose further controls and not to revise the existing rule. Consequently, there are no impacts on any small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. This action finalizes our decision not to impose further controls and not to revise the existing rule. Consequently, there are not costs associated with this action. In addition, today's final decision does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final decision is not subject to section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on 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.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected SOCMI facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications.'' The final rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own SOCMI facilities subject to the HON. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by the final rule present a disproportionate risk to children. This conclusion is based on our assessment of the information on the effects on human health and exposures associated with SOCMI operations.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this final decision is not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113; 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The final rule does not involve technical standards beyond those already provided under the current rule. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance, agencies are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that ''appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group'' (EPA, 1998).

The Agency has recently reaffirmed its commitment to ensuring environmental justice for all people, regardless of race, color, national origin, or income level. To ensure environmental justice, we assert that we shall integrate environmental justice considerations into all of our programs and policies, and, to this end, have identified eight national environmental justice priorities. One of the priorities is to reduce exposure to air toxics. At proposal, EPA requested comment on the implications of environmental justice concerns relative to the two options proposed since some HON facilities are located near minority and low-income populations. We received one comment regarding environmental justice concerns that is addressed in the response to comments document.

K. Congressional Review Act.

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule is effective December 21, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: December 15, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[Amended]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart F—[Amended]

Table 2—[Amended]

■ 2. Table 2 to subpart F of part 63 is amended by removing the entry for ''Methyl ethyl ketone (2–Butanone).''

Table 4—[Amended]

■ 3. Table 4 to subpart F of part 63 is amended by removing the entry for ''Methyl ethyl ketone (2–Butanone).''

Subpart G—[Amended]

■ 4. Section 63.119 is amended by revising paragraph (g)(7)(ii) and adding paragraph (g)(7)(iv) to read as follows:

§ 63.119 Storage vessel provisions—reference control technology.

* * * * *

(g) * * *

(7) * * *

(ii) If complying with paragraph (g)(6)(i) of this section, comply with the requirements for closed vent system and control device specified in §§ 63.119 through 63.123. The notification and reporting requirements in § 63.122 do not apply to the owner or operator of the offsite cleaning or reloading facility.

* * * * *

(iv) After the compliance dates specified in § 63.100(k) at an offsite reloading or cleaning facility subject to paragraph (g) of this section, compliance with the monitoring, recordkeeping, and reporting provisions of any other subpart of this part 63 constitutes compliance with the monitoring, recordkeeping, and reporting provisions of paragraph (g)(7)(ii) or paragraph (g)(7)(iii) of this section. You must identify in your Notification of Compliance Status report required by § 63.152(b), the subpart to the part 63 with which the owner or operator of the reloading or cleaning facility complies.

■ 5. Section 63.132 is amended by adding paragraphs (c)(3) and (d)(3) to read as follows:

§ 63.132 Process wastewater provisions—general.

* * * * *

(c) * * *

(3) The owner or operator of a Group 2 wastewater shall re-determine group status for each Group 2 stream, as necessary, to determine whether the stream is Group 1 or Group 2 whenever process changes are made that could reasonably be expected to change the stream to a Group 1 stream. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or whenever there is a replacement, removal, or addition of recovery or control equipment. For purposes of this paragraph (c)(3), process changes do not include: Process upsets; unintentional, temporary process changes; and changes that are within the range on which the original determination was based.

(d) * * *

(3) The owner or operator of a Group 2 wastewater shall re-determine group status for each Group 2 stream, as necessary, to determine whether the stream is Group 1 or Group 2 whenever process changes are made that could reasonably be expected to change the stream to a Group 1 stream. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or whenever there is a replacement, removal, or addition of recovery or control equipment. For purposes of this paragraph (d)(3), process changes do not include: Process upsets; unintentional, temporary

process changes; and changes that are within the range on which the original determination was based.

* * * * *

Table 9—[Amended]

■ 6. Table 9 to subpart G of part 63 is amended by removing the entry for ''Methyl ethyl ketone (2–Butanone).''

Table 34—[Amended]

■ 7. Table 34 to subpart G of part 63 is amended by removing the entry for ''Methyl ethyl ketone (2–Butanone).''

Table 36—[Amended]

■ 8. Table 36 to subpart G of part 63 is amended by removing the entry for ''Methyl ethyl ketone (2–Butanone).''

[FR Doc. E6–21869 Filed 12–20–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 121206B]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the daily Atlantic bluefin tuna (BFT) retention limits for the Atlantic tunas General category should be adjusted to provide reasonable opportunity to harvest the General category January time-period subquota. Therefore, NMFS increases the daily BFT retention limits for the entire month of January, including previously scheduled Restricted Fishing Days (RFDs), to provide enhanced commercial General category fishing opportunities in all areas while minimizing the risk of an overharvest of the General category BFT quota.

DATES: The effective dates for the BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

The 2006 BFT fishing year began on June 1, 2006, and ends May 31, 2007. The final initial 2006 BFT specifications and General category effort controls were published on May 30, 2006 (71 FR 30619). These final specifications divided the General category quota among three subperiods (June through August, the month of September, and October through January) in accordance with the 1999 Highly Migratory Species Fishery Management Plan (1999 FMP) (May 29, 1999; 64 FR 29090), and implementing regulations at § 635.27. The final initial 2006 BFT specifications increased the General category retention limit to three fish for the June though August time-period, as well as established the following General category RFD schedule: all Saturday and Sundays from November 18, 2006, through January 31, 2007, and Thursday November 23, 2006, and Monday December 25, 2006, inclusive.

Due to the large amount of available quota and the low catch rates, NMFS extended the three-fish retention limit through September (71 FR 51529, August 30, 2006), October (71 FR 58287, October 3, 2006), November (71 FR 64165, November 1, 2006), and December (71 FR 68752, November 28, 2006) to enhance fishing opportunities while minimizing the risk of exceeding available quota. On October 2, 2006, NMFS published a final rule (71 FR 58058) implementing the Consolidated Highly Migratory Species Fishery Management Plan (HMS FMP). The HMS FMP revised the General category time-period subquota allocation scheme by dividing the coastwide General category into the following five distinct time-periods; June through August, September, October through November, December, and January of the following year. The effective date of these time-periods and their associated subquota was November 1, 2006.

Daily Retention Limits

Pursuant to this action and the final initial 2006 BFT specifications, noted above, the daily BFT retention limits for Atlantic tunas General category are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Limit
General	December 1 - 31, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	January 1 - 31, 2007, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger
	February 1 through May 31, 2007, inclusive	All	CLOSED

Adjustment of General Category Daily Retention Limits

Under § 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for a reasonable opportunity to harvest the quota for BFT. As part of the final specifications on May 30, 2006 (71 FR 30619), NMFS adjusted the commercial daily BFT retention limit, in all areas, for those vessels fishing under the General category quota, to three large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip. This retention limit, which was to remain in effect through August 31, 2006, inclusive, was extended through September, October, November, and December via separate actions published in the **Federal Register**. From January 1 - 31, 2007, inclusive, the General category daily BFT retention limit was scheduled to

revert to one large medium or giant BFT per vessel per day/trip.

The total General category time-period subquota allocations for the 2006 fishing year equal 1,163.3 metric tons (mt). As of December 11, 2006, 114.9 mt has been landed in the General category, resulting in an available balance of 1048.4 mt, and catch rates remain at less than 1.0 mt per day. If catch rates remain at current levels and January RFDs remain as scheduled, approximately 43.0 mt would be landed through January 31, 2007. This projection would bring the cumulative time-period subquota landings to approximately 157.9 mt, resulting in an underharvest of approximately 1,005.4 mt. The October 2, 2006, final rule (71 FR 58058) established stand-alone General category time-periods for the months of December and January. Each of these time-periods are allocated a portion of the coastwide General category, thereby ensuring fishing opportunities are provided in years where high catch rates are experienced. In combination with the subquota rollover from previous time-periods, scheduled RFDs, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on January 1, 2007, NMFS anticipates the full January time-period subquota will not be harvested. In the past, however, the fishery has had the capability of increasing landings rates dramatically in winter months, particularly off southern states. If the fishery was to perform at these past levels with high landings rates (although not witnessed during the winter of 2005/2006), it may alleviate concern of excessive roll-overs from one fishing year to the next, but raises the possibility of unprecedented, and potentially unsustainable, catch rates during the winter fishery.

The final initial 2006 BFT specifications scheduled a number of RFDs for the month of January, including all Saturdays and Sundays. These RFDs were designed to provide for an extended late season, south Atlantic BFT fishery for the commercial handgear fishermen in the General category. For the reasons referred to above, NMFS has determined that the scheduled January RFDs are no longer required to meet their original purpose, and may in fact exacerbate low catch rates. Therefore, NMFS determined that an increase in the General category daily BFT retention limit on those previously established RFDs for the month of January is warranted. NMFS has selected these days in order to give adequate advance notice to fishery participants. While catch rates have continued to be low so far this season, NMFS recognizes that they may increase at any time late in the season.

Therefore, based on a review of dealer reports, daily landing trends, available quota, revised time-periods, and the availability of BFT on the fishing grounds, NMFS has determined that an increase in the General category daily BFT retention limit effective from January 1 through January 31, 2007, inclusive of previously scheduled RFDs for the month of January, is warranted. Thus, the General category daily retention limit of three large medium or giant BFT per vessel per day/trip (see Table 1) is extended through January 31, 2007, including all Saturdays and Sundays of January as well.

Under the current regulations for the Atlantic HMS, the 2006 General category BFT season will close on January 31, 2007. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT, measuring 73 inches curved fork length, or greater, under the General category quota, must cease at 11:30 p.m., local time, January 31, 2007. Persons aboard vessels permitted in the Atlantic Tunas General category may catch and release or tag and release BFT of all size classes while the General category is closed. All BFT should be released, or tagged and released, with a minimum of injury.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Monitoring and Reporting

NMFS selected the daily retention limits and their duration after examining current and previous fishing year catch and effort rates, taking into consideration public comment on the annual specifications and inseason management measures for the General category received during the 2006 BFT quota specifications rulemaking process, and analyzing the available quota for the 2006 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports, the Automated Landings Reporting System, state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort, NMFS may determine that additional retention limit adjustments are necessary prior to January 31, 2007.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the internet at *www.hmspermits.gov*, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

NMFS has recently become aware of increased availability of large medium and giant BFT in close proximity to shores of southern Atlantic states, as derived from fishing reports and landings data from dealers. This increase in abundance provides the potential to increase General category landings rates if fishery participants are authorized to harvest three large medium or giant BFT per day. Although landings to date have been low (i.e., averaging less than one mt per day) there is the potential for increased availability of BFT during the winter to allow for an increase in fishery landing rates. The regulations implementing the HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Adjustment of retention limits, including waiving previously scheduled RFDs in the month of January, is also necessary to avoid excessive quota underharvests. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are still available on the fishing grounds. Analysis of available data shows that the General category BFT retention limit may be increased for the Atlantic tuna General and HMS Charter/Headboat permit holders with minimal risks of exceeding the International Commission for the Conservation of Atlantic Tunas allocated quota.

Delays in increasing the retention limits would be contrary to the public interest. Limited opportunities to harvest the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend on catching the available quota designated in the HMS FMP, or depend on multiple BFT retention limits to attract individuals to book charters. For both

the General and the HMS Charter/Headboat sectors, the retention limits must be adjusted as expeditiously as possible so the impacted sectors can benefit from the adjustment.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., current default retention limit is one fish per vessel/trip but this action increases that limit and allows retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 15, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–21866 Filed 12–20–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051104293–5344–02; I.D. 111406C]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New Jersey

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

ACTION: Closure of commercial fishery.

SUMMARY: NMFS announces that the summer flounder commercial quota available to New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 2006, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise New Jersey that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New Jersey.

DATES: Effective 0001 hours, December 21, 2006, through 2400 hours, December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2006 calendar year was set equal to 14,154,000 lb (6,420 mt) (70 FR 77061, December 29, 2005). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, resulting in a commercial quota of 2,367,255 lb (1,073,787 kg). The 2006 allocation was reduced to 2,331,554 lb (1,057,593 kg) due to research set-aside.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that New Jersey has harvested its quota for 2006.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 21, 2006, further landings of summer flounder in New Jersey by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2006 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 21, 2006, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 15, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–9811 Filed 12–18–06; 2:45 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 245
Thursday, December 21, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–27600; File No. S7–03–04]

RIN 3235–AJ05

Investment Company Governance

AGENCY: Securities and Exchange Commission.

ACTION: Request for additional comment.

SUMMARY: The Commission is reopening the comment period on its June 2006 request for comment regarding amendments to investment company (''fund'') governance provisions. The purpose of the additional comment period is to permit public comment on two papers prepared by the Office of Economic Analysis on this topic that will be made public by including them in the comment file. The comments the Commission receives will be used to inform our further consideration of the matter.

DATES: Comments must be received on or before 60 days after publication of the second of the two staff economic papers in the public comment file. When the second of the two staff economic papers in the public comment file is published, the Commission will publish a document announcing the comment deadline.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–03–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File Number S7–03–04. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jonathan Sokobin, Deputy Chief Economist, Office of Economic Analysis, (202) 551–6600 or Vincent Meehan, Staff Attorney, or Penelope Saltzman, Branch Chief, Office of Regulatory Policy, (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In June 2006, the Commission requested additional comment [1] regarding amendments to fund governance provisions of rules under the Investment Company Act.[2] We received many comments in response to our request, some of which provided information on the costs of the provisions. Few, however, directly addressed in a meaningful way the economic implications of the provisions. Before considering further rulemaking on this matter, the Commission wishes to develop a more comprehensive record and a more thorough understanding of the economic consequences of the provisions.

To that end, the Commission invites comment on any aspect of the two staff economic papers that will be published shortly after the issuance of this release. Specifically, our staff economists have reviewed existing relevant economic literature related to conflicts of interest that advisers have with regard to mutual funds they advise, as well as literature related to mutual fund governance, independent chairmen, and board independence. Our staff economists also have performed an analysis of the statistical properties of mutual fund returns and potential limitations inherent in any empirical analysis designed to identify a relationship between those returns and fund governance. We will include their papers in the public comment file, and we request comment on them. In addition, in order to facilitate our assessment of the economic implications of the fund governance provisions and any alternative approaches available to us, we also seek comment on any other extant analyses, and we request that commenters provide us their best assessment of these.

Dated: December 15, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21903 Filed 12–20–06; 8:45 am]

BILLING CODE 8011–01–P

[1] Investment Company Governance, Investment Company Act Release No. 27395 (June 13, 2006) [71 FR 35366 (June 19, 2006)].

[2] 15 U.S.C. 80a.

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 547

RIN 3141–AA29

Technical Standards for ''Electronic, Computer, or Other Technologic Aids'' Used in the Play of Class II Games

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the period for comments on proposed Class II technical standards published in the **Federal Register** on August 11, 2006 (71 FR 46336).

DATES: The comment period for the proposed technical regulations is extended from December 15, 2006, to January 31, 2007.

FOR FURTHER INFORMATION CONTACT: Michael Gross, Senior Attorney, at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Congress established the National Indian Gaming Commission (NIGC or Commission) under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701 *et seq.*) (IGRA) to regulate gaming on Indian lands. On August 11, 2006, the Commission published proposed Class II technical standards in the **Federal Register** (71 FR 46336).

Dated: December 14, 2006.

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

Cloyce V. Choney,

Commissioner, National Indian Gaming Commission.

[FR Doc. E6–21784 Filed 12–20–06; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 571 and 572

[BOP–1120–P]

RIN 1120–AB10

Reduction in Sentence for Medical Reasons

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Prisons (Bureau) is revising its regulations on procedures for reductions in sentence (RIS) for medical reasons. 28 CFR Part 571, Subpart G, is currently entitled ''Compassionate Release (Procedures for the Implementation of 18 U.S.C. 3582(c)(1)(A)(i) and 4205(g)).'' We are revising these regulations to (1) more accurately reflect our authority under these statutes and our current policy, (2) clarify procedures for RIS consideration, and (3) describe procedures for RIS consideration of D.C. Code offenders, for whom the Bureau has responsibility under the National Capital Revitalization and Self-Government Improvement Act of 1997 (D.C. Revitalization Act), D.C. Official Code § 24–101(b). The new Subpart G will be entitled ''Reduction in Sentence for Medical Reasons.''

DATES: Comments due by February 20, 2007.

ADDRESSES: Regulations Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. Our e-mail address is *BOPRULES@bop.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 353–8248.

SUPPLEMENTARY INFORMATION: The Bureau is revising its regulations on procedures for reductions in sentence (RIS) for medical reasons. 28 CFR Part 571, Subpart G, is currently entitled ''Compassionate Release (Procedures for the Implementation of 18 U.S.C. 3582(c)(1)(A) and 4205(g)).''

Title 18 of the United States Code, section 3582(c)(1)(A)(i) states that a court, on motion of the Director of the Bureau, may reduce a term of imprisonment if ''extraordinary and compelling reasons warrant such a reduction.'' Based on the Bureau's experience in implementing this statute and resultant policy decisions, we clarify through these proposed regulations the specific criteria that the Bureau will consider for a RIS.

It is important to note we do not intend this regulation to change the number of RIS cases recommended by the Bureau to sentencing courts. It is merely a clarification that we will only consider inmates with extraordinary and compelling medical conditions for RIS, and not inmates in other, non-medical situations which may be characterized as ''hardships,'' such as a family member's medical problems, economic difficulties, or the inmate's claim of an unjust sentence.

In this regulation, we explain that an inmate may be a candidate for RIS consideration if Bureau medical staff, or a Bureau-selected doctor consulting on his/her case, conclude with reasonable medical certainty that the inmate has one of the following two conditions:

- A terminal illness with a life expectancy of one year or less; or
- A profoundly debilitating medical condition that:

(1) May be physical or cognitive in nature;

(2) is irreversible and cannot be remedied through medication or other measures; and

(3) has eliminated or severely limited the inmate's ability to attend to fundamental bodily functions and personal care needs without substantial assistance from others, including personal hygiene and toilet functions, basic nutrition, medical care, and physical safety.

If an inmate has such a medical condition, we will not automatically give that inmate a RIS recommendation. Instead, as is our current practice, we will carefully consider whether the inmate is a danger to society, and other relevant considerations which focus on potential risks to public safety and the nature of the offense, before recommending a RIS. These considerations may include but are not limited to: Potential impact on victims or witnesses, criminal history, inmate's age and length of sentence, and the previous existence of the medical condition.

Section-by-Section Explanation

Subpart G—New Title

Previously, this subpart was entitled ''Compassionate Release.'' We are changing the title of subpart G to read ''Reduction in Sentence for Medical Reasons.'' The Bureau has received letters and Administrative Remedy appeals from inmates who mistakenly believe that we will consider circumstances other than the inmate's medical condition for reducing a sentence. Such is not the Bureau's practice. We believe this title more accurately describes our criteria and procedures.

Section 571.60 Purpose

In this section, we state that the purpose of this part is to describe the procedures used to assess whether an inmate in Bureau custody is appropriate for a reduction in sentence.

Section 571.61 Legal Authority for Reducing the Term of Imprisonment of an Inmate Requesting a Reduction in Sentence

This section describes the statutes that allow the Director to make a motion to the sentencing court requesting a RIS. In addition to previous authority, 18 U.S.C. 3582(c)(1)(A)(i) and 4205(g), we added the District of Columbia (D.C.) Code § 24–101, §§ 24–461 through 24–465, § 24–467, and § 24–468.

Under the D.C. Revitalization Act, enacted August 5, 1997, the Bureau is responsible for the care and custody of ''the felony population sentenced pursuant to the District of Columbia Official Code'' (D.C. Code offenders). (D.C. Official Code § 24–101(b)). D.C. Code offenders in Bureau custody are subject to Federal laws and Bureau regulations as long as they are ''consistent with the sentence imposed.''

Under the D.C. Revitalization Act, we must follow the D.C. Code when reviewing a RIS for D.C. Code offenders in Bureau custody. We therefore add the relevant D.C. Code provisions to this regulation.

Section 571.62 Medical Conditions Considered for a Reduction in Sentence

In this section, we clarify what extraordinary and compelling circumstances may warrant a RIS. We explain that an inmate may be a candidate for RIS consideration if

Bureau medical staff, or a Bureau-selected doctor consulting on his/her case, conclude with reasonable medical certainty that the inmate suffers from a terminal illness with a life expectancy of one year or less, or a profoundly debilitating medical condition that may be physical or cognitive in nature, is irreversible and cannot be remedied through medication or other measures, and has eliminated or severely limited the inmate's ability to attend to fundamental bodily functions and personal care needs without substantial assistance from others (including personal hygiene and toilet functions, basic nutrition, medical care, and physical safety).

In each of these conditions, inmates may be unable to care for themselves. We may find that such inmates are not likely to pose a danger to the public or the community if released. We may find that issues of confinement, punishment, and rehabilitation may no longer be principal considerations. These types of conditions, viewed in totality, may be extraordinary and compelling circumstances warranting a RIS.

Section 571.63 How To Request a Reduction in Sentence

This section instructs inmates to request a RIS in writing at the institution. This does not change any previous substantive requirements. We currently have this requirement in 28 CFR 571.61(a).

This section also explains what the RIS request should include. This does not change any previous substantive requirements, which are currently in 28 CFR 571.61(a)(1) and (2).

Section 571.64 Submitting a Request for a Reduction in Sentence on Behalf of an Inmate Who Is Too Ill To Make a Request in Writing

This section allows inmates who are too ill to make written requests to make their requests verbally to staff or to have someone else make a request on their behalf. We intend this regulation to be more permissive, and allow more ways for ill inmates to make this request.

Section 571.65 Bureau Review of a Request for a Reduction in Sentence

This section simply explains that Bureau medical staff or a Bureau-selected doctor consulting on an inmate's case at the institution must first conclude that an inmate has a medical condition as described in § 571.62. If an inmate is medically eligible for RIS consideration under § 571.62, Bureau staff at the institution must then determine that the inmate will not pose a danger to society. If both these threshold requirements are met, staff will then carefully assess other relevant factors before determining that a RIS is appropriate in the inmate's case. In assessing other relevant factors, Bureau staff will be guided by national Bureau policy statements on this subject.

This section also explains that staff at the institution, the Warden, the Regional Office, and the Central Office of the Bureau all review inmate RIS requests. This is merely a codification of currently existing practice, and will notify inmates and the public that a RIS request is reviewed by all three levels of the Bureau before approval.

Section 571.66 Director's Determination That a Reduction in Sentence Is Appropriate

This section explains that, if the Director determines that a RIS is appropriate, he/she will ask the United States Attorney's Office in the district where the inmate was sentenced to submit the Director's motion to the sentencing court on the Bureau's behalf. A RIS can only occur if the court grants the motion under 18 U.S.C. 3582(c)(1)(A)(i) or § 4205(g). If the court grants a motion under § 4205(g), release also depends on a decision by the Parole Commission to grant parole. This does not change any previous substantive language.

For D.C. Code offenders, a RIS can only occur if the United States Parole Commission grants medical or geriatric parole under D.C. Official Code §§ 24–463 through 24–465 to inmates in Bureau custody for offenses that were committed before August 5, 2000, or the court grants a motion under D.C. Official Code § 24–468 for inmates in Bureau custody for offenses that were committed on or after August 5, 2000.

Section 571.67 Denial of a Request for a Reduction in Sentence

This section explains how the Warden, Regional Director, and General Counsel will notify inmates if they deny a RIS request and how inmates may appeal that decision. This does not change any previous substantive language. We currently have similar language in 28 CFR 571.63(a)(4).

We note that D.C. Code offenders, as described below, may appeal RIS decisions or any other Bureau action or inaction through the Bureau's Administrative Remedy Program.

Sections 571.68–571.74 D.C. Code Offenders

We add these sections to comply with the D.C. Revitalization Act. The D.C. Revitalization Act makes the Bureau responsible for ''the felony population sentenced pursuant to the District of Columbia Code'' (D.C. Code offenders). (D.C. Official Code § 24–101(b)) D.C. Code offenders in Bureau custody are subject to Federal laws and Bureau regulations as long as they are ''consistent with the sentence imposed.''

The D.C. Code contains specific provisions that govern D.C. Code sentences regarding RIS based on medical reasons. Because the Bureau is now responsible for the custody of D.C. Code felony offenders, we add regulations stating the eligibility requirements that D.C. Code offenders in Bureau custody must meet to be considered for RIS. The process described in §§ 571.62 through 571.67 will otherwise be followed.

Section 571.68 Eligibility of D.C. Code Offenders With Indeterminate (Parolable) Sentences for Reduction in Sentence

In this section, we describe the ways in which D.C. Code offenders who committed a felony before August 5, 2000, and were sentenced to an indeterminate (parolable) sentence, might be eligible for a reduction in sentence, which is described in the D.C. Code as ''medical parole'' and ''geriatric parole.'' This section also describes inmates who are excluded from RIS eligibility: D.C. Code offenders (1) whose physical or medical condition existed at the time of sentencing; or (2) who were convicted of first degree murder (D.C. Official Code §§ 22–2101, 2106), an armed crime of violence or dangerous crime (D.C. Official Code § 22–4502), possession of a firearm while committing a crime of violence or dangerous crime (D.C. Official Code § 22–4504(b), or armed or unarmed carjacking (D.C. Official Code § 22–2803).

Section 571.69 Eligibility of D.C. Code Offenders With Determinate (Non-Parolable) Sentences for Reduction in Sentence

In this section, we describe RIS eligibility for D.C. Code offenders who committed a felony on or after August 5, 2000, and were sentenced to terms of imprisonment not subject to parole. Such inmates may be eligible for a reduction in sentence if they: (1) meet the medical conditions described in § 571.62, or (2) are 65 years of age or older, have a chronic infirmity, illness, or disease related to aging, and release under supervision would not endanger public safety. This section also describes inmates who are excluded from RIS eligibility: D.C. Code offenders (1) whose physical or medical condition

was known by the court at the time of sentencing; or (2) who are serving a term of imprisonment imposed pursuant to the District of Columbia Official Code §§ 22–2803(c) (carjacking), or 22–2104(b) (first degree murder).

Section 571.70 How To Request a Reduction in Sentence Under the D.C. Code

Under this section, D.C. Code offenders with indeterminate (parolable) sentences may request a reduction in sentence either by following the procedures in §§ 571.63 and 571.64, or by sending an application directly to the Parole Commission. D.C. Code offenders with determinate (non-parolable) sentences may request a reduction in sentence only by following the procedures in §§ 571.63 and 571.64.

Section 571.71 Evaluating a Request for RIS by a D.C. Code Offender

This section makes it clear that the Bureau will use the same procedures to assess a D.C. Code offender's application for a reduction in sentence as it uses for federal offenders.

Section 571.72 Ineligibility for Reduction in Sentence

Aside from provisions concerning D.C. Code offenders, this is not a substantive change from the current § 571.64. An inmate is not eligible for a RIS if he/she is (a) a state prisoner housed in a Bureau facility, (b) a federal offender who committed an offense before November 1, 1987, and serving a non-parolable sentence, or (c) a military prisoner housed in a Bureau facility.

Section 572.40 Reduction in Sentence (RIS) Under 18 U.S.C. 4205(g)

We make minor changes to this section to conform with changes to our regulations on RIS for medical reasons.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this regulation is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this regulation has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation 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 United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

28 CFR Parts 571 and 572

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR parts 571 and 572, chapter V, subchapter D, as follows.

Subchapter D—Community Programs and Release

PART 571—RELEASE FROM CUSTODY

1. Revise the authority citation for 28 CFR part 571 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565; 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 1.1–1.10; D.C. Official Code § 24–101, §§ 24–461—24–465, § 24–467, and § 24–468.

Subpart G—Compassionate Release (Procedures for the Implementation of 18 U.S.C. 3582(c)(1)(A) and 4205(g))

2. Revise subpart G of part 571 to read as follows:

Subpart G—Reduction in Sentence for Medical Reasons

Sec.

571.60 Purpose.
571.61 Legal authority for reducing the term of imprisonment of an inmate requesting a reduction in sentence.
571.62 Medical conditions considered for a reduction in sentence.
571.63 How to request a reduction in sentence.
571.64 Submitting a request for a reduction in sentence on behalf of an inmate who is too ill to make a request in writing.
571.65 Bureau review of a request for a reduction in sentence.
571.66 Director's determination that a reduction in sentence is appropriate.
571.67 Denial of a request for a reduction in sentence.
571.68 Eligibility of D.C. Code offenders with indeterminate (parolable) sentences for reduction in sentence.
571.69 Eligibility of D.C. Code offenders with determinate (non-parolable) sentences for reduction in sentence.
571.70 How to request a reduction in sentence under the D.C. Code.
571.71 Evaluating a request for RIS by a D.C. Code Offender.
571.72 Ineligibility for reduction in sentence.

§ 571.60 Purpose.

The purpose of this subpart is to describe the criteria and procedures used to assess whether an inmate in Bureau of Prisons (Bureau) custody is appropriate for a reduction in sentence.

§ 571.61 Legal authority for reducing the term of imprisonment of an inmate requesting a reduction in sentence.

(a) Pursuant to 18 U.S.C. 3582(c)(1)(A)(i), the Director of the

Bureau of Prisons is authorized to file a motion in the sentencing court for a reduction in an inmate's sentence when the Director of the Bureau determines that extraordinary and compelling circumstances exist to warrant a reduction in sentence. The sentencing court may reduce the term of imprisonment on the Director's motion, and the inmate becomes immediately eligible for release.

(b) 18 U.S.C. 4205(g)(Repealed as to offenses committed on or after November 1, 1987) provides that the court, on the Director's motion, may make an inmate serving a parolable sentence immediately eligible for parole consideration.

(c) The District of Columbia Official Code (D.C. Official Code) § 24–101, §§ 24–461—24–465, § 24–467, and § 24–468, collectively authorize the Bureau to determine whether a RIS may be warranted for D.C. Code offenders in Bureau custody.

§ 571.62 Medical conditions considered for a reduction in sentence.

An inmate may be considered for a RIS if Bureau medical staff, or a Bureau-selected doctor consulting on his/her case, conclude with reasonable medical certainty that the inmate suffers from:

(a) A terminal illness with a life expectancy of one year or less; or

(b) A profoundly debilitating medical condition that:

(1) May be physical or cognitive in nature;

(2) Is irreversible and cannot be remedied through medication or other measures; and

(3) Has eliminated or severely limited the inmate's ability to attend to fundamental bodily functions and personal care needs without substantial assistance from others, including personal hygiene and toilet functions, basic nutrition, medical care, and physical safety.

§ 571.63 How to request a reduction in sentence.

(a) You may request a reduction in sentence (RIS) in writing at your institution.

(b) The RIS request should include:

(1) A statement explaining the medical condition(s) that create the extraordinary or compelling circumstances for a RIS; and

(2) A proposed release plan, including information about where you will live, receive medical treatment, and how you will support yourself and pay for medical care.

§ 571.64 Submitting a request for a reduction in sentence on behalf of an inmate who is too ill to make a request in writing.

If an inmate is too ill to make a request in writing, that inmate may make the request verbally to Bureau staff, or someone else may submit a written request for that inmate.

§ 571.65 Bureau review of a request for a reduction in sentence.

(a) *Institution staff review.*

(1) Bureau medical staff at the institution level must first conclude that you have a qualifying medical condition as described in § 571.62 or, for D.C. Code offenders who committed a felony before August 5, 2000, as described in § 571.68.

(2) If you are medically eligible for RIS consideration, Bureau staff at the institution level will carefully assess the public safety concerns and the totality of the circumstances before determining that you are, in fact, appropriate for a RIS, including a review of the impact a RIS will have on any victims.

(b) *Warden review.* If the Warden, after reviewing all the relevant documents, determines that a RIS is appropriate, the Warden sends a written recommendation to the Regional Director.

(c) *Regional Director review.* If the Regional Director agrees, the Regional Director sends a written recommendation to the Office of General Counsel.

(d) *General Counsel review.* The General Counsel will ascertain whether the United States Attorney's Office in the district in which you were sentenced agrees with the Regional Director's recommendation. If the General Counsel and the U.S. Attorney's Office agree with the recommendation, the Director will then determine whether to request the U.S. Attorney's office to submit a RIS motion to the sentencing court on the Bureau's behalf.

§ 571.66 Director's determination that a reduction in sentence is appropriate.

If the Director determines that your situation makes you appropriate for a RIS under 18 U.S.C. 3582(c)(1)(A)(i) or § 4205(g), or for D.C. Code offenders, D.C. Official Code §§ 24–461–465, 467–468, the Director will request the U.S. Attorney's Office in the district where you were sentenced to submit a RIS motion to the sentencing court on the Bureau's behalf. A RIS can only occur if the court grants the motion or if the Parole Commission grants the application for certain D.C. Code offenders. If the court grants a motion under § 4205(g), release also depends on a decision by the Parole Commission to grant you parole.

§ 571.67 Denial of a request for a reduction in sentence.

If the Warden, the Regional Director, or the Director determines that a RIS is not appropriate and denies your RIS request, you will receive a written notice stating the reason(s) for denial.

(a) If the Warden or Regional Director denies the RIS request, you may appeal the denial through the Administrative Remedy Program (28 CFR part 542, subpart B).

(b) If the Director denies the RIS request, you may not appeal the denial through the Administrative Remedy Program.

§ 571.68 Eligibility of D.C. Code offenders with indeterminate (parolable) sentences for reduction in sentence.

(a) If you are a D.C. Code offender who committed a felony before August 5, 2000, and you were sentenced to an indeterminate (parolable) term of imprisonment, you may be eligible for:

(1) *Medical parole* only if you are:

(i) *Terminally ill*, which means that you have an incurable condition caused by illness or disease which would, within reasonable medical judgment, produce death within 6 months, and you do not constitute a danger to yourself or society; or

(ii) *Permanently incapacitated*, which means that, by reason of an existing physical or medical condition which is not terminal, you are permanently and irreversibly physically incapacitated, and you do not constitute a danger to yourself or society; or

(2) *Geriatric parole*, which means that you are age 65 or older, you suffer from a chronic infirmity, illness, or disease related to aging, and you pose a low risk to the community.

(b) *Exclusions.* You are *not* eligible for medical or geriatric parole if:

(1) The physical or medical condition existed at the time of sentencing, or

(2) The conviction was for first degree murder (D.C. Official Code §§ 22–2101, 2106), an armed crime of violence or dangerous crimes (D.C. Official Code § 22–4502), possession of a firearm during the commission of a crime of violence or dangerous crime (D.C. Official Code § 22–4504(b), or armed or unarmed carjacking (D.C. Official Code § 22–2803).

§ 571.69 Eligibility of D.C. Code offenders with determinate (non-parolable) sentences for reduction in sentence.

(a) If you are a D.C. Code offender who committed a felony on or after August 5, 2000, and you were sentenced to a determinate (non-parolable) term of

imprisonment, you may be eligible for a reduction in sentence if:

(1) You meet the medical conditions described in § 571.62; or

(2) You are 65 years of age or older, have a chronic infirmity, illness, or disease related to aging, and releasing you under supervision would not endanger public safety.

(b) *Exclusions.* You are *not* eligible for medical or geriatric parole if:

(1) The physical or medical condition was known to the court at the time of sentencing, or

(2) You are serving a term of imprisonment imposed pursuant to the District of Columbia Official Code §§ 22–2803(c) (carjacking), or 22–2104(b) (first degree murder).

§ 571.70 How to request a reduction in sentence under the D.C. Code.

(a) *D.C. Code offenders with indeterminate (parolable) sentences* may request a reduction in sentence either by following the procedures in §§ 571.63 and 571.64, or by sending the request directly to the United States Parole Commission (USPC).

(b) *D.C. Code offenders with determinate (non-parolable) sentences* may request a reduction in sentence only by following the procedures in §§ 571.62 and 571.63.

§ 571.71. Evaluating a request for RIS by a D.C. Code Offender.

Other than applying different eligibility requirements (described in § 571.69), in evaluating a RIS request by a D.C. Code offender who committed a felony before August 5, 2000, the Bureau will follow the same criteria and procedures set forth for federal prisoners in §§ 571.62 through 571.67.

§ 571.72 Ineligibility for reduction in sentence.

You are NOT eligible for a reduction in sentence if you are:

(a) A state prisoner housed in a Bureau facility; or

(b) A federal offender who committed an offense before November 1, 1987, and serving a non-parolable sentence; or

(c) A military prisoner housed in a Bureau facility.

Subpart H—Designation of Offenses for Purposes of 18 U.S.C. 4042(C)

§§ 571.71 and 571.72 [Redesignated]

3. Redesignate §§ 571.71 and 571.72 as §§ 571.81 and 571.82, respectively.

PART 572—PAROLE

4. Revise the authority citation for 28 CFR part 572 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4205, 5015 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 1.1–1.10.

5. Revise § 572.40 in Subpart E to read as follows:

§ 572.40 Reduction in Sentence under 18 U.S.C. 4205(g).

18 U.S.C. 4205(g), repealed effective November 1, 1987, remains the controlling law for inmates who committed offenses before that date. 18 U.S.C. 3582(c)(1)(A) is the controlling law for inmates who committed offenses on or after November 1, 1987. Procedures for a RIS under either statute are in 28 CFR part 571, subpart G.

[FR Doc. E6–21772 Filed 12–20–06; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1919 and 1926

[Docket No. S–778B]

RIN 1218–AC19

Standards Improvement Project, Phase III

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

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: OSHA routinely conducts reviews of its existing safety and health standards to improve and update them. As part of this ongoing process, OSHA is issuing this ANPRM to initiate Phase III of the Standards Improvement Project (SIPs III). SIPs III is the third in a series of rulemaking actions intended to improve and streamline OSHA standards by removing or revising individual requirements within rules that are confusing, outdated, duplicative, or inconsistent. These revisions maintain or enhance employees' safety and health, while reducing regulatory burdens where possible.

OSHA has already identified a number of provisions that are potential candidates for inclusion in SIPs III. These candidates include recommendations received from the public in other rulemakings. The purpose of this notice is to invite comment on these recommendations, as well as provide an opportunity for commenters to suggest other candidates that might be appropriate for inclusion in this rulemaking. OSHA will use the information received in response to this notice to help determine the scope of SIPs III.

DATES: Comments must be submitted by the following dates:

Hardcopy: Your comments must be submitted (postmarked or sent) by February 20, 2007.

Facsimile and electronic transmission: Your comments must be sent by February 20, 2007.

ADDRESSES: You may submit comments and additional material, identified by OSHA Docket No. S–778B, by any of the following methods:

Electronically: You may submit comments, and attachments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions online for making electronic submissions.

Facsimile (FAX): If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, and messenger or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. S–778B, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours of operations are 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions received must include the Agency name and OSHA docket number (S–778B) for this rulemaking. Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* For further information on submitting comments plus additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read or download submissions, comments, or other material, go to *http://www.regulations.gov*, or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT:
Press inquiries: Kevin Ropp, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.
General and technical information: Michael Seymour, Office of Physical Hazards, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1950.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Request for Information, Data, and Comments
A. Compliance with NFPA 101–2000, Life Safety Codes (§ 1910.35)
B. Subpart H—Hazardous Materials—Flammable and Combustible Liquids (§ 1910.106) and Spray Finishing Using Flammable and Combustible Materials (§ 1910.107)
C. Subpart I—Personal Protective Equipment (§ 1910.132 and § 1915.152)
D. Respiratory Protection (§ 1910.134)
E. Subpart J—General Environmental Controls—Sanitation Standard (§ 1910.141)
F. Carcinogens (4-Nitrobiphenyl, etc.) (§ 1910.1003)
G. Lead (§ 1910.1025 and § 1926.62)
H. 1,3-Butadiene (§ 1910.1051)
I. Asbestos (§ 1915.1001)
J. General Modifications to Medical Examinations and Industrial Hygiene Sampling Provisions
K. General Modifications to Training Provisions
L. Miscellaneous Items Under Consideration
M. General Solicitation for Recommendations
III. Public Participation
IV. Authority and Signature

I. Background

OSHA wants to improve confusing, outdated, duplicative, or inconsistent requirements in its standards. Improving OSHA standards will help employers better understand their obligations, which will lead to increased compliance, ensure greater safety and health for employees, and reduce compliance costs. In addition, this action will allow OSHA to recognize newer and more flexible ways of achieving the intent of the standards.

OSHA's effort to improve standards began in the 1970s, not long after the first set of standards was issued. In 1973, OSHA issued proposals to clarify and update rules that had originally been adopted by the Agency as ''initial'' standards. In 1978, OSHA published the Selected General and Special (Cooperage and Laundry Machinery, and Bakery Equipment) Industry Safety and Health Standards: Revocation (43 FR 9831). Commonly known as the Standards Deletion Project, this was a comprehensive final rule revoking hundreds of unnecessary and duplicative requirements in the General Industry Standards (part 1910). Another rulemaking in 1984 titled the Revocation of Advisory and Repetitive Standards (49 FR 5318) resulted in the removal of many repetitive and unenforceable requirements. These rulemaking actions were primarily directed at removing standards that were: (1) Not relevant to employee safety; that is, the standards addressed public safety issues; (2) duplicative of other standards found elsewhere in the general industry standards; (3) otherwise considered a ''nuisance'' standard; that is, one having no merit or employee safety and health benefits; or (4) unenforceable due to legal considerations.

In 1996, in response to a Presidential Memorandum on Improving Government Regulations, OSHA began another series of rulemaking improvement actions. Patterned after the earlier rulemaking actions, the new effort was designed to identify and then revise or eliminate standards that were confusing, outdated, duplicative, or inconsistent. This effort also included standards that could be rewritten in plain language. In the first action, Miscellaneous Changes to General Industry and Construction Standards (61 FR 37849), otherwise known as the Standards Improvement Project (SIPs I), OSHA focused on revising standards that were out of date, duplicative, or inconsistent.

The final rule on SIPs I was published on June 18, 1998 (63 FR 33450). Changes made in SIPs I included reducing the frequency of a medical testing requirement and eliminating an unnecessary or obsolete medical test required in both the coke oven and inorganic arsenic standards; changing the emergency-response provisions of the vinyl chloride standard; eliminating the public safety provisions of the temporary labor camp standard; and eliminating unnecessary cross-references in the textile industry standards. All of these improvements were made without reducing employee safety and health protection.

In 2002, OSHA published a proposed rule for Phase II of the Standards Improvement Project (SIPs II) (67 FR 66494). In that notice, OSHA proposed to revise a number of provisions in health and safety standards that had been identified by commenters during SIPs I or that the Agency had identified as standards in need of improvement.

In the final rule on SIPs II, published on January 5, 2005 (70 FR 1111), the Agency revised a number of health standards to reduce regulatory burden, facilitate compliance, and eliminate unnecessary paperwork without reducing health protections. The improvements made by SIPs II addressed issues such as employee notification of the use of chemicals in the workplace, frequency of exposure monitoring, and medical surveillance.

In addition to the SIPs initiatives, OSHA has a related but separate rulemaking process, the Consensus Update Project initiated on November 24, 2004 (69 FR 68283), to update OSHA standards that are based on, or reference national consensus standards. Many of OSHA's rules were adopted under a two-year statutory authority that allowed the new Agency to incorporate existing national consensus standards into its body of regulations without notice and comment rulemaking. National consensus standards are generally updated on a regular cycle, and thus the rules initially adopted by OSHA are often out-of-date. To update these rules based on the updated consensus standards requires rulemaking. OSHA is using a number of different rulemaking approaches to update as many of these rules as possible.

The rules that are addressed in SIPs rulemakings are not simply consensus standards updates. Some of the suggestions that were received in previous SIPs rulemakings are currently being addressed in either specific rulemaking projects for updating of the rule involved (e.g., a complete revision of the explosives standard is currently on the regulatory agenda), or will be addressed in the consensus standards update process. Therefore, it is likely that any comments or suggestions related exclusively to consensus standards that are submitted in response to this request will be considered under the consensus standards update project rather than the SIPs rulemaking.

OSHA has identified numerous standards as potential candidates for improvement in SIPs III based on the Agency's review of its standards, suggestions and comments from the public, or recommendations from the Office of Management and Budget (OMB). The OMB recommendations were based on comments they received on Regulatory Reform of the U.S. Manufacturing Sector (2005).[1] Many commenters during the SIPs II

[1] To view the full Regulatory Reform report, please visit: *http://www.whitehouse.gov/omb/inforeg/reports/manufacturing_initiative.pdf.*

rulemaking process applauded the SIPs process and OSHA for its ''efforts to streamline and improve its health standards by removing or revising requirements that are outdated, duplicative, or inconsistent'' (Ex. 3–5, 3–10, 3–11, and 3–13 to Docket S–778A).

Because the Agency has identified numerous candidate standards for improvement and stakeholders have encouraged the Agency to continue this effort, OSHA has determined to proceed with Phase III of SIPs. As already noted, SIPs III will proceed at the same time that the Agency updates consensus standards in a separate project. In SIPs III, OSHA's objective is to modify individual provisions of standards by removing or revising requirements of standards that are confusing, outdated, duplicative, or inconsistent without reducing employees' safety and health or imposing any additional economic burden. As in the earlier rulemakings, the Agency seeks help from the public to identify standards that are in need of improvement based on this objective. While commenters may suggest extensive changes or major reorganization of some standards, suggestions that require a large-scale revision of a standard may not be appropriate for this rulemaking. The Agency will determine whether such large-scale changes are addressed in SIPs III, in the Consensus Update Project, or in a future rulemaking dedicated to the specific issues raised by commenters.

II. Request for Information, Data, and Comments

OSHA requests the public to identify standards that are in need of improvement because they are confusing, outdated, duplicative, or inconsistent. In addition, the agency is considering the following changes in SIPs III. When commenting on the issues below, OSHA requests that you reference the issue number, explain your rationale, and provide, if possible, data and information to support your comments.

A. Compliance with NFPA 101–2000, Life Safety Codes (§ 1910.35)

On May 19, 2004, OSHA received a petition from the International Code Council (ICC) to revise Subpart E—Exit Routes. This standards development organization proposed that OSHA consider allowing employers to demonstrate compliance with the egress provisions of Subpart E by following its International Building Code (IBC) and International Fire Code (IFC), just as OSHA currently permits employers to demonstrate compliance by following the egress provisions of the National Fire Protection Association (NFPA) 101, Life Safety Code (2000 edition). The IBC and IFC are not currently referenced by OSHA.

The preamble to OSHA's 2002 plain language update of Subpart E (67 FR 67949–67965) explains that OSHA declined to extend recognition to the building codes [2] at that time because there were three different model building codes used in the country. That situation has changed significantly. First, the three former building codes have evolved into a single code, the IBC. Secondly, OSHA has made a preliminary determination that the egress provisions of the IBC and IFC, when applied together, offer employee protection equal to the Subpart E provisions.

Some jurisdictions in the country adopt the ICC codes for building construction and fire prevention purposes, while NFPA codes are used in other jurisdictions. OSHA believes employees, employers, the building industry, and code officials may all benefit from OSHA allowing either alternative. Therefore, OSHA is considering the recognition of the combined egress provisions of the IBC and IFC as an alternative equivalent to Subpart E.

1. Do the combined egress provisions of the IBC and IFC offer equivalent protection to OSHA's Subpart E?

2. Are there other alternative national building codes that OSHA should consider?

3. Would allowing the use of the IBC and IFC as an equivalent to Subpart E help employers reduce cost?

B. Subpart H—Hazardous Materials—Flammable and Combustible Liquids (§ 1910.106) and Spray Finishing Using Flammable or Combustible Materials (§ 1910.107)

On December 1, 2001, the National Marine Manufacturers Association petitioned OSHA to update § 1910.107 to reference portions of the 1995 edition of NFPA 33-Standard for Spray Application Using Flammable or Combustible Materials. This edition of NFPA 33 was the first to include a composites manufacturing chapter. This chapter includes less stringent provisions than previous editions of NFPA 33 that formed the basis for § 1910.107. These less stringent 1995 provisions presumed a lower degree of hazard in the process of composites spraying. Subsequently, OSHA staff witnessed field tests at the request of the industry to demonstrate the hazard level; these tests were inconclusive.

OSHA received a second petition on August 17, 2004, from the American Composite Manufacturers Association (ACMA). ACMA petitioned OSHA to adopt certain sections of the ''current'' versions of NFPA 33 as well as NFPA 30—Flammable and Combustible Liquids Code. At that time, the current versions of those NFPA standards were the 2003 editions. NFPA 33 retained the specific provisions for composites spraying through its 2003 edition. ACMA noted in their petition, that the newer NFPA standards ''* * * reflect significant advances in understanding the hazards presented by many of the covered operations.'' They further noted ''* * * NFPA 33 now contains fire protection standards specifically designed for composites manufacturing operations which recognize the inherently lower degree of hazard inherent in these operations.''

On June 17, 2004, ACMA testified on this issue to the Subcommittee on Regulatory Reform and Oversight of the Small Business Committee, U.S. House of Representatives. Additionally, the National Association of Manufacturers and the National Marine Manufacturers Association subsequently submitted a reform nomination [3] to OMB. Both the testimony and the reform nomination requested recognition of the more ''current'' NFPA 33 provisions, but did not request recognition of NFPA 30. The 2003 editions of NFPA 30 and 33 remain the most current, however, NFPA is in the process of revising both these standards, with the next anticipated editions being 2007.

OSHA is considering whether or not NFPA 30 and NFPA 33 are equivalent to the existing provisions in § 1910.106 and § 1910.107. As mentioned above, OSHA had attended a presentation to demonstrate that the new NFPA provisions were equivalent, however the demonstration did not prove to be conclusive. In addition, there is a lack of data that OSHA can rely on to draw conclusions. With this, OSHA cannot conclude at this time that NFPA 30 and NFPA 33 provide protection for employees equivalent to § 1910.106 and § 1910.107. OSHA hopes that commenters can provide data to help

[2] Uniform, Southern, and BOCA Building Codes.

[3] In OMB's draft 2004 Report to Congress on the Costs and Benefits of Federal Regulation, OMB requested public nominations of specific regulations, guidance documents and paperwork requirements that, if reformed, could result in lower costs, greater effectiveness, enhanced competitiveness, more regulatory certainty and increased flexibility. See Reference Number 153 addressing flammable liquids in the Regulatory Reform report at: *http://www.whitehouse.gov/omb/inforeg/reports/manufacturing_initiative.pdf.*

the Agency determine what course of action to take.

As mentioned above, OSHA intends to update its standards that reference outdated consensus standards. As part of that process, it is anticipated that § 1910.106 and § 1910.107 will be updated in their entirety sometime in the future. In this ANPRM, however, OSHA is exploring the idea of amending § 1910.106 and § 1910.107, at this time, to allow employers to comply with the 2003 editions of NFPA 30 and 33 until the more extensive revision is completed. Making this change now, as part of the SIPs III effort, would allow employers engaged in composites manufacturing operations to follow the newer provisions of the NFPA 33. However, the Agency is concerned that the new NFPA 33 may not provide employee protection equivalent to the existing standard. OSHA believes additional information regarding the equivalency of the employee protection afforded by the newer requirements for composite spraying is needed. While OSHA's *de minimis* policy would allow employers to comply with the more current versions of consensus standards applicable to their work, employers must be able to demonstrate that complying with the consensus standard is as protective as following the OSHA standard. In the case of composite sprayings, ACMA noted that they were aware of the *de minimis* policy but that, in their experience, they have had problems demonstrating that the newer standard provides equivalent protection. ACMA stated that ''* * * some of our member companies have been able to successfully appeal citations to OSHA supervisors, but such appeals are time consuming and expensive, and are often intimidating to small business owners'' [ACMA 2004 petition]. Updating the OSHA standard to reference the newer NFPA standards would eliminate any confusion or inconsistency as to the employer's obligation. OSHA is particularly interested in comment on the following:

4. Are the provisions in the 2003 edition of NFPA 30 as protective or more protective of employees' safety and health than the equivalent provisions in § 1910.106? Should OSHA revise § 1910.106 to be consistent with these provisions? Please submit specific available information or data supporting your comments.

5. Are the provisions in the 2003 edition of NFPA 33 as protective or more protective of employees' safety and health than the equivalent provisions in § 1910.107? Should OSHA revise § 1910.107 to be more consistent with these provisions? Please submit specific available information or data supporting your comments.

C. Subpart I—Personal Protective Equipment—General Requirements (§ 1910.132 and § 1915.152)

In 1994, OSHA revised the general industry safety standards regarding personal protective equipment (PPE) ''to be more consistent with the current consensus regarding good industry practices, as reflected by the latest editions of the pertinent American National Standards Institute (ANSI) standards'' (59 FR 16334). The revision includes a requirement for employers to perform a hazard assessment that would provide the information necessary for the employer to select the appropriate PPE for employees and to verify compliance by way of a written certification. As part of this revision the Agency added paragraphs § 1910.132(d), (e), and (f) as well as non-mandatory appendices A and B to Subpart I—Personal Protective Equipment. Appendix A contains a list of references and is provided for information purposes. Appendix B—Guidelines for Hazard Assessment and Personal Protective Equipment Selection was added to the subpart to provide specific guidance to employers and employees regarding eye, face, head, foot, and hand hazards.

In the final rule, OSHA determined that it was not necessary for employers to prepare and retain a formal written hazard assessment. However, in order to verify compliance the employer is required to prepare a written certification that would include the following: The person certifying that the evaluation had been performed; the dates of the hazard assessment; and a statement identifying the document as the certification of the hazard assessment required by the standard.

The ship repair, shipbuilding, and shipbreaking (*i.e.* shipyards) standard requires a similar hazard assessment. The final rule for Shipyards § 1915.152, published in 1996 (61 FR 26321), revised the PPE section requiring employers to do a hazard assessment, equipment (PPE) selection, and to verify the required assessment through a ''document,'' rather than a certification as required for general industry employees in § 1910.132. The document must contain the date of the hazard assessment and the name of the person performing the hazard assessment. The comments from the Shipyard industry argued against a written certification, stating that it would create a burden. OSHA agreed and changed the word from ''certification'' to ''document'', which OSHA judged to be an equally effective way to verify compliance.

OSHA is concerned that the hazard assessment provisions in § 1910.132(d) and § 1915.152 lack specific documentation of the hazard assessment required to be performed by the employer, and are thus not sufficiently protective of employees' safety and health. Currently, employers in both industries are not required to document or post the results of the hazard assessment. Employers are only required to include the name of the person certifying, the date(s) of the hazard assessment, and in the General Industry standard § 1910.132, a statement that the document is a certification that the hazard assessment has been performed.

The Agency is interested in making the hazard assessment process more effective. One method the Agency is considering is to require employers to include the results of the hazard assessment (the hazards identified and the PPE needed to address those hazards) in a certification and to post the certification for review by employees. Another method being considered to increase effectiveness of the hazard assessment in § 1910.132 and § 1915.152 is to revise the respective Appendices and make them mandatory, adding a requirement to post the results of the assessment.

OSHA believes that all industries could benefit from doing a hazard assessment and in the interest of making rules consistent across all industries, we have included some questions on Construction (part 1926), Marine Terminals (part 1917), and Longshoring (part 1918) standards where there is no explicit requirement for a written PPE hazard assessment. There may be ways to revise these standards, such as a performance-based assessment, that are both feasible and not overly burdensome. OSHA is seeking answers to these questions and suggestions for effective alternatives.

OSHA is seeking comments on other options that the Agency should consider that would assure that employers conduct thorough hazard assessments and select the appropriate equipment to protect employees.

6. OSHA has identified posting requirements in many other standards to ensure employee notification. Are there other methods to inform employees of the hazard assessment results, such as additional training to inform employees of the findings, that are equally as effective or more effective?

7. Would adding a posting requirement to § 1910.132 and § 1915.152 be more or less protective

than the protection currently provided? Please provide any rationale or data to support your answer.

8. Are there other approaches to conducting hazard assessments for PPE that are more effective than Appendix B in § 1910.132 and Appendix A in § 1915.152?

9. Should similar revisions be considered for Construction (Part 1926), Marine Terminals (Part 1917), and Longshoring (Part 1918) standards?

D. Respiratory Protection (§ 1910.134)

Paragraph (o)(2) of this standard states ''Appendix D of this section is non-mandatory;'' however, paragraph (k)(6) of the standard specifies that the ''basic advisory information on respirators, as presented in Appendix D of this section, shall be provided by the employer * * * to employees who wear respirators when such use is not required by this section or by the employer''. [Emphasis added.] The phrase ''shall be provided'' in paragraph (k)(6) mandates the employer to provide the ''basic advisory information'' in the appendix to the designated employees. Appendix D is also marked as ''Mandatory'' in the standard. Therefore, OSHA is considering removing paragraph (o)(2) from the standard and revising the preceding paragraph (o)(1) to include Appendix D among the list of mandatory appendices, which was OSHA's original intent.

10. Have employers understood that the requirement to provide Appendix D information to employees who voluntarily use respirators is a mandatory requirement?

11. Is the information contained in Appendix D appropriate for alerting employees to considerations related to voluntary respirator use?

12. To what extent, if any, would deleting paragraph (o)(2) and clarifying that Appendix D is mandatory increase the burden on employers?

E. Subpart J—General Environmental Controls—Sanitation Standard (§ 1910.141)

The definition of potable drinking water in OSHA's current sanitation standard, § 1910.141, makes reference to U.S. Public Health Service Drinking Water Standards published in 42 CFR part 72. There are other agencies that have provisions relating to safe drinking water, such as the Food and Drug Administration (FDA) at Title 21 of the CFR, referring to the Environmental Protection Agency (EPA) at Title 40, specifically the Office of Water.

13. What is the appropriate updated reference that would provide an adequate definition for potable water? Are there other references or definitions for drinking water from other agencies or authoritative sources that OSHA should consider?

14. Are there other instances where a citation to another Federal Standard referenced in an OSHA standard is no longer correct?

F. Carcinogens (4-Nitrobiphenyl, etc.) (§ 1910.1003)

In 1996, OSHA consolidated 13 similar standards for regulating carcinogenic chemicals into a single standard, § 1910.1003 (See 61 FR 9228, March 7, 1996). OSHA did not intend to make substantive changes to any of the 13 standards under that action. Where language among the 13 standards differed, the Agency attempted to design the regulatory text of the single rule to maintain the same substantive requirements of each standard. Four of these 13 standards, covering employee exposures to methyl chloromethyl ether, bis-chloromethyl ether, ethyleneimine, and beta-propiolactone, had a provision in former paragraph (c)(4)(iv) of each standard that provided respirator requirements that differed from those provided in the other nine standards. Specifically, this provision required employers to ensure that employees involved in handling any of these four carcinogenic chemicals wear full-facepiece, supplied-air respirators of the continuous-flow or pressure-demand type rather than half-mask respirators permitted under the other nine standards. The Agency inadvertently omitted this provision from the consolidated standard, thereby appearing to change the respirator requirement for those four substances. That was not intended; therefore, OSHA is considering reinstating the former respirator-use requirement in paragraph (c)(4)(iv) of § 1910.1003 for the four substances.

15. What types of respirators are currently being used to protect employees from exposure to these four chemicals?

16. If OSHA reinstates the requirements for full-facepiece air-supplied respirators, does the respirator-use requirement conflict with OSHA's Respiratory Protection Standard (§ 1910.134)?

17. Would the reinstated respirator use requirement be more or less protective than the protection offered by OSHA's Respiratory Protection Standard? Please provide any data or rationale to support your answer.

18. How would reinstating the respirator use requirement change the economic or paperwork burden?

G. Lead (§ 1910.1025 and § 1926.62)

The Agency's substance-specific standards usually require that employers initiate or implement protective actions, including exposure monitoring, medical surveillance, and exposure controls, at specific airborne concentrations of a toxic substance.

In several provisions of the lead standards (§ 1910.1025 and § 1926.62), the airborne concentrations at which protective actions must occur vary slightly. A number of provisions in the lead standards trigger actions at airborne concentrations, which are ''above the AL,'' and ''at or above the PEL.'' The terminology in the lead standards for these airborne concentrations is inconsistent and can be confusing. For example, § 1910.1025(d)(6)(iii) currently states that ''[t]he employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level[.]'' OSHA is considering revising this to state ''[t]he employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are at or below the PEL but at or above the action level[.]'' [Emphasis added.]

Similar issues arise with respect to the blood lead levels that trigger medical removal protection or return to work in the lead standards. OSHA is considering changing these terminologies in the lead standard(s) to make these internally consistent and consistent with each other. Table 1 describes the revisions being considered.

TABLE 1.—RECOMMENDED REVISIONS TO THE AL, PEL, AND NUMERICAL-CRITERIA PROVISIONS OF THE LEAD STANDARDS

Provision	Existing language	Revised language
§ 1910.1025 (Lead in General Industry): (d)(6)(ii)	''at or above the action level but below the permissible exposure limit''.	''at or above the action level but at or below the permissible exposure limit''

TABLE 1.—RECOMMENDED REVISIONS TO THE AL, PEL, AND NUMERICAL-CRITERIA PROVISIONS OF THE LEAD STANDARDS—Continued

Provision	Existing language	Revised language
(d)(6)(iii)	''are below the PEL but at or above the action level''	''are at or below the PEL but at or above the action level''
(d)(8)(ii)	''exceeds the permissible exposure limit''	''is above the permissible exposure limit''
(j)(1)(i)	''above the action level''	''at or above the action level''
(j)(2)(ii)	''exceeds the numerical criterion''	''is at or above the numerical criterion''
(j)(2)(iv)	''exceeds 40 μg/100 g'' and ''exceeds the numerical criterion''.	''is at or above 40 μg/100 g'' and ''is at or above the numerical criterion''
(k)(1)(i)(B)	''at or below 40 μg/100 g''	''below 40 μg/100 g''
(k)(1)(iii)(A)(1)	''at or below 40 μg/100 g''	''below 40 μg/100 g''
§ 1926.62 (Lead in Construction):		
(d)(8)(ii)	''at or above the PEL'' and ''at or above that level''	''above the PEL'' and ''above that level''
(j)(2)(ii)	''exceeds the numerical criterion''	''is at or above the numerical criterion''
(j)(2)(iv)(B)	''exceeds 40 μg/dl''	''is at or above 40 μg/dl''
(k)(1)(iii)(A)*(1)*	''at or below 40 μg/dl''	''below 40 μg/dl''

19. Would making the provisions of the lead standards more consistent with each other assist employers in complying with these standards?

20. Are there any increases to the economic or paperwork burden as a result of making the suggested changes? If increases are identified, please explain the impact.

21. Are there similar changes needed in other standards that would increase their consistency? Please explain the rationale for your suggestions.

H. 1,3-Butadiene (§ 1910.1051)

Paragraph (m)(3) of the 1,3-butadiene standard (§ 1910.1051) for general industry requires employers to establish and maintain fit-testing records for employees who use respirators to reduce toxic exposures. However, paragraph (h)(2)(i) states that ''employers must implement a respiratory protection program in accordance with OSHA's respiratory-protection standard § 1910.134 (b) through (d) * * * and (f) through (m).'' The requirements to establish and maintain fit-testing records specified in paragraph (m)(2) of the respiratory-protection standard are essentially the same as the applicable recordkeeping requirements in paragraph (m)(3) of the 1,3-butadiene standard.

The Agency inadvertently failed to delete the recordkeeping provision in the 1,3-butadiene standard when it replaced many of the respiratory-protection requirements of health standards with the reference to the respiratory-protection standard in § 1910.134 (see 63 FR 1293–1294). OSHA believes that having two similar recordkeeping provisions is redundant and confusing. Therefore, the Agency is considering removing paragraph (m)(3) from the 1,3-butadiene standard for general industry.

22. To what extent, in any, does removing paragraph (m)(3) from 1,3-butadiene standard reduce protection?

23. Does removing this paragraph reduce employers' and employees' understanding of their obligations to keep respirator fit-test records?

24. Are there similar changes that can be made in other standards that would increase their consistency? Please explain the rationale for your suggestions.

I. Asbestos (§ 1915.1001)

The introductory paragraph to OSHA's respiratory-protection standard (§ 1910.134) specifies that the standard applies to ship repair, shipbuilding, and ship breaking (i.e. shipyards) (Part 1915), general industry (Part 1910), marine terminals (Part 1917), longshoring (Part 1918), and construction (Part 1926). Three of these parts, general industry, shipyards, and construction, contain standards regulating employee exposure to asbestos, with each of these standards having a paragraph entitled ''Respirator program.'' These paragraphs specify the requirements for an employer's respirator program with respect to asbestos exposure. In the final rulemaking for the respiratory-protection standard, the Agency updated these paragraphs in the asbestos standards for general industry and construction [4] so that the program requirements would be consistent with the provisions of the newly revised respiratory-protection standard (see 63 FR 1285 and 1298). However, the Agency inadvertently omitted revising the respirator program requirements specified in paragraph (h)(3)(i) of the asbestos standard for shipyards (§ 1915.1001). OSHA is considering correcting this oversight and revising paragraph (h)(3)(i) of the asbestos standard for shipyards to read the same as paragraphs (g)(2)(i) of the asbestos standard for general industry (§ 1910.1001) and (h)(2)(i) of the asbestos standard for construction (§ 1926.1101) which state ''[t]he employer must implement a respiratory protection program in accordance with § 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m).''

Similarly, the Agency is considering removing paragraphs (h)(3)(ii), (h)(3)(iii), and the entirety of paragraph (h)(4) from the shipyard standard, which address filter changes, washing faces and facepieces to prevent skin irritation, and fit testing, respectively. OSHA believes this is appropriate because the continuing-use provisions specified in paragraph (g)(2)(ii) duplicate paragraphs (h)(3)(ii) and (h)(3)(iii) of the asbestos standard for shipyards. Also, the fit-testing requirements provided in paragraph (f) of the respiratory-protection standard either meet or exceed the provisions specified in (h)(4) of the shipyard asbestos standard except that the frequency of fit-testing is different. The current Shipyard asbestos standard at § 1915.1001 (4)(i) requires quantitative and qualitative fit-testing be performed initially and at least every six months thereafter. The Respirator standard at § 1910.134 (f)(2) requires employees wearing a tight-fitting respirator be fit-tested prior to initial use, whenever a different facepiece is used and at least annually thereafter.

By adding the reference to § 1910.134 (respirator standard) in § 1915.1001(h)(3)(i) of the shipyard

[4] Paragraphs (g)(2)(i) and (h)(2)(i) of the asbestos standard for general industry (§ 1910.1001) and the asbestos standard for construction (§ 1926.1101), respectively, specify the provisions of the updated respiratory-protection standard that apply to employers covered by these standards.

asbestos standard, OSHA would incorporate the fit testing requirements of § 1910.134(f), which include the requirement to use the OSHA-accepted qualitative fit testing and quantitative fit testing protocols and procedures contained in Appendix A. Accordingly, the fit testing requirements of § 1915.1001, Appendix C would be duplicative. Therefore, OSHA is considering deleting this Appendix.

25. Would revising § 1915.1001(h)(3)(i) to be consistent with similar provisions in the asbestos standard for general industry and construction create additional compliance requirements?

26. Does this change maintain the same level of employee protection? Would making the recommended changes increase the economic or paperwork burden?

27. Besides altering the frequency of fit testing, how would making the recommended change to delete paragraphs (h)(3)(ii) through (h)(4)(ii) affect the requirements of the standard?

J. General Modifications to Medical Examinations and Industrial Hygiene Sampling Provisions

Many of OSHA's health standards are over 20 years old. Since their promulgation, there have been many technological advances, including changes in medical testing and industrial hygiene sampling. The Agency is interested in determining whether any of these new medical tests or industrial hygiene sampling technologies should be permitted for use in its health standards. The Agency is also interested in determining whether these tests or technologies would accomplish the identified task required by the standard as well as or better than the technologies identified in the current medical and sampling requirements.

28. Are there newer medical tests that would provide equivalent or better diagnostic results than the tests contained in OSHA's standards? For example, are there updated medical tests that could replace chest x-rays for diagnosing asbestos related diseases or Beta-2 microglobulin in urine for diagnosing kidney disease related to cadmium exposure?

29. Are there newer methods to determine personal exposures to hazards? For example, are there newer methods using passive sampling for different chemical exposures or an updated method to determine exposure to cotton dust better than the vertical elutriator cotton dust sampler?

K. General Modifications to Training Provisions

Training is an essential part of every employer's safety and health program for protecting employees from injury and illness. Many OSHA standards specifically require that employers train employees in the safety and health aspects of their jobs. Other OSHA standards establish employers' responsibility to limit certain job assignments to employees who are ''competent'' or ''qualified,'' meaning that they have had specialized training.

In SIPs II, OSHA changed the notification and timing requirements in some health standards to make them more consistent across different health standards (67 FR 66493). OSHA did this to reduce regulatory confusion and facilitate compliance but without diminishing employee protection. Similarly, the Agency believes bringing consistency to its training requirements would achieve the same goals.

30. How could the Agency modify the training requirements in various OSHA safety and health standards to promote compliance with the training requirements?

31. How should training content and frequency of retraining be addressed to improve employees' safety and health? Please identify changes that could be made to improve the training process.

32. Would making training requirements uniform among various standards facilitate employers' compliance with OSHA regulations? Please explain.

33. To what extent, if any, do other agencies' training requirements overlap with OSHA's?

L. Miscellaneous Items Under Consideration

a. Recordkeeping Requirements—Commercial Diving Operations (§ 1910.440)

The original Commercial Diving Operations standard included a requirement in paragraph § 1910.411 that employers provide medical exams to dive team members. This paragraph was removed by a 1979 court decision [Taylor Diving and Salvage vs. U.S. Department of Labor (599 F.2d 622)(5th Cir., 1979)]. However, the current standard still includes a reference to paragraph § 1910.411 in paragraph (b)(3)(i) of § 1910.440, which requires employers to keep dive team medical records for five years. Since there is no longer a requirement for team medical exams, the requirement to keep such records for five years makes no sense. Therefore, OSHA intends to propose removing paragraph (b)(3)(i) of § 1910.440.

34. Is there any reason why this paragraph should not be deleted? Please explain.

35. Are there references in other standards that need to be updated?

b. Definitions (§§ 1917.2, 1918.2, and 1919.2)

Hazardous Ships' Stores (46 CFR 147) contains the following definition for ships' stores:

> Materials which are aboard a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel, or for the safety or comfort of the vessel's passengers or crew.

A definition of ships' stores is not contained in Marine Terminals (29 CFR 1917.2), Safety and Health Regulations for Longshoring (29 CFR 1918.2), and Gear Certification (29 CFR 1919.2), even though these OSHA standards contain the term. OSHA is considering adding the definition of ships' stores in 47 CFR 147 to these OSHA standards.

36. Is there any reason why this definition should not be added to the OSHA standards listed? If so, please explain your rationale for why this definition should not be added. Is there an alternative definition that OSHA should consider?

37. Are there other definitions that could be added to these or other standards to improve consistency?

M. General Solicitation for Recommendations

In addition to solicitation of comment on the specific recommendations noted above, OSHA invites comment on other standards that are in need of improvement because they are confusing, outdated, duplicative, or inconsistent with similar standards. It would be helpful if you could provide information supporting your recommended changes. Please describe the reasons why you believe these regulations are confusing, outdated, duplicative or inconsistent and provide specific language that you believe will improve the standard.

38. Are there any standards that can be updated to make them more protective of employees' safety or health and at the same time reduce the compliance burden on employers?

39. Are there any standards that can be updated to be more protective of employees' safety or health without imposing any additional compliance burden on the employer?

40. Are there any other standards that need to be changed to reduce or eliminate inconsistencies between standards?

III. Public Participation

Submission of Comments and Access to the Docket

OSHA invites comments on all aspects of this advance notice of proposed rulemaking (ANPRM). Throughout this document, OSHA has invited comment on specific issues and requested information and data about practices at your establishment and in your industry. OSHA will carefully review and evaluate these comments, information and data, as well as all other information in the rulemaking record, to determine how to proceed.

You may submit comments and additional materials (1) electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All submissions must identify the Agency name and the OSHA docket number for this rulemaking (S–778B). You may supplement electronic submissions by uploading document attachments and files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic submissions by name, date, and docket number so OSHA can attach them to your submissions.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Submissions are posted without change at: *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov*. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments, and attachments, and to access the docket, is available at the Web site's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov*. This document, as well as news releases and other relevant information, also is available at OSHA's Webpage at: *http://www.osha.gov*.

IV. Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR 1911, and Secretary's Order 5–2002 (67 FR 65008).

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. E6–21799 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–26–P

Notices

Federal Register
Vol. 71, No. 245
Thursday, December 21, 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

Submission for OMB Review; Comment Request

December 18, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: National Visitor Use Monitoring, and Customer and Use Survey Techniques for Operations, Management, Evaluation, and Research.

OMB Control Number: 0596–0110.

Summary of Collection: The National Forest Management Act (NFMA) of 1976 and the Government Performance and Results Act of 1993 (GPRA) require a comprehensive assessment of present and anticipated uses, demand for and supply of renewable resources from the nation's public and private forests and rangelands. An important element in the reporting is the number of visits to National Forests and Grasslands, as well as to Wilderness Areas that the agency manages.

Need and Use of the Information: The Forest Service (FS) is required to report to Congress and others in conjunction with these legislated requirements as well as the use of appropriated funds. FS plans to collect information from a variety of National Forests and other recreation areas. The Customer and Use Survey Techniques for Operations, Management, Evaluation and Research (CUSTOMER) study combines several different survey approaches to gather data describing visitors to and users of public recreation lands, including their trip activities, satisfaction levels, evaluations, demographic profiles, trip characteristics, spending, and annual visitation patterns. FS will use face-to-face interviewing for collecting information on-site as well as written survey instruments to be mailed back by respondents. Information gathered through the various Customer modules has been and will continue to be used by planners, researchers, managers, policy analyst, and legislators in resource management areas, regional offices, regional research stations, agency headquarters, and legislative offices.

Description of Respondents: Individuals or households.

Number of Respondents: 69,900.

Frequency of Responses: Reporting; Quarterly; Annually.

Total Burden Hours: 9,910.

Charlene Parker,
Departmental Information Collection Clearance Officer.

[FR Doc. E6–21833 Filed 12–20–06; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–05–308]

United States Standards for Grades of Pea Pods

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is establishing voluntary United States Standards for Grades of Pea Pods. The standards will provide industry with a common language and uniform basis for trading, thus promoting the orderly and efficient marketing of pea pods.

DATES: *Effective Date:* January 22, 2007.

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240, (202) 720–2185, fax (202) 720–8871, or e-mail *Cheri.Emery@usda.gov.*

The United States Standards for Grades of Pea Pods are available either from the above address or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture, ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and provides copies of official standards upon request. The United States

Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS established the voluntary United States Standards for Grades of Pea Pods using the procedures that appear in part 36, title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

AMS developed a proposed U.S. Standards for Grades of Pea Pods. The proposal would establish U.S. Fancy and U.S. No. 1 ''Grades,'' ''Tolerances,'' and ''Application of Tolerances'' sections. Additionally, this proposal defines: ''Injury,'' ''Damage,'' ''Serious Damage,'' and basic requirements.

On January 24, 2006, a notice was published in the **Federal Register** (71 FR 3817), requesting comments on proposed voluntary United States Standards for Grades of Pea Pods, with the comment period ending on March 27, 2006.

A request was received from a packer/shipper of pea pods, expressing the need for additional time to review the proposed U.S. Standards. The packer/shipper requested an extension to the comment period to allow them the opportunity to submit comments. After reviewing the request, AMS reopened and extended the comment period by publishing a notice in the **Federal Register**, May 22, 2006 (71 FR 29606), extending the period for comment to June 22, 2006.

AMS received one other response to the proposed standards. The comment was from an industry group representing about 90 percent of the fresh vegetables produced in California and Arizona. The association expressed support for the development of the standards for pea pods.

The comments are available by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

Based on the comment received, specifically concerning the development of the standards and information gathered, AMS believes the standards will provide a common language for trading and promote the orderly and efficient marketing of pea pods. The official grades of pea pod lots covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables, and Other Products (Sec. 51.1 to 51.61).

The United States Standards for Grades of Pea Pods will be effective 30 days after publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: December 15, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–21840 Filed 12–20–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TM–07–04]

Notice of Release of National Organic Program Noncompliance and Adverse Action Records

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is publishing this notice to inform accredited certifying agents and producers and handlers certified to the National Organic Program (NOP) of AMS' intention to release notices of noncompliance, and the identity of each entity which has been suspended or revoked, as well as the reasons for these actions. The release of these materials complies with the Freedom of Information Act (FOIA) in which any information that is not protected from disclosure by a FOIA exemption must be provided to the public.

FOR FURTHER INFORMATION CONTACT: Mark Bradley, Associate Deputy Administrator, National Organic Program, 1400 Independence Avenue, SW., Room 4008–S, Ag Stop 0268, Washington, DC, 20250–0268; Telephone: (202) 720–3252; Fax: (202) 205–7808; e-mail: *mark.bradley@usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This notice is issued under the FOIA as amended, 5 U.S.C. 552, and the Organic Foods Production Act (OFPA) of 1990, as amended, 7 U.S.C. 6501 *et seq.*

II. Background

On April 12, 2006, AMS received a FOIA request for notices of noncompliance and records of suspension and revocation of certification and accreditation issued pursuant to the NOP. The Agency maintains the records sought by the FOIA requester pursuant to its administration of the OFPA.

The FOIA provides for any person to request and access federal agency records except for those records, or portions of records, which are protected by one of the nine exemptions under the FOIA. The records collected and maintained under the OFPA are not statutorily exempt from disclosure, and therefore in accordance with the FOIA and USDA's FOIA implementing regulations, 7 CFR part 1, AMS is required to release responsive records, or portions of responsive records, that are not protected from disclosure by any FOIA exemption.

III. Action

Pursuant to 7 CFR 205.662, accredited certifying agents are obligated to issue noncompliance notifications, notices of suspension, and notices of revocation regarding NOP certification when circumstances warrant such action. Likewise, pursuant to 7 CFR 205.665, the NOP is obligated to issue notifications of noncompliance and notices of suspension and revocation of accreditation as warranted.

Some of the information contained in these notification letters, in particular those issued to certified operations, may contain confidential business information. Therefore, the agency will conduct a thorough review of those notification documents issued since implementation of the NOP on October 21, 2002, pursuant to 7 CFR 205.662 and 205.665, and in accordance with 5 U.S.C. 552(b)(4), withhold confidential commercial or financial information. Examples of the information which may appear in responsive records and that is subject to withholding include: Product formulations; supply sources; amount paid or owed in certification fees; sales volumes; yield quantities; amount of acreage planted to a specific crop or designated as pasture; the number of livestock units; the identity of an entity for which a private label is produced.

Dated: December 15, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–21838 Filed 12–20–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0187]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The meeting will be held on January 24, 2007, from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Georgia World Congress Center, 285 Andrew Young International Boulevard, NW., Atlanta, GA.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 101, Conyers, GA 30094, (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, the Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference.

Topics for discussion at the upcoming meeting include:

1. H5/H7 low pathogenic avian influenza program for commercial layers, broilers, and turkeys;

2. Compartmentalization of notifiable avian influenza free zones;

3. National animal identification program for poultry; and

4. Cleaning, disinfection, and bird disposal costs for commercial poultry flocks.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the discussions during the meeting. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. APHIS–2006–0187 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 15th day of December 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–21841 Filed 12–20–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Cape Cod Water Resources Restoration Project, Barnstable County, MA; Record of Decision

1. *Purpose*—As State conservationist for the Natural Resources Conservation Service (NRCS), I am the Responsible Federal Official (RFO) for all NRCS projects in Massachusetts.

The recommended plan for the Cape Cod Watershed involves works of improvement to be installed under authorities administered by NRCS. This areawide planning Project [1] includes 26 salt marsh restoration projects, 24 fish passage remediation projects, and 26 stormwater remediation projects.

The Cape Cod Watershed plan was prepared under the authority of the Watershed Protection and Flood Prevention Act (Public Law 566, 83rd Congress, 68 Stat. 666, as amended) by the Cape Cod Conservation District, Barnstable County Commissioners, the 15 towns of Barnstable County, and the Massachusetts Executive Office of Environmental Affairs. The scoping meeting, held during May 2005, established the NRCS, U.S. Department of Agriculture, as lead agency.

2. *Measures taken to comply with national environmental policies*—The Cape Cod Water Resources Restoration Project has been planned in accordance with existing Federal legislation concerned with the preservation of environmental values. The following actions were taken to ensure that the Cape Cod Watershed plan is consistent with national goals and policies.

The interdisciplinary environmental evaluation of the Cape Cod Water Resources Restoration Project was conducted by the sponsoring local organizations, cooperating agencies, and the NRCS. Information was obtained from many groups and agencies. An inventory and evaluation of environmental and socioeconomic conditions were prepared by Massachusetts NRCS and EA Engineering, Science, and Technology under a contract with NRCS. Reviews were held with the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration, National Park Service, Massachusetts Executive Office of Environmental Affairs, State Historic Preservation Officer, and the Tribal Historic Preservation Officer of the Wampanoag Tribe of Gay Head (Aquinnah). Inputs from these reviews were included in the EIS.

A public meeting was held on May 18, 2005, to solicit public participation in the environmental evaluation, to assure that all interested parties had sufficient information to understand how their concerns are affected by water resource problems, to afford local interests the opportunity to express their views regarding the plans that can best solve these problems, and to provide all interests an opportunity to participate in the plan selection. More than 400 parties were notified by mail of the joint public meetings. Meeting notes are on file at the NRCS State Office.

Testimony and recommendations were received relative to the following subjects:

a. Support for projects to treat stormwater runoff as a means for improving water quality and keeping shellfish beds open for recreational and commercial use.

b. Support for projects to restore fish passageways on local streams.

c. Support for projects to restore tidal flushing to salt marshes with restricted tidal openings.

A draft Environmental Impact Statement (EIS) was prepared in August 2006 and made available for public review. The recommendations and comments obtained from the public meeting held during Project planning and assessment were considered in the preparation of the draft EIS.

The draft EIS was distributed to agencies, conservation groups, organizations, and individuals for comment. Copies were also placed in the libraries of all 15 towns in the watershed, and the draft EIS was made available on the Massachusetts NRCS Web site. The draft EIS was filed with the Environmental Protection Agency on August 3, 2006, and notices of the availability of the draft EIS for public review were published in the **Federal Register** by NRCS on August 1, 2006, and by EPA on August 11, 2006.

[1] We use ''Project'' in this ROD and the Plan-EIS to refer to the areawide Cape Cod Water Resources Restoration Project and ''project'' to refer to individual site restoration or remediation activities; the Project comprises 76 projects.

Existing data and information pertaining to the Project's probable environmental consequences were obtained with assistance from other scientists and engineers. Documentary information as well as the views of interested Federal, State, and local agencies and concerned individuals and organizations having special knowledge of, competence over, or interest in the Project's environmental impacts were sought. This process continued until it was felt that all the information necessary for a comprehensive, reliable assessment had been gathered.

A complete picture of the Project's current and probable future environmental setting was assembled to determine the proposed Project's impact and identify unavoidable adverse environmental impacts that might be produced. During these phases of evaluation, it became apparent that there are legitimate conflicts of scientific theory and conclusions leading to differing views of the Project's environmental impact. In such cases, after consulting with persons qualified in the appropriate disciplines, those theories and conclusions appearing to be the most reasonable, and having scientific acceptance were adopted.

The consequences of a full range of reasonable and viable alternatives to specific improvements were considered, studied, and analyzed. In reviewing these alternatives, all courses of action that could reasonably accomplish the Project purposes were considered. Attempts were made to identify the economic, social, and environmental values affected by each alternative. Both structural and nonstructural alternatives were considered.

The alternatives considered reasonable alternatives to accomplish the project's objectives were (1) Water Resources Restoration Alternative, (2) No Action Alternative.

3. *Conclusions*—The following conclusions were reached after carefully reviewing the proposed Cape Cod Water Resources Restoration Project in light of all national goals and policies, particularly those expressed in the National Environmental Policy Act, and after evaluating the overall merit of possible alternatives to the Project:

a. The Cape Cod Water Resources Restoration Project will employ reasonable and practicable means that are consistent with the National Environmental Policy Act while permitting the application of other national policies and interests. These means include, but are not limited to, a Project planned and designed to minimize adverse effects on the natural environment while accomplishing an authorized Project purpose. Project features designed to preserve existing environmental values for future generations include: (1) Replacement of inadequately sized or failed culverts with larger culverts or bridges to restore tidal flushing to salt marshes; (2) reconstruction of failed fish passageways, replacement of collapsed or improperly aligned curves, or removing restrictions at bridges to provide full access to upstream spawning and nursery areas for anadromous fish; and (3) installation of catch basins and infiltration systems or other cost-effective alternatives to treat stormwater runoff, reduce bacteria loading to tidal receiving waters, and help keep shellfish beds open.

b. The Cape Cod Water Resources Restoration Project was planned using a systematic interdisciplinary approach involving integrated uses of the natural and social sciences and environmental design arts. All conclusions concerning the environmental impact of the Project and overall merit of existing plans were based on a review of data and information that would be reasonably expected to reveal significant environmental consequences of the proposed Project. These data included studies prepared specifically for the Project and comments and views of all interested Federal, State, and local agencies and individuals. The results of this review constitute the basis for the conclusions and recommendations. The Project will not affect any cultural resources eligible for inclusion in the National Register of Historic Places. Nor will the Project affect any species of fish, wildlife, or plant or their habitats that have been designated as endangered or threatened.

c. In studying and evaluating the environmental impact of the Cape Cod Water Resources Restoration Project, every effort was made to express all significant environmental values quantitatively and to identify and give appropriate weight and consideration of nonquantifiable environmental values.

d. Wherever legitimate conflicts of scientific theory and conclusions existed and conclusions led to different views, persons qualified in the appropriate environmental disciplines were consulted. Theories and conclusions appearing to be most reasonable scientifically acceptable, or both, were adopted.

e. Every possible effort has been made to identify those adverse environmental effects that cannot be avoided if the Project is constructed.

f. The long-term and short-term resource uses, long-term productivity, and the irreversible and irretrievable commitment of resources are described in the final EIS.

g. All reasonable and viable alternatives to Project features and to the Project itself were studied and analyzed with reference to national policies and goals, especially those expressed in the National Environmental Policy Act and the Federal water resource development legislation under which the Project was planned. Each possible course of action was evaluated as to its possible economic, technical, social, and overall environmental consequences to determine the tradeoffs necessary to accommodate all national policies and interests. Some alternatives may tend to protect more of the present and tangible environmental amenities than the proposed Project will preserve. However, no alternative or combination of alternatives will afford greater protection of the environmental values while accomplishing the other Project goals and objectives.

h. I conclude, therefore, that the proposed Project will be the most effective means of meeting national goals and is consistent in serving the public interest by including provisions to protect and enhance the environment. I also conclude that the recommended plan is the environmentally preferable plan.

4. *Recommendations*—Having concluded that the proposed Cape Cod Water Resources Restoration Project uses all practicable means, consistent with other essential considerations of the national policy, to meet the goals established in the National Environmental Policy Act, that the Project will thus serve the overall public interest, that the final EIS has been prepared, reviewed, and accepted in accordance with the provisions of the National Environmental Policy Act as implemented by Departmental regulations for the preparation of environmental impact statements, and that the Project meets the needs of the Project's sponsoring local organizations, I propose to implement the Cape Cod Water Resources Restoration Project.

Christine Clarke,

State Conservationist, Natural Resources Conservation Service, U.S. Department of Agriculture.

[FR Doc. E6–21847 Filed 12–20–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

The Secretary of Agriculture's Determination of the Primary Purpose of the Commonwealth of Massachusetts' Small Renewables Initiative Program

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of determination.

SUMMARY: The Natural Resources Conservation Service (NRCS) is providing public notice that the Secretary of Agriculture has determined the cost-share payments made under the Commonwealth of Massachusetts' Small Renewables Initiative Program are primarily for the purpose of protecting or restoring the environment. NRCS was assigned technical and administrative responsibility for reviewing the Commonwealth of Massachusetts' Program and making appropriate recommendations for the Secretary's determination of primary purpose. This determination is in accordance with Section 126 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 126), and permits recipients of cost-share payments to exclude from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Mr. Philip F. Holahan, Deputy Executive Director and General Counsel, Massachusetts Technology Collaborative, 75 North Drive, Westborough, Massachusetts 01581 or Branch Chief, Environmental Improvement Programs, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Under section 126(a)(10) of the Internal Revenue Code, gross income does not include the ''excludable portion'' of payments received under any program of a State under which payments are made to individuals primarily for the purpose of protecting or restoring the environment. In general, a cost-share payment for selected conservation practices is exempt from Federal taxation, if it meets three tests: (1) It was for a capital expense, (2) it does not substantially increase the operator's annual income from the property for which it is made, and (3) the Secretary of Agriculture certified that the payment was made primarily for conserving soil and water resources, protecting or restoring the environment, improving forests, or providing habitat for wildlife.

The Secretary of Agriculture evaluates a conservation program on the basis of criteria set forth in 7 CFR part 14, and makes a ''primary purpose'' determination for the payments made under the program. The objective of the determinations made under part 14 is to provide maximum conservation, environmental, forestry improvement, and wildlife benefits to the general public from the operation of applicable programs. Final determinations are made on the basis of program, category of practices, or individual practices. Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury determines if the payments made under the conservation program substantially increase the annual income derived from the property benefited by the payments.

Determination

The Massachusetts Technology Park Corporation uses the Small Renewables Initiative Program to offer cost-share incentives for the installation of small renewable energy systems, totaling not more that 10kw of capacity per installation. The objectives of the program are met through a market-based incentive structure that is designed to provide a level of support that will promote the installation of renewables, and encourage a paradigm shift toward increased adoption of renewable energy technologies and energy-efficient, high-performance design elements in Massachusetts buildings. By promoting renewable energy sources, the Small Renewables Initiative Program reduces the negative environmental impacts generally associated with more traditional methods of electricity generation.

As provided for by Section 126 of the Internal Revenue Code, the Secretary examined the authorizing legislation, regulations, and operating procedures regarding the identified programs. In accordance with the criteria setout in 7 CFR part 14, the Secretary has determined the cost-share payments made under the Commonwealth of Massachusetts' Small Renewables Initiative Program are primarily for the purpose of protecting and restoring the environment.

A ''Record of Decision'' has been prepared and is available upon request from the Branch Chief, Environmental Improvement Programs, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Washington, DC 20250.

Signed in Washington, DC.

Arlen L. Lancaster,

Chief.

[FR Doc. E6–21845 Filed 12–20–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–806)

Silicon Metal from Brazil: Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 3, 2006, the Department of Commerce initiated and the International Trade Commission instituted a sunset review of the antidumping duty order on silicon metal from Brazil. As a result of the review, the International Trade Commission determined that revocation of the order on silicon metal from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Therefore, the Department of Commerce is revoking this antidumping duty order.

EFFECTIVE DATE: February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Janis Kalnins or Minoo Hatten, Office 5, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1392 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by this order is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this order is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the

HTS item numbers are provided for convenience and for customs purposes, the written description remains dispositive.

Background

On February 16, 2001, the Department of Commerce (the Department) published the continuation of the antidumping duty order on silicon metal from Brazil resulting from the first sunset review of this order. *See Continuation of Antidumping Duty Orders on Silicon Metal From Brazil and China and on Silicomanganese From Brazil and China, and Continuation of Suspended Antidumping Duty Investigation on Silicomanganese From Ukraine*, 66 FR 10669 (February 16, 2001). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218, the Department initiated and the International Trade Commission (ITC) instituted the second sunset review of the order on silicon metal from Brazil on January 3, 2006. *See Initiation of Five–Year (Sunset) Reviews*, 71 FR 91 (January 3, 2006); *Institution of Five–Year Reviews Concerning the Antidumping Duty Orders on Silicon Metal from Brazil and China*, 71 FR 138 (January 3, 2006). As a result of its review, the Department found that revocation of the order would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margin likely to prevail were the order to be revoked. *See Silicon Metal from the People's Republic of China and Brazil: Final Results of the Expedited Reviews of the Antidumping Duty Orders*, 71 FR 26334 (May 4, 2006). On December 11, 2006, the ITC determined pursuant to section 751(c) of the Act that revocation of the antidumping duty order on silicon metal from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Silicon Metal From Brazil and China*, 71 FR 71554 (December 11, 2006), and ITC Publication 3892 (December 2006) entitled *Certain Silicon Metal from Brazil and China: Investigation Nos. 731–TA–471 and 472 (Second Review).*

Determination to Revoke

As a result of the determination by the ITC that revocation of this antidumping duty order is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department is revoking the order on silicon metal from Brazil, pursuant to section 751(d) of the Act. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is February 16, 2006 (i.e., the fifth anniversary of the date of publication in the **Federal Register** of the notice of continuation of the antidumping duty order). The Department will notify U.S. Customs and Border Protection to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after February 16, 2006, the effective date of revocation of the antidumping duty order. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five–year sunset review and notice are in accordance with section 751(d)(2) and published pursuant to section 777(i)(1) of the Act.

Dated: December 14, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–21848 Filed 12–20–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–806)

Silicon Metal from the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on silicon metal from the People's Republic of China (''PRC'') would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing this notice of continuation of the antidumping duty order.

EFFECTIVE DATE: December 21, 2006.

FOR FURTHER INFORMATION CONTACT: FOR INFORMATION CONTACT: Michael Quigley or Juanita Chen, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–4047 or (202) 482–1904.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2006, the Department initiated sunset reviews of the antidumping duty orders on silicon metal from the PRC and Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 71 FR 91 (January 3, 2006). As a result of its review, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of margins likely to prevail were the orders to be revoked. *See Silicon Metal from the People's Republic of China and Brazil: Final Results of the Expedited Reviews of the Antidumping Duty Orders*, 71 FR 26334 (May 4, 2006). On November 15, 2006, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on silicon metal from the PRC would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, but that revoking the existing antidumping duty order on silicon metal from Brazil would not. *See Silicon Metal From Brazil and China*, 71 FR 71554 (December 11, 2006); *see also Silicon Metal From Brazil and China*, (Investigations Nos. 731–TA–471 and 472 (Second Review)), Publication 3892 (December 2006).

Scope of the PRC Order

The merchandise covered by this order is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as a chemical product, but is commonly referred to as a metal. HTSUS items numbers are provided for convenience and customs purposes. The written description of the scope remains dispositive.

In response to a request from petitioners, on February 3, 1993, the Department clarified that silicon metal, with a high aluminum content and a silicon content of at least 89.00 percent but less than 99.99 percent, is within the scope of the order. *See Notice of Scope Rulings*, 58 FR 27542 (May 10, 1993).

Determination

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty

order on silicon metal from the PRC would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on silicon metal from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this order not later than November 2011.

This five-year (sunset) review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: December 14, 2006.

David M. Spooner

Assistant Secretary for Import Administration

[FR Doc. E6–21849 Filed 12–20–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–848

Notice of Extension of the Preliminary Results of New Shipper Antidumping Duty Reviews: Silicon Metal from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 21, 2006.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Mike Quigley, 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) 482–1386 and (202) 482–4047, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Shanghai Jinneng International Trade Co., Ltd. (''Shanghai Jinneng'') and Jiangxi Gangyuan Silicon Industry Co., Ltd. (''Jiangxi Gangyuan'') in accordance with 19 CFR 351.214(c) for new shipper reviews of the antidumping duty order on silicon metal from the People's Republic of China. On July 25, 2006, the Department found that the requests for review with respect to Shanghai Jinneng and Jiangxi Guangyuan met all of the regulatory requirements set forth in 19 CFR 351.214(b) and initiated these new shipper antidumping duty reviews covering the period June 1, 2005, through May 30, 2006. *See Silicon Metal From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 42084 (July 25, 2006).

Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214(i)(2).

The Department has determined that the review is extraordinarily complicated as the Department must gather additional publicly available information on surrogate values to use for a highly complex and technical process involving specialized inputs, evaluate the complex corporate structures of both respondents, issue additional supplemental questionnaires, and conduct verifications of both respondents. Based on the timing of the case and the additional information that must be gathered and verified, the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. Accordingly, the Department is extending the time limit for the completion of the preliminary results of the new shipper reviews of Shanghai Jinneng and Jiangxi Guangyuan by 120 days from the original January 14, 2007, deadline. The preliminary results for both new shipper reviews will now be due May 14, 2007, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). The final results will, in turn, be due 90 days after the date of issuance of the preliminary results, unless extended.

This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: December 14, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–21851 Filed 12–20–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In–Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 21, 2006.

FOR FURTHER INFORMATION CONTACT: Maura Jeffords or Eric Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–3146 or 6071, respectively.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in–quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period July 1, 2006, through September 30, 2006.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in–quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an

in–quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: December 12, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN–QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
25 European Union Member States[3]	European Union Restitution Payments	$ 0.00	$ 0.00
Canada	Export Assistance on Certain Types of Cheese	$ 0.31	$ 0.31
Norway	Indirect (Milk) Subsidy	$ 0.00	$ 0.00
	Consumer Subsidy	*$ 0.00*	*$ 0.00*
	Total	$ 0.00	$ 0.00
Switzerland	Deficiency Payments	$ 0.00	$ 0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 25 member states of the European Union are: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

[FR Doc. E6–21883 Filed 12–20–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121506B]

Endangered Species; File No. 1420–01

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Dr. Doug Peterson (Permit Holder and Principal Investigator), Warnell School of Forest Resources (Fisheries Division), University of Georgia, Athens, GA 30602 (File No. 1420–01) has been issued a modified permit to conduct scientific research on shortnose sturgeon (*Acipenser brevirostrum*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Brandy Hutnak, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 10, 2005, notice was published in the **Federal Register** (70 FR 68398) that a request for a scientific research permit to take shortnose sturgeon had been submitted by Dr. Doug Peterson. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Dr. Peterson is authorized to conduct a study of shortnose sturgeon in the Altamaha River, Georgia, to collect information on the status of the population of shortnose sturgeon in the Altamaha River and Estuary. The goals and methods employed in the modification will be consistent with the original permit and provide critical data on stock status, life history, and survival rates as well as to identify specific habitat requirements of the various life stages of shortnose sturgeon in the Altamaha River.

In his initial application, Dr. Peterson's request for an annual take of 200 adults and juvenile shortnose sturgeon was based on previous studies that suggested the Altamaha River population contained less than 1,000 total individuals. After 2 years of study, Dr. Peterson made two revised estimates supporting 5,000 and 6,320 individuals respectively in the Altamaha River. Therefore, to obtain a more meaningful population estimate with a reasonable confidence interval, Dr. Peterson is authorized to increase the number of shortnose to be marked and released annually to 1,000, an increase of 800 sturgeon. Additionally, 12 adult shortnose sturgeon annually (from the 1000 per year above) are permitted in the take for sex ratio determination by laparoscopic methods and for performing blood work. The remaining adult and juvenile fish (up to 30 total) scheduled to receive an internal radio-sonic tracking transmitter, are also authorized to be examined laparoscopically for sex ratio verification. Lastly, the annual incidental lethal take of adult or juvenile sturgeon is increased from 0 to 2 animals.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 18, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–21861 Filed 12–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121506A]

Endangered and Threatened Species; Initiation of a Status Review under the Endangered Species Act for the Atlantic White Marlin

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

ACTION: Notice of initiation of a status review under the Endangered Species Act (ESA); request for information.

SUMMARY: We, NMFS, announce the initiation of a status review for the Atlantic white marlin (*Tetrapturus albidus*), and we solicit information on the status of and threats to the species.

DATES: Information regarding the status of and threats to the Atlantic white marlin must be received by February 20, 2007.

ADDRESSES: You may submit information on the Atlantic white marlin by any one of the following methods:

- Fax: 727–824–5309, Attention: Dr. Stephania Bolden
- Mail: Information on paper, disk or CD-ROM should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701
- E-mail: *whitemarlin.info@noaa.gov*. Include in the subject line the following identifier: white marlin review

FOR FURTHER INFORMATION CONTACT: Dr. Stephania Bolden, NMFS, Southeast Regional Office (727) 824–5312, or Ms. Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

We conducted a status review of the Atlantic white marlin under the ESA and published a 12-month determination that listing was not warranted (67 FR 57204; September 9, 2002). As a result of subsequent litigation and a settlement agreement with the Center for Biological Diversity, we agreed to initiate a status review following the 2006 stock assessment by the International Commission for the Conservation of Atlantic Tunas (ICCAT); the 2006 ICCAT white marlin stock assessment can be found at *www.iccat.int*. Atlantic white marlin are billfish (Family: Istiophoridae) found throughout tropical and temperate waters of the Atlantic Ocean and adjacent seas. White marlin, along with other billfish and tunas, are managed internationally by the member nations of the ICCAT. At this time we announce commencement of a new status review for the Atlantic white marlin, and request information regarding the status of and threats to the species, pursuant to the terms of the aforementioned settlement agreement.

Request for Information

To support this status review, we are soliciting information relevant to the status of and threats to the species, including, but not limited to, information on the following topics: (1) historical and current abundance and distribution of the species and congeners throughout the species range; (2) potential factors for the species' decline throughout the species range; (3) rates of capture and release of the species from both recreational and commercial fisheries; (4) post-release mortality; (5) life history information (size/age at maturity, growth rates, fecundity, reproductive rate/success, etc.); (6) morphological and molecular information to assist in determining taxonomy of this species and congeners; (7) threats to the species, particularly: (a) present or threatened destruction, modification, or curtailment of habitat or range; (b) over-utilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation, (d) inadequacy of existing regulatory mechanisms, or (e) other natural or manmade factors affecting its continued existence; and (8) any ongoing conservation efforts for the species. See **DATES** and **ADDRESSES** for guidance on and deadlines for submitting information.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 18, 2006.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06–9812 Filed 12–18–06; 2:45 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/ Overseas Environmental Impact Statement for the Southern California Range Complex (including the San Clemente Island Range Complex) and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and Presidential Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions), the Department of the Navy (DON) announces its intent to prepare an Environmental Impact Statement (EIS)/Overseas Environmental Impact Statement (OEIS) to evaluate the potential environmental effects associated with conducting naval readiness activities in the Southern California (SOCAL) Range Complex (to include the San Clemente Island (SCI) Range Complex). DON proposes to support current, emerging, and future military activities in the SOCAL and SCI Range Complexes as necessary to achieve and sustain Fleet readiness, including military training; research, development, testing, and evaluation (RDT&E) of systems, weapons, and platforms; and investment in range resources and range infrastructure, all in furtherance of our statutory obligations under Title 10 of the United States Code governing the roles and responsibilities of the DON.

On August 17, 1999, DON initiated the NEPA process for an EIS/OEIS evaluating the impacts of DON activities at the SCI Range Complex by publishing a Notice of Intent in the **Federal Register** (64 FR 44716–44717). DON has determined that it is appropriate to include within the scope of the SOCAL Range Complex EIS/OEIS the previously announced environmental analysis of military activities on the SCI Range. Therefore, this Notice of Intent supersedes and withdraws the August 17, 1999, notice of the DON's intent to prepare an EIS/OEIS for the SCI Range Complex.

Dates and Addresses: Three public scoping meetings will be held to receive oral and written comments on environmental concerns that should be addressed in the EIS/OEIS. Public scoping meetings will be held on the following dates, at the times and locations specified:

1. Wednesday, January 29, 2007, 6 p.m.–8 p.m., Cabrillo Marine Aquarium Library, 3720 Stephen M. White Drive, San Pedro, CA.

2. Tuesday, January 30, 2007, 6 p.m.–8 p.m., Oceanside Civic Center Library, 330 North Coast Highway, Oceanside, CA.

3. Wednesday, January 31, 2007, 6 p.m.–8 p.m., Coronado Public Library, 640 Orange Avenue, Coronado, CA.

Each meeting will consist of an information session staffed by DON representatives, to be followed by a presentation describing the proposed action and alternatives. Written comments from interested parties are encouraged to ensure that the full range of relevant issues is identified. Members of the public can contribute oral or written comments at the scoping meetings, or written comments by mail or fax, subsequent to the meetings. Additional information concerning the scoping meetings is available at: *http://www.SocalRangeComplexEIS.com.*

FOR FURTHER INFORMATION CONTACT: Ms. Diori Kreske, Naval Facilities Engineering Command Southwest, 2585 Callaghan Hwy., San Diego, CA 92136–5198; telephone 619–556–8706.

SUPPLEMENTARY INFORMATION: The SOCAL Range Complex is a suite of land ranges and training areas, surface and subsurface ocean ranges and operating areas, and military airspace that is centrally managed and controlled by DON agencies. The complex geographically encompasses near-shore and offshore surface ocean operating areas and extensive military Special Use Airspace generally located between Marine Corp Base Camp Pendleton to the north and San Diego to the south. It extends more than 600 miles to the southwest in the Pacific Ocean covering approximately 120,000 square nautical miles of ocean area. The SCI Range Complex is geographically encompassed by the SOCAL Range Complex. The SCI Range Complex consists of land ranges and training areas on San Clemente Island and certain near-island ocean operating areas and ranges.

Collectively, the components of the SOCAL Range Complex provide the space and resources needed to execute training events across the training continuum, from individual skills training to complex joint exercises. The mission of the SOCAL Range Complex is to support DON, Marine Corps, and joint (multi-service) training by maintaining and operating range facilities and by providing range services and support to the Pacific Fleet, U.S. Marine Corps Forces Pacific, and other forces and military activities. The Commander, Fleet Forces Command and Commander, U.S. Pacific Fleet are responsible for operations, maintenance, training, and support of this national training asset.

Naval transformation initiatives determine current, emerging, and future requirements for training access to the SOCAL Range Complex. Moreover, recent world events have placed the U.S. military on heightened alert in the defense of the U.S., and in defense of allied nations. At this time, the U.S. military, and specifically the U.S. Navy, is actively engaged in anti-terrorism efforts around the globe. Title 10 U.S. Code Section 5062 directs the Chief of Naval Operations to maintain, train, and equip all naval forces for combat so that they are capable of winning wars, deterring aggression, and maintaining freedom of the seas. To achieve this level of readiness, naval forces must have access to ranges, operating areas (OPAREAs), and airspace where they can develop and maintain skills for wartime missions and conduct RDT&E of naval weapons systems. As such, DON ranges, OPAREAs, and airspace must be maintained and/or enhanced to accommodate necessary training and testing activities in support of national security objectives.

The proposed action, therefore, responds to DON's need to: (1) Maintain baseline operations at current levels; (2) accommodate future increases in operational training tempo in the SOCAL and SCI Range Complexes as necessary to support the deployment of naval forces; (3) achieve and sustain readiness in ships and squadrons so that the DON can quickly surge significant combat power in the event of a national crisis or contingency operation and consistent with Fleet Readiness Training Plan; (4) support the acquisition, testing, training, and introduction into the Fleet of advanced platforms and weapons systems; and, (5) implement investments to optimize range capabilities required to adequately support required training. DON will meet these needs and maintain the long-term viability of the SOCAL Range Complex, while protecting human health and the environment.

Three alternatives will be evaluated in the EIS/OEIS, including: (1) The No Action Alternative, comprised of baseline operations and support of existing range capabilities; (2) Alternative 1 comprised of the No Action Alternative plus additional operations on upgraded/-modernized existing ranges; and (3) Alternative 1 plus new ranges, new dedicated capabilities, additional increased tempo (beyond Alternative 1) to optimize training in support of future contingencies. The analysis will address potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, and socioeconomics, as well as other environmental issues that could occur with the implementation of the DON's proposed actions and alternatives.

The DON is initiating the scoping process to identify community concerns and local issues to be addressed in the EIS/OEIS. Federal, State, and local agencies, and interested parties are encouraged to provide oral and/or written comments to the DON that identify specific issues or topics of environmental concern that should be addressed in the EIS/OEIS. Written comments must be postmarked by February 8, 2007, and should be mailed to: Naval Facilities Engineering Command Southwest, 2585 Callaghan Hwy., San Diego, CA 92136–5198; Attention: Ms. Diori Kreske, telephone 619–556–8706.

Dated: December 13, 2006.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, Federal Legislative Liaison Officer.

[FR Doc. E6–21802 Filed 12–20–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 22, 2007. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before February 20, 2007.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachael Potter, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the

public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: December 15, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Impact Evaluation of Mandatory-Random Student Drug Testing.

Abstract: The purpose of this study is to evaluate the impact of mandatory-random student drug testing on participation in school activities and on substance use. Data collection includes student surveys, school-level records of substance-related incidents, school-level drug testing results, and interviews of school staff. Data will be collected from 52 study schools (randomly assigned to treatment and control groups) and external schools. Additional Information: In keeping with the No Child Left Behind Act of 2001 (Pub. L. No. 107–110), which requires that education decision makers base instructional practices and programs on scientifically based research, the Impact Evaluation of Mandatory-Random Student Drug Testing is designed to use rigorous methods to estimate the impacts of this drug-prevention strategy.

Frequency: Survey 5x, records.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 13,034.

Burden Hours: 6,660.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3244. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–21812 Filed 12–20–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 22, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 15, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Extension.

Title: Social and Character Development Research Program National Evaluation.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 11,381.

Burden Hours: 8,294.

Abstract: The SACD National Evaluation will evaluate seven school-based interventions designed to promote positive social and character development among elementary school children and determine, through randomized field trials, whether the interventions produce meaningful effects. The primary research questions are: (1) Do the SACD interventions affect social-emotional competence, school climate, positive and negative behavior, and academic achievement?; (2) For whom, and under what conditions, are the interventions effective?; and (3) What is the process by which the

interventions affect children's behavior? Data collection activities will include the administration of surveys to children, teachers, principals, and primary caregivers; school observations, and school record abstractions over a three year period: from 2004–05 to 2006–07. Results from the evaluation will provide education professionals with information they need to make informed choices about which intervention to adopt.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3214. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–21814 Filed 12–20–06; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public teleconference meetings for the working subcommittees of the Technical Guidelines Development Committee.

DATES & TIMES: Tuesday, January 9, 2007, 10:30 a.m. EST; Thursday, January 11, 2007, 11 a.m. EST; Friday, January 12, 2006, 11 a.m. EST: Tuesday, January 23, 2007, 10:30 a.m. EST; Friday, January 26, 2007, 11 a.m. EST; Thursday, February 1, 2007, 11 a.m. EST; Tuesday, February 6, 2007, 10:30 a.m. EST; Friday, February 9, 2007, 11 a.m. EST; Thursday, February 15, 2007, 11 a.m. EST; Tuesday, February 20, 2007, 10:30 a.m. EST; Friday, February 23, 2007, 11 a.m. EST; Thursday, March 1, 2007, 11 a.m. EST; Friday, March 2, 2007, 11 a.m. EST; Tuesday, March 6, 2007, 10:30 a.m. EST; Friday, March 9, 2007, 11 a.m. EST; Thursday, March 15, 2007, 11 a.m. EDT; Friday, March 16, 2007, 11 a.m. EDT; Tuesday, March 20, 2007, 10:30 a.m. EDT.

STATUS: Audio recordings of working subcommittee teleconferences are available upon conclusion of each meeting at: *http://vote.nist.gov/subcomm_mtgs.htm*. Agendas for each teleconference will be posted one week in advance of each meeting at the above Web site.

SUMMARY: The Technical Guidelines Development Committee (the ''Development Committee'') was established to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather and analyze information on relevant issues. These working subcommittees propose resolutions to the TGDC on best practices, specifications and standards. Specifically, NIST staff and Committee members will meet via the above scheduled teleconferences to review and discuss progress on tasks defined in resolutions passed at Development Committee plenary meetings. The resolutions define technical work tasks for NIST that will assist the Committee in developing recommendations for voluntary voting system guidelines. The Committee met in its seventh plenary session on December 4–5, 2007. Documents and transcriptions of Committee proceedings are available at: *http://vote.nist.gov/PublicHearingsandMeetings.html.*

SUPPLEMENTARY INFORMATION: The Technical Guidelines Development Committee (the ''Development Committee'') was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The information gathered and analyzed by the working subcommittees during their teleconference meetings will be reviewed at future Development Committee plenary meetings.

CONTACT INFORMATION: Allan Eustis 301–975–5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after subcommittee teleconference meetings, written comments should be addressed to the contact person indicated above, or to *voting@nist.gov.*

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 06–9822 Filed 12–19–06; 10:43 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 15, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–3564–012

Applicants: FPL Energy Wyman IV LLC

Description: FPL Energy Wyman IV LLC submits a Notice of Change in material Facts by FPL Energy Wyman IV LLC and Request for Waiver of 30-day notice requirement.

Filed Date: 12/06/2006

Accession Number: 20061206–5003

Comment Date: 5 p.m. Eastern Time on Wednesday, December 27, 2006.

Docket Numbers: ER07–43–001

Applicants: Arizona Public Service Company

Description: Arizona Public Service Company request to Revise its Proposed Effective date to January 31, 2007 for its 10/26/06 Notice of Cancellation.

Filed Date: 12/11/2006

Accession Number: 20061208–5071

Comment Date: 5 p.m. Eastern Time on Tuesday, January 02, 2007.

Docket Numbers: ER07–90–001

Applicants: New York State Electric & Gas Corporation

Description: New York State Gas and Electric Corporation submits Supplement to Rate Schedule FERC No. 117.

Filed Date: 12/12/2006

Accession Number: 20061214–0008

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2007.

Docket Numbers: ER07–91–001

Applicants: New York State Electric & Gas Corporation

Description: New York State Electric and Gas Corporation submits Supplement to Rate Schedule FERC No. 72 .

Filed Date: 12/12/2006

Accession Number: 20061214–0007

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2007.

Docket Numbers: ER07–225–000

Applicants: Direct Commodities Trading Inc.

Description: Direct Commodities Trading Inc submits its Notice of Cancellation of its FERC Electric Tariff Rate Schedule FERC No. 1.

Filed Date: 11/16/2006

Accession Number: 20061120–0200

Comment Date: 5 p.m. Eastern Time on Tuesday, December 26, 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. E6–21782 Filed 12–20–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0445; FRL–8259–2]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request: NESHAP for Site Remediation (Renewal); EPA ICR Number 2062.03, OMB Control Number 2060–0534

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR which is abstracted below, describes the nature of the information collection and its expected burden and cost.

DATES: Additional comments may be submitted on or before January 22, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0445, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention Desk Officer for EPS, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For questions about this ICR, contact Zofia Kosim, Air Enforcement Division, Office Civil Enforcement, Mail Code 2242A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; phone number: (202) 564–8733; fax number: (202) 564–0068; e-mail address: *kosim.zofia@epa.gov*. Refer to EPA ICR Number 2062.03.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 21, 2006, (71 FR 35652), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under docket ID number EPA–OECA–2006–0445, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1927.

Use EPA's electronic docket and comments system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above. Please note that EPA's policy that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Site Remediation (Renewal).

ICR Numbers: EPA ICR Number 2062.03, OMB Control Number 2060–0534.

ICR Status: This ICR is scheduled to expire on December 31, 2006. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB

control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Environmental Protection Agency (EPA) is required under section 111 of the Clean Air Act, as amended, to collect data. The information will be used by Agency enforcement personnel to (1) Identify existing sources subject to these standards; (2) ensure that Best Demonstrated Technology is being properly applied; and (3) ensure that the emission control devise is being properly operated and maintained on a continuous basis. In addition, records and reports are necessary to enable the EPA to identify those site remediation facilities that may not be in compliance with these standards. Based on reported information, the EPA can decide which facilities should be inspected and what records or processes should be inspected at the facilities. The records that site remediation facilities maintain would indicate to the EPA whether the personnel are operating and maintaining control equipment properly. The type of data required is principally emissions data (through parametric monitoring) and would not be confidential. If any information is submitted to the EPA for which a claim of confidentiality is made, the information would be safeguarded according to the Agency policies set forth in 40 CFR, chapter 1, part 2, subpart B.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 219 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Site remediation facilities.

Estimated Number of Respondents: 286.

Frequency of Response: On occasion and semiannually.

Estimated Total Annual Hour Burden: 125,027.

Estimated Total Annual Cost: $582,000 for operating and maintenance costs. There are no capital/startup costs associated with this ICR.

Change in Estimates: There is a decrease in hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is not due to any program changes. Over the past three years, the respondents completed those activities required to achieve initial compliance. Such activities are more burdensome than the burden associated with the rule requirements for continuing compliance as addressed by this ICR. Hence, there is a decrease in burden.

Dated: December 13, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–21892 Filed 12–20–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL229–2; FRL–8259–4]

Notice of Prevention of Significant Deterioration Final Determination for City of Springfield

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that on November 22, 2006, the Environmental Appeals Board (EAB) of the EPA dismissed with predjudice a petition for review of a federal Prevention of Significant Deterioration (PSD) permit issued to City of Springfield, Illinois, by the Illinois Environmental Protection Agency (IEPA).

DATES: The effective date for the EAB's decision is November 22, 2006. Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of *December 21, 2006.*

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Constantine Blathras at (312) 886–0671.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air and Radiation Division, Air Programs Branch, Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/.*

SUPPLEMENTARY INFORMATION:

Notification of EAB Final Decision

The IEPA, acting under authority of a PSD delegation agreement, issued a PSD permit to the City of Springfield on August 10, 2006, granting approval to construct a new 250 megawatt coal-fired electric generating unit at the City of Springfield's existing power plant in Sangamon County, Illinois. On September 12, 2006, the Sierra Club filed a petition for review of the conditions of the Prevention of Significant Deterioration Permit No. 167120AAO (Application No. 041 10050) which was issued to the City of Springfield, lllinois. On November 17, 2006, the Sierra Club voluntarily withdrew its petition for review in this matter and requested that the EAB enter an order dismissing its petition for review in this matter with prejudice. The Sierra Club requested dismissal because the parties had reached an agreement that obviated the need for further litigation. On November 22, 2006, the EAB granted the Sierra Club's motion and the petition for review was dismissed with prejudice.

Dated: December 12, 2006.

Bharat Mathur,

Deputy Regional Administrator, Region 5.

[FR Doc. E6–21888 Filed 12–20–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2004–0032; FRL–8259–1]

RIN 2040–AE76

Notice of Availability of Final 2006 Effluent Guidelines Program Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final 2006 Effluent Guidelines Program Plan.

SUMMARY: EPA establishes national technology-based regulations known as effluent guidelines and pretreatment standards to reduce pollutant discharges from categories of industry discharging directly to waters of the United States or discharging indirectly through Publicly Owned Treatment Works (POTWs). The Clean Water Act (CWA) sections 301(d), 304(b), 304(g), and 307(b) require EPA to annually review these effluent guidelines and pretreatment standards.

This notice presents EPA's 2006 review of existing effluent guidelines and pretreatment standards. It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). This notice also presents the final 2006 Effluent Guidelines Program Plan (''final 2006 Plan''), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. CWA section 304(m) requires EPA to biennially publish such a plan after public notice and comment. The Agency published the preliminary 2006 Plan on August 29, 2005 (70 FR 51042). This notice also provides EPA's preliminary thoughts concerning its 2007 annual reviews under CWA sections 301(d), 304(b), 304(g) and 307(b) and solicits comments, data and information to assist EPA in performing these reviews. EPA intends to continue a detailed study of the steam electric power generating industry and start detailed studies for the following industrial sectors: the coal mining industry, the health services industry, and the coalbed methane industry, which is part of the oil and gas extraction industry. Finally, after two public comment periods, this notice discusses how EPA incorporates elements from the draft Strategy for National Clean Water Industrial Regulations (Strategy) into its effluent guidelines reviews and planning.

ADDRESSES: Submit your comments, data and information for the 2007 annual review, identified by Docket ID No. EPA–HQ–OW–2006–0771, by one of the following methods:

(1) *www.regulations.gov.* Follow the on-line instructions for submitting comments.

(2) E-mail: *OW-Docket@epa.gov*, Attention Docket ID No. EPA–HQ–OW–2006–0771.

(3) Mail: Water Docket, Environmental Protection Agency, Mailcode: 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2006–0771. Please include a total of 3 copies.

(4) Hand Delivery: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2006–0771. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW–2006–0771. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the index at *www.regulations.gov.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Key documents providing additional information about EPA's annual reviews and the final 2006 Effluent Guidelines Program Plan include the following:

- Interim Detailed Study Report for the Steam Electric Power Generating Point Source Category, EPA–821–R–06–015, DCN 3401;
- Final Report: Pulp, Paper, and Paperboard Detailed Study, EPA–821–R–06–016, DCN 3400;
- Final Engineering Report: Tobacco Products Processing Detailed Study, EPA–821–R–06–017, DCN 3395; and
- Technical Support Document for the 2006 Effluent Guidelines Program Plan, EPA–821–R–06–018, DCN 3402.

FOR FURTHER INFORMATION CONTACT: Mr. Carey A. Johnston at (202) 566–1014 or *johnston.carey@epa.gov*, or Ms. Jan Matuszko at (202) 566–1035 or *matuszko.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Is This Document Organized?

The outline of this notice follows.

I. General Information
II. Legal Authority
III. What Is the Purpose of This **Federal Register** Notice?
IV. Background
V. EPA's 2006 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)
VI. EPA's 2007 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)
VII. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards
VIII. The Final 2006 Effluent Guidelines Program Plan Under Section 304(m)
IX. Status of ''Strategy for National Clean Water Industrial Regulations'' and EPA's Effluent Guidelines Reviews and Planning

I. General Information

A. Does This Action Apply to Me?

This notice simply provides a statement of the Agency's effluent guidelines review and planning processes and priorities at this time, and does not contain any regulatory requirements.

B. What Should I Consider as I Prepare My Comments for EPA for the 2007 Review?

1. Submitting Confidential Business Information

Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In

addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Legal Authority

This notice is published under the authority of the CWA, 33 U.S.C. 1251, *et seq.*, and in particular sections 301(d), 304(b), 304(g), 304(m), 306, and 307(b), 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316, and 1317.

III. What Is the Purpose of This Federal Register Notice?

This notice presents EPA's 2006 review of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 304(g) and 307(b). It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). This notice also presents the final 2006 Effluent Guidelines Program Plan (''final 2006 Plan''), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. CWA section 304(m) requires EPA to biennially publish such a plan after public notice and comment. The Agency published the preliminary 2006 Plan on August 29, 2005 (70 FR 51042). This notice also provides EPA's preliminary thoughts concerning its 2007 annual reviews under CWA sections 301(d), 304(b), 304(g) and 307(b) and solicits comments, data and information to assist EPA in performing these reviews. Finally, after two public comment periods, this notice discusses how EPA incorporates elements from the draft Strategy for National Clean Water Industrial Regulations (Strategy) into its effluent guidelines reviews and planning.

IV. Background

A. What Are Effluent Guidelines and Pretreatment Standards?

The CWA directs EPA to promulgate effluent limitations guidelines and standards that reflect pollutant reductions that can be achieved by categories or subcategories of industrial point sources using specific technologies. See CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the waters of the United States (direct dischargers), the effluent limitations guidelines and standards promulgated by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. See CWA sections 301(a), 301(b), and 402. For sources that discharge to POTWs (indirect dischargers), EPA promulgates pretreatment standards that apply directly to those sources and are enforced by POTWs and State and Federal authorities. See CWA sections 307(b) and (c).

1. Best Practicable Control Technology Currently Available (BPT)—CWA Sections 301(b)(1)(A) & 304(b)(1)

EPA defines Best Practicable Control Technology Currently Available (BPT) effluent limitations for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD^5), total suspended solids, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501). EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants. See Appendix A to part 423. All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed, and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate. See CWA section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes, or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—CWA Sections 301(b)(2)(E) & 304(b)(4)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with Best Conventional Pollutant Control Technology (BCT) for discharges from existing industrial point sources. In addition to considering the other factors specified in section 304(b)(4)(B) to establish BCT limitations, EPA also considers a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in 1986. See 51 FR 24974 (July 9, 1986).

3. Best Available Technology Economically Achievable (BAT)—CWA Sections 301(b)(2)(A) & 304(b)(2)

For toxic pollutants and non-conventional pollutants, EPA promulgates effluent guidelines based on the Best Available Technology Economically Achievable (BAT). See CWA section 301(b)(2)(A), (C), (D) and (F). The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and other such factors as the EPA Administrator deems appropriate. See CWA section

304(b)(2)(B). The technology must also be economically achievable. See CWA section 301(b)(2)(A). The Agency retains considerable discretion in assigning the weight accorded to these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—CWA Section 306

New Source Performance Standards (NSPS) reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (i.e., conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—CWA Section 307(b)

Pretreatment Standards for Existing Sources (PSES) are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

6. Pretreatment Standards for New Sources (PSNS)—CWA Section 307(c)

Like PSES, Pretreatment Standards for New Sources (PSNS) are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their facilities the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. What Are EPA's Review and Planning Obligations Under Sections 301(d), 304(b), 304(g), 304(m), and 307(b)?

1. EPA's Review and Planning Obligations Under Sections 301(d), 304(b), and 304(m)—Direct Dischargers

Section 304(b) requires EPA to review its existing effluent guidelines for direct dischargers each year and to revise such regulations ''if appropriate.'' Section 304(m) supplements the core requirement of section 304(b) by requiring EPA to publish a plan every two years announcing its schedule for performing this annual review and its schedule for rulemaking for any effluent guideline selected for possible revision as a result of that annual review. Section 304(m) also requires the plan to identify categories of sources discharging non-trivial amounts of toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or NSPS under section 306. See CWA section 304(m)(1)(B); S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31 (indicating that section 304(m)(1)(B) applies to ''non-trivial discharges.''). Finally, under section 304(m), the plan must present a schedule for promulgating effluent guidelines for industrial categories for which it has not already established such guidelines, providing for final action on such rulemaking not later than three years after the industrial category is identified in a final Plan.[1] See CWA section 304(m)(1)(C). EPA is required to publish its preliminary Plan for public comment prior to taking final action on the plan. See CWA section 304(m)(2).

In addition, CWA section 301(d) requires EPA to review every five years the effluent limitations required by CWA section 301(b)(2) and to revise them if appropriate pursuant to the procedures specified in that section. Section 301(b)(2), in turn, requires point sources to achieve effluent limitations reflecting the application of the best available technology economically achievable (for toxic pollutants and non-conventional pollutants) and the best conventional pollutant control technology (for conventional pollutants), as determined by EPA under sections 304(b)(2) and 304(b)(4), respectively. For nearly three decades, EPA has implemented sections 301 and 304 through the promulgation of effluent limitations guidelines, resulting in regulations for 56 industrial categories. See *E.I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 113 (1977). Consequently, as part of its annual review of effluent limitations guidelines under section 304(b), EPA is also reviewing the effluent limitations they contain, thereby fulfilling its obligations under sections 301(d) and 304(b) simultaneously.

2. EPA's Review and Planning Obligations Under Sections 304(g) and 307(b)—Indirect Dischargers

Section 307(b) requires EPA to revise its pretreatment standards for indirect dischargers (''from time to time, as control technology, processes, operating methods, or other alternatives change.'' See CWA section 307(b)(2). Section 304(g) requires EPA to annually review these pretreatment standards and revise them ''if appropriate.'' Although section 307(b) only requires EPA to review existing pretreatment standards ''from time to time,'' section 304(g) requires an annual review. Therefore, EPA meets its 304(g) and 307(b) review requirements by reviewing all industrial categories subject to existing categorical pretreatment standards on an annual basis to identify potential candidates for revision.

Section 307(b)(1) also requires EPA to promulgate pretreatment standards for pollutants not susceptible to treatment by POTWs or that would interfere with the operation of POTWs, although it does not provide a timing requirement for the promulgation of such new pretreatment standards. EPA, in its discretion, periodically evaluates indirect dischargers not subject to categorical pretreatment standards to identify potential candidates for new pretreatment standards. The CWA does not require EPA to publish its review of pretreatment standards or identification of potential new categories, although EPA is exercising its discretion to do so in this notice.

EPA intends to repeat this publication schedule for future pretreatment standards reviews (e.g., EPA will publish the 2007 annual pretreatment standards review in the notice

[1] EPA recognizes that one court—the U.S District Court for the Central District of California—has found that EPA has a duty to promulgate effluent guidelines within three years for new categories identified in the Plan. See NRDC *et al.* v. EPA, No. 04–8307, 2006 WL 1834260 (C.D. Ca, June 27, 2006). However, EPA continues to believe that the mandatory duty under section 304(m)(1)(c) is limited to providing a schedule for concluding the effluent guidelines rulemaking—not necessarily promulgating effluent guidelines—within three years, and is considering whether to appeal this decision.

containing the Agency's 2007 annual review of existing effluent guidelines and the preliminary 2008 Plan). EPA intends that these contemporaneous reviews will provide meaningful insight into EPA's effluent guidelines and pretreatment standards program decision-making. Additionally, by providing a single notice for these and future reviews, EPA hopes to provide a consolidated source of information for the Agency's current and future effluent guidelines and pretreatment standards program reviews.

V. EPA's 2006 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)

A. What Process Did EPA Use To Review Existing Effluent Guidelines and Pretreatment Standards Under CWA Section 301(d), 304(b), 304(g), and 307(b)?

1. Overview

In its 2006 annual review, EPA reviewed all industrial categories subject to existing effluent limitations guidelines and pretreatment standards, representing a total of 56 point source categories and over 450 subcategories. This review consisted of a screening level review of all existing industrial categories based on the hazard associated with discharges from each category and other factors identified by EPA as appropriate for prioritizing effluent guidelines and pretreatment standards for possible revision. For categories prioritized based on the screening-level review, EPA conducted further review—a ''detailed study'' of two categories (i.e., Steam Electric Power Generation and Pulp, Paper, and Paperboard categories—and a less intensive ''prioritized category review'' of eleven categories—in order to determine whether it would be appropriate to identify these categories for effluent guidelines rulemaking. EPA also took a closer look at several stakeholder identified categories to determine whether they warranted additional review. Together, these reviews discharged EPA's obligations to annually review both existing effluent limitations guidelines for direct dischargers under CWA sections 301(d) and 304(b) and existing pretreatment standards for indirect dischargers under CWA sections 304(g) and 307(b).

Based on this review, and in light of the effluent guidelines rulemakings and detailed studies currently in progress based on prior annual reviews and other events, EPA is not identifying any existing categories for effluent guidelines rulemaking at this time. EPA does, however, intend to conduct more focused detailed reviews in the 2007 and 2008 annual reviews of the effluent guidelines for the following categories: Steam Electric Power Generating (Part 423), Coal Mining (Part 434), Oil and Gas Extraction category (Part 435) (only to assess whether to revise the limits to include Coal Bed Methane extraction as a new subcategory), and Hospitals (Part 460).[2] As part of its detailed study of the Coal Bed Methane extraction industry, EPA plans to seek approval for an Information Collection Request (ICR) to gather data from the industry. See Sections V.B.2 and VII.D.

2. How did EPA's 2005 annual review influence its 2006 annual review of point source categories with existing effluent guidelines and pretreatment standards?

In view of the annual nature of its reviews of existing effluent guidelines and pretreatment standards, EPA believes that each annual review can and should influence succeeding annual reviews, e.g., by indicating data gaps, identifying new pollutants or pollution reduction technologies, or otherwise highlighting industrial categories for additional scrutiny in subsequent years. During its 2005 annual review, which concluded in September 2005, EPA started detailed studies of the existing effluent guidelines and pretreatment standards for two industrial categories: Pulp, Paper, and Paperboard (Part 430) and Steam Electric Power Generating (Part 423). In addition, EPA identified eleven other priority industrial categories as candidates for further study in the 2006 reviews based on the toxic discharges reported to the Toxics Release Inventory (TRI) and Permit Compliance System (PCS). EPA published the findings from its 2005 annual review with its preliminary 2006 Plan (August 29, 2005; 70 FR 51042), making the data collected available for public comment. Docket No. EPA–HQ–OW–2004–0032. EPA used the findings, data and comments on the 2005 annual review to inform its 2006 annual review. The 2006 review also built on the previous reviews by continuing to use the screening methodology, incorporating some refinements to assigning discharges to categories and updating toxic weighting factors used to estimate potential hazards of toxic pollutant discharges. In its 2006 reviews, EPA completed its detailed study of the Pulp and Paper industry. EPA intends to continue its detailed study of the Steam Electric industry in its 2007 annual review.

3. What actions did EPA take in performing its 2006 annual reviews of existing effluent guidelines and pretreatment standards?

a. Screening-Level Review

The first component of EPA's 2006 annual review consisted of a screening-level review of all industrial categories subject to existing effluent guidelines or pretreatment standards. As a starting point for this review, EPA examined screening-level data from its 2005 annual reviews. In its 2005 annual reviews, EPA focused its efforts on collecting and analyzing data to identify industrial categories whose pollutant discharges potentially pose the greatest hazard to human health or the environment because of their toxicity (i.e., highest estimates of toxic-weighted pollutant discharges). In particular, EPA ranked point source categories according to their discharges of toxic and non-conventional pollutants (reported in units of toxic-weighted pound equivalent or TWPE), based primarily on data from TRI and PCS. EPA calculated the TWPE using pollutant-specific toxic weighting factors (TWFs). Where data are available, these TWFs reflect both aquatic life and human health effects. For each facility that reports to TRI or PCS, EPA multiplies the pounds of discharged pollutants by pollutant-specific TWFs. This calculation results in an estimate of the discharged toxic-weighted pound equivalents, which EPA then uses to assess the hazard posed by these toxic and non-conventional pollutant discharges to human health or the environment. EPA repeated this process for the 2006 annual reviews using the most recent TRI data (2003). EPA also examined the potential usability of PCS data (2002) for evaluating nutrient discharges and discovered several complications in calculating the pollutant load attributed to nutrients. EPA intends to pursue means for improving the data review for nutrients discharges in future effluent guidelines reviews. The full description of EPA's methodology for the 2006 screening-level review is presented in the final Technical Support Document (TSD) for the 2006 Plan (*see DCN 3402) and in the Docket* (*see* EPA–HQ–OW–2004–0032) accompanying this notice.

[2] Based on available information, hospitals consist mostly of indirect dischargers for which EPA has not established pretreatment standards. As discussed in Section VII.D, EPA is including hospitals in its review of the Health Services Industry, a potential new category for pretreatment standards. As part of that process, EPA will review the existing effluent guidelines for the few direct dischargers in the category.

EPA is continuously investigating and solicits comment on how to improve its analyses. EPA made a few such improvements to the screening-level review methodology from the 2005 to the 2006 annual review. As part of the 2006 screening level review, EPA corrected the PCSLoads2002 and TRIReleases2002 databases, by addressing issues raised in comments (e.g., updating TWFs and average POTW pollutant removal efficiencies for a number of pollutants) and collecting additional information from individual facilities that report to TRI or PCS. EPA also started a process for conducting a peer review of its development and use of TWFs (*see* DCN 03333).

EPA also continued to use the quality assurance project plan (QAPP) developed for the 2005 annual review to document the type and quality of data needed to make the decisions in this annual review and to describe the methods for collecting and assessing those data (*see* EPA–HQ–OW–2004–0032–0050). EPA used the following document to develop the QAPP for this annual review: ''EPA Requirements for QA Project Plans (QA/R–5), EPA–240–B01–003.'' Using the QAPP as a guide, EPA performed extensive quality assurance checks on the data used to develop estimates of toxic-weighted pollutant discharges (i.e., verifying 2003 discharge data reported to TRI and the 2002 discharges of nutrients reported to PCS) to determine if any of the pollutant discharge estimates relied on incorrect or suspect data. For example, EPA contacted facilities and permit writers to confirm and, as necessary, corrected TRI and PCS data for facilities that EPA had identified in its screening-level review as the significant dischargers of nutrients and of toxic and non-conventional pollution.

Based on this methodology, EPA prioritized for potential revision industrial categories that offered the greatest potential for reducing hazard to human health and the environment. EPA assigned those categories with the lowest estimates of toxic-weighted pollutant discharges a lower priority for revision (i.e., industrial categories marked ''3'' in the ''Findings'' column in Table V–1).

In order to further focus its inquiry during the 2006 annual review, EPA did not prioritize for potential revision categories for which effluent guidelines had been recently promulgated or revised, or for which effluent guidelines rulemaking was currently underway (i.e., industrial categories marked ''1'' in the ''Findings'' column in Table V–1). For example, EPA excluded facilities that are associated with the Chlorine and Chlorinated Hydrocarbon (CCH) Manufacturing effluent guidelines rulemaking (formerly known as the ''Vinyl Chloride and Chlor-Alkali Manufacturing'' effluent guidelines rulemaking) currently underway, subtracting the pollutant discharges from these facilities in its 2006 hazard assessment of the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) and Inorganic Chemicals point source categories to which CCH facilities belong.

Additionally, EPA applied less scrutiny to industrial categories for which EPA had promulgated effluent guidelines or pretreatment standards within the past seven years. EPA chose seven years because this is the time it customarily takes for the effects of effluent guidelines or pretreatment standards to be fully reflected in pollutant loading data and TRI reports (in large part because effluent limitations guidelines are often incorporated into NPDES permits only upon re-issuance, which could be up to five years after the effluent guidelines or pretreatment standards are promulgated). Because there are 56 point source categories (including over 450 subcategories) with existing effluent guidelines and pretreatment standards that must be reviewed annually, EPA believes it is important to prioritize its review so as to focus on industries where changes to the existing effluent guidelines or pretreatment standards are most likely to be needed. In general, industries for which new or revised effluent guidelines or pretreatment standards have recently been promulgated are less likely to warrant such changes. However, in cases where EPA becomes aware of the growth of a new industrial activity within a category for which EPA has recently revised effluent guidelines or pretreatment standards, or where new concerns are identified for previously unevaluated pollutants discharged by facilities within the industrial category, EPA would apply more scrutiny to the category in a subsequent review. EPA identified no such instance during the 2006 annual review.

EPA also did not prioritize for potential revision at this time categories for which EPA lacked sufficient data to determine whether revision would be appropriate. For industrial categories marked ''5'' in Table V–1, EPA lacks sufficient information on the magnitude of the toxic-weighted pollutant discharges associated with these categories. EPA will seek additional information on the discharges from these categories in the next annual review in order to determine whether a detailed study is warranted. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of an industrial category. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study. See the appropriate section in the TSD for the 2006 Plan (DCN 3402) for EPA's data needs for these industrial categories. For industrial categories marked ''4'' in Table V–1, EPA has sufficient information on the toxic-weighted pollutant discharges associated with these categories to start a detailed study of these industrial categories in the 2007 annual review. EPA intends to use the detailed study to obtain information on hazard, availability and cost of technology options, and other factors in order to determine if it would be appropriate to identify the category for possible effluent guidelines revision. In the 2007 annual review, EPA will conduct detailed studies of four such categories.

As part of its 2006 annual review, EPA also considered the number of facilities responsible for the majority of the estimated toxic-weighted pollutant discharges associated with an industrial activity. Where only a few facilities in a category accounted for the vast majority of toxic-weighted pollutant discharges (i.e., categories marked ''(2)'' in the ''Findings'' column in Table V–1), EPA did not prioritize the category for potential revision. EPA believes that revision of individual permits for such facilities may be more effective than a revised national effluent guideline at addressing the hazard from the category because individual permit requirements can be better tailored to these few facilities and may take considerably less time to establish than a national effluent guideline. The Docket accompanying this notice lists facilities that account for the vast majority of the estimated toxic-weighted pollutant discharges for particular categories (*see* DCN 3402). For these facilities, EPA will consider identifying pollutant control and pollution prevention technologies that will assist permit writers in developing facility-specific, technology-based effluent limitations on a best professional judgment (BPJ) basis. In future annual reviews, EPA also intends to re-evaluate each category based on the information available at the time in

order to evaluate the effectiveness of the BPJ permit-based support.

EPA received comments urging the Agency to encourage and recognize voluntary efforts by industry to reduce pollutant discharges, especially when the voluntary efforts have been widely adopted within an industry and the associated pollutant reductions have been significant. EPA agrees that industrial categories demonstrating significant progress through voluntary efforts to reduce hazard to human health or the environment associated with their effluent discharges would be a comparatively lower priority for effluent guidelines or pretreatment standards revision, particularly where such reductions are achieved by a significant majority of individual facilities in the industry. Although during this annual review EPA could not complete a systematic review of voluntary pollutant loading reductions, EPA's review did indirectly account for the effects of successful voluntary programs because any significant reductions in pollutant discharges should be reflected in discharge monitoring and TRI data, as well as any data provided directly by commenters, that EPA used to assess the toxic-weighted pollutant discharges.

EPA also received comment urging the Agency to consider the availability and affordability of pollution-control technology in prioritizing effluent guidelines for revision. As was the case in the 2004 annual review, EPA was unable to gather the data needed to perform a comprehensive screening-level analysis of the availability of treatment or process technologies to reduce toxic pollutant wastewater discharges beyond the performance of technologies already in place for all of the 56 existing industrial categories. However, EPA believes that its analysis of hazard is useful for assessing the effectiveness of existing technologies because it focuses on the amount and significance of pollutants that are still discharged following existing treatment. Therefore, by assessing the hazard associated with discharges from all existing categories in its screening-level review, EPA was indirectly able to assess the possibility that further significant reductions could be achieved through new pollution control technologies for these categories. In addition, EPA directly assessed the availability of technologies for certain industries that were prioritized for a more in-depth review as a result of the screening level analysis. See DCN 3400, DCN 3401, and Sections 6–18 of the TSD for the final 2006 Plan.

Similarly, EPA could not identify a suitable screening-level tool for comprehensively evaluating the affordability of treatment or process technologies because the universe of facilities is too broad and complex. EPA could not find a reasonable way to prioritize the industrial categories based on readily available economic data. In the past, EPA has gathered information regarding technologies and economic achievability through detailed questionnaires distributed to hundreds of facilities within a category or subcategory for which EPA has commenced rulemaking. Such information-gathering is subject to the requirements of the Paperwork Reduction Act (PRA), 33 U.S.C. 3501, *et seq.* The information acquired in this way is valuable to EPA in its rulemaking efforts, but the process of gathering, validating and analyzing the data can consume considerable time and resources. EPA does not think it appropriate to conduct this level of analysis for all point source categories in conducting an annual review. Rather, EPA believes it is appropriate to set priorities based on hazard and other screening-level factors identified above, and to directly consider the availability and affordability of technology only in conducting the more in-depth reviews of prioritized categories. For these prioritized categories, EPA may conduct surveys or other PRA data collection activities in order to better inform the decision on whether effluent guidelines are warranted. Additionally, EPA is working to develop tools for directly assessing technological and economic achievability as part of the screening-level review in future annual reviews under section 301(d), 304(b), and 307(b) (*see* DCN 2490). EPA solicits comment on how to best identify and use screening-level tools for assessing technological and economic achievability on an industry-specific basis as part of future annual reviews.

In summary, through its screening level review, EPA focused on those point source categories that appeared to offer the greatest potential for reducing hazard to human health or the environment, while assigning a lower priority to categories that the Agency believes are not good candidates for effluent guidelines or pretreatment standards revision at this time. This enabled EPA to concentrate its resources on conducting more in-depth reviews of certain industries prioritized as a result of the screening level analysis, as discussed below (*see* section V.A.3.b and c). EPA also took a closer look at industries identified by stakeholders as high-priority, as discussed below (*see* section V.A.3.d).

b. Detailed Study of Two Categories

In addition to conducting a screening-level review of all existing categories, EPA did a detailed study of two categories prioritized for further review: The Pulp, Paper and Paperboard point source category and the Steam Electric Generating point source category. For these industries, EPA gathered and analyzed additional data on pollutant discharges, economic factors, and technology issues during its 2006 annual review. EPA examined: (1) Wastewater characteristics and pollutant sources; (2) the pollutants driving the toxic-weighted pollutant discharges; (3) treatment technology and pollution prevention information; (4) the geographic distribution of facilities in the industry; (5) any pollutant discharge trends within the industry; and (6) any relevant economic factors.

EPA relied on many different sources of data including: (1) The 2002 U.S. Economic Census; (2) TRI and PCS data; (3) contacts with reporting facilities to verify reported releases and facility categorization; (4) contacts with regulatory authorities (states and EPA regions) to understand how category facilities are permitted; (5) NPDES permits and their supporting fact sheets; (6) monitoring data included in facility applications for NPDES permit renewals (Form 2C data); (7) EPA effluent guidelines technical development documents; (8) relevant EPA preliminary data summaries or study reports; (9) technical literature on pollutant sources and control technologies; (10) information provided by industry including industry conducted survey and sampling data; and (11) stakeholder comments (*see* DCN 3403).

During its 2005 annual review, EPA started detailed studies for the Pulp, Paper, and Paperboard point source category (Part 430) and the Steam Electric Power Generating point source category (Part 423) because they represent the two industrial point source categories with the largest combined TWPE based on EPA's ranking approach. EPA continued these detailed studies during its 2006 annual review. EPA had planned to complete both of these detailed studies in its 2006 annual review, prior to publication of the final 2006 Plan. However, EPA was only able to complete the detailed study for the Pulp, Paper, and Paperboard category. See section V.B.2.a. EPA is continuing its detailed study of the Steam Electric Power Generating category during the 2007 and 2008 annual reviews. See section V.B.2.b.

c. Further Review of Prioritized Categories

In addition to identifying two categories for detailed studies during the 2005 review, EPA identified 11 additional categories with potentially high TWPE discharge estimates. For a listing of these categories and EPA's 2005 review of them, see Preliminary 2005 Review of Prioritized Categories of Industrial Dischargers, EPA 821–B–05–004. EPA continued its review of these categories during 2006, using the same types of data sources used for the detailed studies but in less depth. EPA did not conduct a detailed study for these categories at this time because EPA needed additional information regarding these industries to determine whether a detailed study would be warranted. See the appropriate section in the TSD for the 2006 Plan (DCN 3402) for EPA's data needs for these industrial categories. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of an industrial category. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study.

d. Public Comments

EPA's annual review process considers information provided by stakeholders regarding the need for new or revised effluent limitations guidelines and pretreatment standards. To that end, EPA established a docket for its 2005 annual review with the publication of the final 2004 Plan to provide the public with an opportunity to provide additional information to assist the Agency in its 2005 annual review. EPA's Regional Offices and stakeholders identified other industrial point source categories as potential candidates for revision of effluent limitations guidelines and pretreatment standards based on potential opportunities to improve implementation of these regulations or because of their pollutant discharges (*see* EPA–HQ–OW–2004–0032–0020). Additionally, EPA solicited public comment on its preliminary 2006 Plan, as well as data and information to assist the Agency in its 2006 annual review. See August 29, 2005 (70 FR 51042). EPA received a total of 61 public comments on its 2005 annual review and the preliminary 2006 Plan. These public comments prompted EPA to review, in particular, the following categories: Organic Chemicals, Pesticides and Synthetic Fibers (Part 414), Coal Mining (Part 434); and Oil and Gas Extraction (Part 435) (only to assess whether to include the Coal Bed Methane extraction industry as a potential new category). See Section V.B.4.

B. What Were EPA's Findings From Its 2006 Annual Review for Categories Subject to Existing Effluent Guidelines and Pretreatment Standards?

1. Screening-Level Review

In its 2006 screening level review, EPA considered hazard—and the other factors described in section A.3.a. above—in prioritizing effluent guidelines for potential revision. See Table V–1 for a summary of EPA's findings with respect to each existing category; see also the Final 2006 TSD. Out of categories subject only to the screening level review in 2006, EPA is not identifying any for effluent guidelines rulemaking at this time, based on the factors described in section A.3.a above and in light of the effluent guidelines rulemakings and detailed studies in progress based on prior annual reviews and other events.

2. Detailed Studies

As a result of its 2005 screening-level review, EPA started detailed studies of two industrial point source categories with existing effluent guidelines and pretreatment standards: Pulp, Paper, and Paperboard (Part 430) and Steam Electric Power Generating (Part 423). During detailed study of these categories, EPA first investigated whether the pollutant discharges reported to TRI and PCS for 2002 accurately reflect the current discharges of the industry. EPA also performed an in-depth analysis of the reported pollutant discharges, and technology innovation and process changes in these industrial categories. Additionally, EPA considered whether there are industrial activities not currently subject to effluent guidelines or pretreatment standards that should be included with these existing categories, either as part of existing subcategories or as potential new subcategories. EPA used these detailed studies to determine whether EPA should identify in the final 2006 Plan one or both of these industrial categories for possible revision of their existing effluent guidelines and pretreatment standards.

Based on the information available to EPA at this time, EPA was able to complete its detailed study for the Pulp, Paper, and Paperboard category, finding that revision of the effluent guidelines for this category is not appropriate at this time for the reasons discussed below. However, EPA was unable to complete its detailed study for the Steam Electric Power Generating category. Consequently, EPA is continuing its study of the Steam Electric Power Generating category in its 2007 and 2008 annual reviews to determine whether to identify this category for effluent guidelines revision. EPA's reviews of these two categories are described below.

a. Pulp, Paper, and Paperboard (Part 430)

As a result of its 2005 screening-level review, EPA initiated a detailed study of the Pulp, Paper, and Paperboard point source category because it ranked highest in terms of toxic and non-conventional pollutant discharges among the industrial point source categories investigated in the screening-level analysis. Dioxins and dioxin-like compounds accounted for 91% of the combined TRI and PCS TWPE for this category in the 2005 screening-level analysis while polycyclic aromatic compounds (PACs), metals, and nitrates, not currently regulated by these effluent guidelines, accounted for an additional 7% of the category's total TWPE.[3] EPA issued a Preliminary Report: Pulp, Paper, and Paperboard Detailed Study (August 2005, EPA–821–B–05–007) along with the Preliminary 2006 Plan, describing its initial review of TRI and PCS data, information provided by industry and by States, and NPDES permits.

In the 2006 annual review, EPA obtained additional information and permits from States and industry including corrections for the TRI and PCS databases. All-in-all, EPA reviewed effluent discharge data for all 76 bleached papergrade kraft and sulfite mills, known collectively as the ''Phase I'' mills. EPA also reviewed effluent discharges for non-bleaching pulp mills, secondary (recycled) fiber mills, and paper and paperboard mills in eight subcategories (Subparts C and F through L), known collectively as the ''Phase II'' mills. EPA did not review in detail the three remaining dissolved kraft and dissolved sulfite mills (Subparts A and D), known as the ''Phase III'' mills. Because of the limited and declining number of facilities in Phase III, EPA believes that support to permit writers in establishing facility-specific effluent

[3] After additional analysis, including information provided in comments on EPA's preliminary Detailed Study (*see* DCN 02177), EPA determined that dioxins and dioxin-like compounds accounted for 81% of the combined TRI and PCS TWPE for this category.

limits based on their Best Professional Judgment (BPJ) is more appropriate than effluent guidelines rulemaking at this time. NPDES permits for Phase III mills will continue to include effluent limitations that reflect a determination of BAT based on BPJ or, if necessary, more stringent limitations to ensure compliance with applicable water quality standards.

The most recent changes to EPA's effluent limitations guidelines and pretreatment standards for this point source category, known as part of the ''Cluster Rules,'' were new limits for Phase I facilities in the Bleached Papergrade Kraft and Soda (Subpart B) and Papergrade Sulfite (Subpart E) subcategories (April 15, 1998; 63 FR 18504). EPA promulgated limits for dioxin, furan, chloroform, chlorinated phenolic compounds, and adsorbable organic halides (AOX). EPA provided reduced monitoring requirements for bleached papergrade kraft mills that employ totally chlorine free (TCF) bleaching and for certain segments of the Papergrade Sulfite subcategory. As part of the detailed study, EPA reviewed the implementation status of the Cluster Rules. Seven permits do not yet include Cluster Rule limits because the revised permits are either being contested or have not been reissued. Two permits allow for demonstration of compliance with the AOX limit at alternate monitoring locations (*see* DCN 3400).

EPA studied in detail how releases of dioxin and dioxin-like compounds are reported to PCS and TRI. Mills file Discharge Monitoring Reports (DMRs) with their permitting authority, usually the state, once a month or at other specified frequencies, as required by their permits. Each mill's NPDES permit specifies the pollutants to monitor and at what frequency. States enter mill-provided DMR data, both for bleach plant effluent monitoring and final effluent monitoring, into EPA's national PCS database. TRI requires that facilities report releases if they manufacture, process, or otherwise use more than 0.1 grams/year of dioxin and dioxin-like compounds. Mills report the mass discharged to surface waters (for facilities discharging directly to a receiving stream) or transferred to a POTW (for indirect dischargers). They are not, however, required to report releases less than 0.0001 gram/year (100 micrograms/year). Unlike NPDES permit compliance monitoring, TRI does not require facilities to measure waste stream pollutant concentrations. Instead, facilities may use emission factors, mass balances, or other engineering calculations to estimate releases. Facilities may estimate their releases using monitoring data collected prior to the year for which they are reporting discharges if they believe the data are representative of reporting year operations. Additionally, mills are only required to report to TRI the total mass of the 17 dioxin and dioxin-like compounds released to surface waters or POTWs but not the distribution of the 17 compounds, although they have different toxicities.

Only 15 mills report releases based on measured concentrations in their wastewater. EPA obtained mill-specific measured concentrations of the 17 dioxin and dioxin-like compounds from six out of the 15 mills that based their estimated 2002 discharges on measurements. For these six mills, all but 636 of the 226,444 TWPE for dioxin and dioxin-like compounds that they reported to TRI are based on measurements below the Method 1613B minimum level (ML). A method minimum level is the level or concentration at which the analytical system gives recognizable signals and an acceptable calibration point. The accuracy of concentrations measured below the Method 1613B ML is less certain than concentrations measured at or above the method ML. Traditionally in effluent guidelines rulemakings EPA establishes numerical effluent limits at or above the ML of the analytical method because individual measurements below the ML are not considered reliable enough for regulatory purposes.

NPDES permits require mills to monitor pollutants discharged and report the results to their state on a monthly basis or at other specified frequencies. The States, in turn, submit these data to PCS. Reporting of monitoring results measured at or below the method ML varies widely. These results may be reported as ''0,'' ''non-detect,'' ''less than ML,'' or a numeric value. The Cluster Rules require Phase I mills to monitor for the most toxic dioxin forms: 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) and 2,3,7,8-tetrachlorodibenzofuran (TCDF) in their bleach plant effluent. Some permit writers also require monitoring of TCDD in mill final effluent. In 2002, only one mill reported detecting TCDD in its final effluent. Since 2002, this mill has changed its operations and has not reported dioxin releases (*see* EPA–HQ–OW–2004–0032–0021). TCDD was not detected in bleach plant effluent above the Method 1613B ML at any of the 51 mills for which EPA has data for the period 2002 to 2004. TCDF was detected above the Method 1613B ML in bleach plant effluent at four bleached papergrade kraft mills and one papergrade sulfite mill. For the bleached papergrade kraft and soda (Subpart B) mills, all reported effluent discharge concentrations of TCDF were below the Daily Maximum BAT effluent guideline of 31.9 picograms/liter. For the papergrade sulfite (Subpart E) mills, the Daily Maximum BAT effluent guideline is expressed as ''<ML'', which means ''less than the minimum level specified in part 430.01(i)'' (i.e., 10 picograms/liter for TCDF). The owner of the papergrade sulfite mill, which reported concentrations of TCDF above the Method 1613B ML in its bleach plant effluent during 2002 and 2003, made changes to the mill, as required by the State of Washington, and subsequently reported no TCDF concentrations above the Method 1613B ML in its bleach plant effluent in 2004. Considering only reported discharges of TCDF with concentrations above the Method 1613B ML, EPA found a total of 4,395 TWPE measured in bleach plant effluents in 2002.

NPDES permit monitoring data show that as of 2004, bleach plant effluent concentrations meet the guidelines established in EPA's 1998 rulemaking. These guidelines are very close to or at the analytical method ML. Furthermore, nearly all of data underlying the estimated releases of dioxin and dioxin-like compounds reported to TRI is based on pollutant concentrations below the Method 1623B MLs, so that TRI-reported discharges of dioxin and dioxin-like compounds for this category are highly uncertain. Therefore, EPA found that additional or revised national categorical limitations for dioxin and dioxin-like compounds are not warranted at this time.

Metals discharges reported to TRI and PCS ranked second after dioxin and dioxin-like compounds in contributing to this category's TWPE. EPA analyzed the concentrations of metals in mill final effluent reported to either TRI or PCS. EPA reviewed the metals that were most significant in terms of their contribution to the total category TWPE (i.e., manganese, aluminum, lead, zinc, mercury, copper, arsenic, cadmium, chromium). For the two national databases, the largest reported metals discharges, in terms of TWPE, are aluminum (92,205 TWPE reported in PCS) and manganese (303,729 TWPE reported in TRI). Facilities report only annual mass discharges (pounds/year) to TRI. PCS includes monitoring data for only those metals with permit requirements. EPA identified 32 mills with NPDES effluent limits or monitoring requirements for metals, which included one or more of the following metals: aluminum, arsenic,

cadmium, chromium, copper, lead, manganese, mercury, and zinc. Because of these data limitations, EPA also obtained effluent monitoring data submitted with NPDES permit renewal applications (e.g., NPDES Permit Renewal Application (Form 2C) data). These data included concentrations for many metals from a variety of types of mills that may not specifically be subject to effluent limits or DMR monitoring.

In reviewing metals data for this industry EPA noted that the sources of metals in mill wastewaters vary by mill and by location. For example, some metals sources include source water, raw materials such as wood chips or pulp, and chemicals added for production processes or wastewater treatment. Metals concentrations in the final effluent were low, with most being near or below their method minimum level. Aluminum and manganese concentrations in the final effluent, while above their method minimum level, were at concentrations generally not considered treatable with end-of-pipe treatment technologies suitable for large mill effluent flows. EPA reviewed the facilities subject to metals permit limits; none of these mills operate an end-of-pipe treatment system designed to remove metals from wastewater. These facilities typically employ pollution prevention practices to maintain compliance with their metals permit limits.

EPA also reviewed metals pollution prevention technologies for mill wastewater through a review of NPDES permits and a literature search. Mills are adopting a number of pollution prevention technologies for preventing metals from entering their wastewaters, such as changing chemical purchasing practices and usage rates (*see* DCN 3400). These pollution prevention technologies are site-specific and reflect the unique combinations of factors at each mill (e.g., source of metals, processing operations including chemical purchasing practices and usage rates) and are not readily adaptable industry-wide.

EPA found that it would not be appropriate to identify the Pulp, Paper, and Paperboard point source category (Part 430) for possible effluent guidelines revision to address metals for the following reasons: (1) Metals concentrations in the final effluent were low, with most being near or below their method minimum level; (2) end-of-pipe treatment technologies for metals removal have not been well demonstrated on mill wastewaters; and (3) pollution prevention technologies are site-specific and reflect the unique combinations of factors at each mill and are not readily adaptable industry-wide.

EPA also reviewed the pollutant loads associated with polycyclic aromatic compounds (PACs) for this industrial point source category. For the 2005 screening-level analysis, EPA calculated the percentage of each PAC present in mill wastewater based on information provided by the National Council for Air and Stream Improvement (NCASI). NCASI's TRI-reporting guidance includes a table listing the concentrations of PAC compounds found in wastewaters for several types of pulping (kraft, bisulfite, chemi-thermo-mechanical, thermo-mechanical) based on a 1990 study. EPA used this distribution to calculate an adjusted TWF for the Pulp, Paper, and Paperboard point source category PACs by summing the product of each chemical's TWF and its percentage relative to the total PACs in mill wastewaters. In the **Federal Register** notice presenting the findings of the 2005 annual review, EPA requested more recent information on PACs discharged from these mills. NCASI provided comments elaborating on a study of 23 direct discharging mills in Quebec between 1998 and 2003. According to NCASI, all data results were below the minimum method detection limit for individual PACs. EPA also reviewed data submitted with NPDES permit renewal applications and did not find reported concentrations of PACs above method detection limits. This updated information supports the conclusion that releases of PACs reported to TRI are uncertain and that reported releases are based on estimates calculated using NCASI's guidance. As with dioxin and dioxin-like compounds, wastewater analyses for PACs reviewed by EPA indicate that discharges are at or below the minimum method detection limit. EPA therefore found that revisions to the effluent limitation guidelines and standards to address PACs are not warranted at this time.

EPA also investigated nitrogen (nitrate, nitrite, ammonia, total nitrogen) and phosphorus (phosphates) discharges from the Pulp, Paper, and Paperboard category. See DCN 3400. EPA requested additional information from the industry to confirm the reported discharges of nutrients. Wastewater discharged from pulp and paper processes typically does not contain sufficient nitrogen and phosphorus to operate a stable biological treatment system capable of reducing the organic (BOD_5) load. For this reason, mills typically add nitrogen and phosphorus to their treatment systems. Minimizing the discharge of total nitrogen and total phosphorus from pulp and paper mill wastewater treatment systems requires optimized nutrient supplementation and effective removal of suspended solids. EPA has not determined if these strategies are feasible for all mills. EPA found that end-of-pipe treatment technologies for nutrients removal have not been well demonstrated on mill wastewaters. For these reasons, EPA does not believe it is appropriate to identify this point source category for effluent guidelines rulemaking to address nutrients at this time.

For the reasons discussed above, EPA is not identifying the Pulp, Paper, and Paperboard point source category (Part 430) as a candidate for effluent guidelines revisions at this time. As with all categories subject to existing effluent guidelines, EPA will continue to examine this industrial category in future annual reviews to determine if revision of existing effluent guidelines may be appropriate.

b. Steam Electric Power Generating (Part 423)

EPA began a detailed study of the Steam Electric Power Generating point source category in the 2005 review because it ranked second-highest in terms of toxic and non-conventional toxic weighted pollutant discharges among the industrial point source categories investigated in the screening level analyses. EPA's screening-level analysis during the 2005 annual review was based primarily on information reported to TRI, PCS, and the U.S. Department of Energy's Energy Information Administration (EIA) for the year 2002. For the screening-level review, EPA also obtained and reviewed additional information to supplement that data, including industry-compiled data on the likely source and magnitude of the reported toxic dischargers.

The effluent limitations guidelines and standards for the Steam Electric Power Generating point source category apply to a subset of all entities comprising the electric power industry. Specifically, facilities regulated by the effluent guidelines are ''primarily engaged in the generation of electricity for distribution and sale which results primarily from a process utilizing fossil-type fuel (coal, oil, or gas) or nuclear fuel in conjunction with a thermal cycle employing the steam water system as the thermodynamic medium.'' See 40 CFR 423.10. Steam electric power generating facilities are primarily classified within SIC codes 4911, 4931 and 4939.

Effluent guidelines for direct dischargers were first promulgated for

this category in 1974 (39 FR 36186). In 1977, EPA promulgated pretreatment standards for facilities that discharge indirectly to POTWs (42 FR 15690). EPA's most recent revisions to the effluent guidelines and standards for this category were promulgated in 1982 (47 FR 52290).

EPA's detailed study of the Steam Electric Power Generating point source category has generally focused on investigating the sources of the large toxic weighted pollutant discharges and the potential for pollution control technologies and practices to reduce these discharges. EPA intends to use this information to determine whether effluent limitations for parameters currently regulated by the effluent guidelines need to be revised, or whether effluent limitations for other parameters should be added to the effluent guidelines.

One key objective of the detailed study is to better quantify the pollutant concentrations and mass released in wastewater discharges from steam electric facilities, and to identify the sources of the pollutants contributing significantly to the toxic weighted loadings. Wastestreams of interest include cooling water, ash-handling wastes, coal pile runoff, wet air pollution control device wastes, water treatment wastes, boiler blowdown, maintenance cleaning wastes, and other miscellaneous wastes. In particular, EPA seeks to determine typical wastewater volumes and pollutant concentrations for the individual process streams using readily available data. EPA also seeks to collect information on any new technologies or process changes for flow or pollutant reductions. EPA's efforts to obtain these data in the 2005 annual review included soliciting information in the **Federal Register** notice for the preliminary 2006 Plan (*see* 70 FR 51058), discussions with the key industry trade association (e.g., Utility Water Act Group), reviewing selected NPDES permits and fact sheets, and conducting in-depth analyses of PCS data.

Boron, aluminum and arsenic (three of the top five pollutants driving pollutant loadings) were not identified in previous effluent guidelines rulemakings as pollutants of concern. Further, previous effluent guidelines rulemakings specifically noted there was no correlation between total suspended solids, a pollutant parameter regulated by the effluent guidelines, and the effluent concentrations of these three pollutants. EPA notes that these three pollutants are mobile and there is some concern that they may be released from impoundment sludges/sediments to the liquid fraction and discharged directly to surface waters. EPA's Office of Research and Development (ORD) and the Office of Solid Waste (OSWER/OSW) are currently investigating the mobility of selenium, arsenic and mercury with respect to potential releases from landfills and liquid impoundments (*see* DCN 3401). Additionally, due to air emissions requirements under the Clean Air Interstate Rule and Clean Air Mercury Rule, increasing amounts of metals and nutrients are expected to be added to the process wastewaters. Based on the potential for cross-media transfer and uncertainties and data gaps regarding the pollutant discharges from this category, EPA is continuing its detailed study of this category to better understand the ultimate fate of these pollutant transfers to determine whether they are adequately controlled by existing water pollution control practices.

The current evaluation allowed EPA to identify targeted areas of concern for which EPA needs to collect additional data. The focus of further study will be narrower than the evaluation conducted for the 2006 annual review, and is expected to concentrate primarily on better characterizing pollutant sources and available pollution control technologies/practices for the pollutants responsible for the majority of the toxic weighted pollutant loadings from steam electric facilities. One aspect of this study will assess the significance of air-to-water cross media pollutant transfers (e.g., mercury and other metals, and nutrients) associated with air pollution controls. In conducting this additional study, EPA's Office of Water will coordinate its efforts with ongoing research and other activities being undertaken by other EPA offices, including ORD, OSWER/OSW, and the Office of Air Quality Planning and Standards (OAQPS) and Office of Atmospheric Programs (OAP) in the Office of Air and Radiation. The detailed study continuing in the 2007 and 2008 annual reviews will likely require new data generation such as wastewater sampling and/or an industry survey.

EPA also investigated certain activities not currently regulated by the steam electric effluent guidelines. Since 1982, there has been an increase in the amount of electricity supplied to the grid from facilities that use alternative fuel sources or which do not utilize the steam-water thermodynamic cycle to produce electricity. To address this, EPA evaluated processes and wastewater discharge characteristics for electric power generating facilities that use prime movers (engines) other than steam turbines (e.g., gas turbines); and steam electric power generating facilities using alternative fuel sources (i.e., non-fossil and non-nuclear fuels such as municipal waste, wood and agricultural wastes, landfill gas, etc.). EPA also reviewed available information for steam supply (i.e., non-electric generating) and certain other utility activities; and steam electric units co-located at manufacturing plants or other commercial facilities (also referred to as ''industrial non-utilities''). Based on the information in the record, EPA found that revising the applicability of Part 423 to include these facilities is not warranted at this time (*see* DCN 3401). In general, EPA could not accurately quantify the pollutant discharges from industrial operations that are not regulated by Part 423. For example, EPA had limited DMR data and process flow diagrams from these facilities to accurately quantify the pollutant discharges from industrial operations that are not regulated by Part 423. EPA intends to continue reviewing these operations in the 2007 and 2008 annual reviews to better characterize their wastewater pollutant discharges.

3. Results of Further Review of Prioritized Categories

During the 2005 annual review, EPA identified 11 categories with potentially high TWPE discharge estimates (i.e., industrial point source categories with existing effluent guidelines identified with ''(5)'' in the column entitled ''Findings'' in Table V–1, Page 51050 of the preliminary 2006 Plan). During the 2006 annual review EPA continued to collect and analyze hazard and technology-based information on these eleven industrial categories. EPA is not identifying any of these categories for an effluent guidelines rulemaking in this final 2006 Plan. The docket accompanying this notice presents a summary of EPA's findings on these eleven industrial categories (*see* DCN 3402), which are also summarized below.

EPA found that the following seven of these eleven industrial categories did not constitute a priority for effluent guidelines revision based on the hazard associated with their discharges (based on data available at this time): Fertilizer Manufacturing, Inorganic Chemicals, Nonferrous Metals Manufacturing, Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF), Petroleum Refining, Porcelain Enameling, and Rubber Manufacturing. EPA will continue to annually review these categories to assess whether revision of effluent guidelines for these categories

may be appropriate in light of any new data and Agency priorities at the time. Additionally, as requested, EPA will provide assistance to permitting authorities in better tailoring permit requirements for these categories. For an additional two of the eleven categories (Pesticide Chemicals, Plastic Molding and Forming) and Phase III facilities in the Pulp, Paper, and Paperboard category, EPA determined that national effluent guidelines (including categorical pretreatment standards) are not the best tools for establishing technology-based effluent limitations because most of the toxic and non-conventional pollutant discharges are from one or a few facilities in their respective industrial category. For facilities in these two categories and Phase III of the Pulp, Paper, and Paperboard category, EPA will provide assistance to permitting authorities, as requested, in identifying pollutant control and pollution prevention technologies for the development of technology based effluent limitations by best professional judgment (BPJ) on a facility specific basis. EPA lacks sufficient information on the magnitude of the toxic-weighted pollutant discharges associated with the remaining two categories. EPA will seek additional information on the discharges from the Ore Mining and Dressing and Textile Mills categories in the next annual review in order to determine whether a detailed study is warranted. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of an industrial category. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study. See the appropriate section in the TSD for the 2006 Plan (DCN 3402) for EPA's data needs for these industrial categories.

4. Other Category Reviews Prompted by Stakeholder Outreach

Following the publication of the findings of the 2004 and 2005 annual reviews in the final 2004 Plan and the preliminary 2006 Plan, EPA's Regional Offices and stakeholders identified the following three industrial point source categories as potential candidates for effluent guideline revision based on potential opportunities to improve efficient implementation of the national water quality program or because of the categories' pollutant discharges (*see* DCN 3403).

a. Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) Effluent Guidelines (Part 414)

As described in the notice containing the preliminary 2006 Plan, EPA began an evaluation of options for promoting water conservation through the use of mass-based limits as part of its 2006 annual review of existing effluent guidelines. EPA strongly supports water conservation and encourages all sectors, including municipal, industrial, and agricultural, to achieve efficient water use. EPA does not intend for its regulations to present a barrier to efficient water use in any industrial sector.

In the preliminary 2006 Plan, EPA requested comment on whether it should consider a rulemaking or other ways to allow permitting authorities to retain mass-based limits for direct dischargers based on current wastewater flows when such flows are lowered due to water conservation, in order to facilitate the prospective adoption of water conservation technologies. EPA received comments from industry, POTWs, and a public interest group. Industry and POTWs support revising the regulations to allow the retention of current mass-based limits and expressed concern that lowering the mass-based permit limits to reflect the lower flows associated with water conservation will result in permit violations and thus discourage water conservation. The public interest group objected to retaining current mass-based limits when flows are lowered because of the potential for acute toxicity effects on aquatic life in receiving streams that could result from increased pollutant concentrations.

Only one facility provided the data requested by EPA in the preliminary 2006 Plan to evaluate the potential need for such a rulemaking. EPA was not able to draw any conclusion from this data as this facility concurrently upgraded its wastewater treatment with advanced treatment technology (ultrafiltration technology) and implemented water conservation practices to reduce wastewater flow rates to the ultrafiltration technology equipment (*see* DCNs 3667, 3701, 4103). Consequently, EPA was not able to separate out the effect of water conservation practices alone on the facility's pollutant discharges. However, the facility's discharge data after the upgrade in wastewater treatment and implementation of water conservation practices do show lower pollutant mass discharges, more efficient and consistent pollutant removals, and compliance with its NPDES permit limits (*see* DCN 3701). No other such data were provided to the Agency for its review.

EPA's record supports the finding that for a variety of industrial sectors, well-operated and designed treatment systems treat wastewater with varying influent pollutant concentrations to the same effluent concentrations across a wide range of flows (*see* DCN 3702). This is due to the fact that wastewater treatment technologies operating within their design specifications are often limited solely by physical/chemical properties of the pollutants in the wastewater, and not necessarily by influent concentrations. Increasing influent pollutant concentrations to a properly designed and operated wastewater treatment system generally leads to increased wastewater treatment efficiency. Additionally, EPA's record supports the fact that water conservation resulting from pollution prevention practices such as changing from wet to dry manufacturing operations can prevent the generation of wastewater pollution and its introduction to wastewater treatment equipment. Moreover, EPA's record documents that the main drivers of water conservation are the economic considerations that result from high operating costs (e.g., water bills, pumping costs, wastewater sludge generation and disposal costs); and water source restrictions (e.g., widespread regional droughts, increasing water demands of urban populations). See DCN 3702. These findings are similar to the discussion in the preamble to the 1987 OCPSF final rule where EPA stated that concentration-based effluent guidelines do not discourage water conservation. In the OCPSF final rule EPA noted that ''water conservation is often practiced for a variety of sound reasons of efficiency and economy, and that wastewater treatment costs themselves may be substantially reduced by reducing the flow which must be treated. The resulting cost savings may outweigh any increased cost that arguably results from being required to treat the more concentrated stream to meet an effluent concentration limitation.'' See November 5, 1987 (52 FR 42555).

After a careful review of public comments and available data, EPA does not agree with public commenters that the OCPSF effluent guidelines inhibit water conservation. Consequently, EPA does not believe that revisions to the mass-based limits guidance for the

OCPSF effluent guidelines are warranted at this time.

b. Other Stakeholder Identified Industries

With the publication of the final 2004 Plan and the preliminary 2006 Plan, EPA solicited public comment to inform its 2006 annual review of existing effluent guidelines and pretreatment standards. Stakeholders commented that EPA should revise the existing effluent limitations guidelines for the Coal Mining (Part 434) and Oil and Gas Extraction (Part 435) point source categories. Based on these comments, EPA conducted an initial screening level review of these two categories, and found that more information is needed in order to determine whether to identify these categories for effluent guidelines rulemaking, for the reasons discussed below.

i. Coal Mining Point Source Category (Part 434)

EPA received public comment from States, industry, and a public interest group that urged EPA to consider revisiting the manganese limitations in the Coal Mining effluent guidelines (40 CFR Part 434). The State and industry commenters requested that EPA study whether additional flexibility is warranted for these manganese limitations. The public interest group commented that EPA should start a rulemaking and promulgate more stringent limitations for manganese, other metals, and other dissolved inorganic pollutants (e.g., chlorides, sulfates, TDS).

State and industry commentors cited the following factors in support of their comments: (1) New, more stringent coal mining reclamation bonding requirements on post-closure discharges; (2) low relative toxicity of manganese to aquatic communities as compared to other toxic metals in the coal mining discharges; and (3) treatment with chemical addition may complicate permit compliance, especially after a mine is closed. The public interest group referenced a study by EPA Region 5 on potential adverse impacts of the discharge of sulfates on aquatic life (*see* DCN 2487).

At this time, EPA does not have sufficient information to evaluate the merits of the factors cited by commenters. However, because of the potential for encouraging proper wastewater treatment, EPA will conduct a detailed study of the coal mining effluent guidelines in the 2007 and 2008 annual reviews. EPA will focus on issues related to manganese limits and pollutants not currently regulated by these regulations. EPA will re-evaluate these effluent guidelines taking into account, among other things, treatment technologies, toxicity of discharges, cost impacts to the industry, and bonding requirements. EPA has placed in the docket and solicits comment on a draft scope of work for this detailed study (*see* DCN 2488).

ii. Oil and Gas Extraction Point Source Category (Part 435)

EPA received comments from public interest groups urging EPA to promulgate effluent guidelines for the coalbed methane (CBM) extraction industry. Because the product extracted by the CBM industry—coal bed natural gas—is virtually identical to the conventional natural gas extracted by facilities subject to the effluent guidelines for Oil and Gas Extraction (40 CFR 435),[4] EPA found that the CBM extraction industry was reasonably considered a potential new subcategory of the Oil and Gas Extraction category. EPA therefore reviewed the Oil and Gas Extraction category to determine whether it may be appropriate to revise its applicability to include limits for CBM extraction.

In conducting this review, EPA found that it will need to gather more specific information as part of a detailed review of the coalbed methane industry in order to determine whether it would be appropriate to conduct a rulemaking to potentially revise the effluent guidelines for the Oil and Gas Extraction category to include limits for CBM. In particular, EPA needs more detailed information on the characteristics of produced water, as well as the technology options available to address such discharges. To aid in a better industrial profile of the CBM sector, EPA intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for their review and approval under the Paperwork Reduction Act (PRA), 33 U.S.C. 3501, *et seq.*, in the 2007 annual review. EPA will use this ICR to collect technical and economic information from a wide range of CBM operations (e.g., geographical differences in the characteristics of CBM produced waters, current regulatory controls, availability and affordability of treatment technology options). In designing this industry survey EPA expects to work closely with CBM industry representatives and other affected stakeholders. EPA solicits comment on the potential scope of this ICR. EPA may also supplement the survey data collection with CBM site visits and produced water sampling.

5. Summary of 2006 Annual Review Findings

In its 2006 annual review, EPA reviewed all categories subject to existing effluent guidelines and pretreatment standards in order to identify appropriate candidates for revision. Based on this review, and in light of effluent guidelines rulemakings and detailed studies currently in progress based on previous annual reviews, EPA is not identifying any existing categories for effluent guidelines rulemaking. EPA is, however, identifying four existing categories (Steam Electric Power Generating, Coal Mining, Oil and Gas Extraction, and Hospitals) for detailed studies in its 2007 and 2008 annual reviews.

A summary of the findings of the 2006 annual review are presented in Table V–1. This table uses the following codes to describe the Agency's findings with respect to each existing industrial category.

(1) Effluent guidelines or pretreatment standards for this industrial category were recently revised or reviewed through an effluent guidelines rulemaking or a rulemaking is currently underway.

(2) National effluent guidelines or pretreatment standards are not the best tools for establishing technology-based effluent limitations for this industrial category because most of the toxic and non-conventional pollutant discharges are from one or a few facilities in this industrial category. EPA will consider assisting permitting authorities in identifying pollutant control and pollution prevention technologies for the development of technology-based effluent limitations by best professional judgment (BPJ) on a facility-specific basis.

(3) Not identified as a hazard priority based on data available at this time.

(4) EPA intends to start or continue a detailed study of this industry in its 2007 and 2008 annual reviews to determine whether to identify the category for effluent guidelines rulemaking.

(5) Incomplete data available to determine whether to conduct a detailed study or identify for possible revision. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of the industrial category. This assessment provides an additional level of quality assurance on the reported pollutant

[4] Reflecting this similarity of product, both CBM extraction operations and conventional Oil and Gas extraction operations share the same SIC code. CBM operations simply constitute another process for extracting natural gas, and are therefore reasonably considered part of the Oil and Gas Extraction category. See DCN 3402, section 6.

discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study. See the appropriate section in the TSD for the 2006 Plan (DCN 3402) for EPA's data needs for this industrial category. EPA will conduct a prioritized category review in the next annual review in order to fill these data gaps.

TABLE V–1.—FINDINGS FROM THE 2006 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS PROMULGATED UNDER SECTION 301(D), 304(B), 304(G), AND 307(B)

No.	Industry category (listed alphabetically)	40 CFR part	Findings *
1	Aluminum Forming	467	(3)
2	Asbestos Manufacturing	427	(3)
3	Battery Manufacturing	461	(3)
4	Canned and Preserved Fruits and Vegetable Processing	407	(3)
5	Canned and Preserved Seafood Processing	408	(3)
6	Carbon Black Manufacturing	458	(3)
7	Cement Manufacturing	411	(3)
8	Centralized Waste Treatment	437	(1)
9	Coal Mining	434	(1) and (4)
10	Coil Coating	465	(3)
11	Concentrated Animal Feeding Operations (CAFO)	412	(1)
12	Concentrated Aquatic Animal Production	451	(1)
13	Copper Forming	468	(3)
14	Dairy Products Processing	405	(3)
15	Electrical and Electronic Components	469	(3)
16	Electroplating	413	(1)
17	Explosives Manufacturing	457	(3)
18	Ferroalloy Manufacturing	424	(3)
19	Fertilizer Manufacturing	418	(3)
20	Glass Manufacturing	426	(3)
21	Grain Mills	406	(3)
22	Gum and Wood Chemicals	454	(3)
23	Hospitals [5]	460	(4)
24	Ink Formulating	447	(3)
25	Inorganic Chemicals	415	(1) and (3)
26	Iron and Steel Manufacturing	420	(1)
27	Landfills	445	(1)
28	Leather Tanning and Finishing	425	(3)
29	Meat and Poultry Products	432	(1)
30	Metal Finishing	433	(1)
31	Metal Molding and Casting	464	(3)
32	Metal Products and Machinery	438	(1)
33	Mineral Mining and Processing	436	(3)
34	Nonferrous Metals Forming and Metal Powders	471	(3)
35	Nonferrous Metals Manufacturing	421	(3)
36	Oil and Gas Extraction	435	(1) and (4)
37	Ore Mining and Dressing	440	(5)
38	Organic Chemicals, Plastics, and Synthetic Fibers	414	(1) and (3)
39	Paint Formulating	446	(3)
40	Paving and Roofing Materials (Tars and Asphalt)	443	(3)
41	Pesticide Chemicals	455	(2)
42	Petroleum Refining	419	(3)
43	Pharmaceutical Manufacturing	439	(1)
44	Phosphate Manufacturing	422	(3)
45	Photographic	459	(3)
46	Plastic Molding and Forming	463	(2)
47	Porcelain Enameling	466	(3)
48	Pulp, Paper, and Paperboard	430	(2) and (3)
49	Rubber Manufacturing	428	(3)
50	Soaps and Detergents Manufacturing	417	(3)
51	Steam Electric Power Generating	423	(4)
52	Sugar Processing	409	(3)
53	Textile Mills	410	(5)
54	Timber Products Processing	429	(3)
55	Transportation Equipment Cleaning	442	(1)
56	Waste Combustors	444	(1)

* (**Note:** The descriptions of the ''Findings'' codes are presented immediately prior to this table.

[5] Based on available information, hospitals consist mostly of indirect dischargers for which EPA has not established pretreatment standards. As discussed in Section VII.D, EPA is including hospitals in its review of the Health Services Industry, a potential new category for pretreatment standards. As part of that process, EPA will review the existing effluent guidelines for the few direct dischargers in the category.

VI. EPA's 2007 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)

As discussed in section V and further in section VIII, EPA is coordinating its annual reviews of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 307(b) and 304(g) with the publication of preliminary Plans and biennial Plans under section 304(m). Public comments received on EPA's prior reviews and Plans helped the Agency prioritize its analysis of existing effluent guidelines and pretreatment standards during the 2006 review. The information gathered during the 2006 annual review, including the identification of data gaps in the analysis of certain categories with existing regulations, in turn, provides a starting point for EPA's 2007 annual review. See Table V–1 above. In 2007, EPA intends to again conduct a screening-level analysis of all 56 categories and compare the results against those from previous years. EPA will also conduct more detailed analyses of those industries that rank high in terms of toxic and non-conventional discharges among all point source categories. Additionally, EPA intends to continue the detailed study of the Steam Electric Power Generating (Part 423) category and start detailed studies for the following categories: Coal Mining (Part 434), Oil and Gas Extraction (Part 435) (only to assess whether to include Coal Bed Methane extraction as a new subcategory), and Hospitals (Part 460). EPA specifically invites comment and data on all 56 point source categories.

VII. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards

All indirect dischargers are subject to general pretreatment standards (40 CFR 403), including a prohibition on discharges causing ''pass through'' or ''interference.'' See 40 CFR 403.5. All POTWs with approved pretreatment programs must develop local limits to implement the general pretreatment standards. All other POTWs must develop such local limits where they have experienced ''pass through'' or ''interference'' and such a violation is likely to recur. There are approximately 1,500 POTWs with approved pretreatment programs and 13,500 small POTWs that are not required to develop and implement pretreatment programs.

In addition, EPA establishes technology-based national regulations, termed ''categorical pretreatment standards,'' for categories of industry discharging pollutants to POTWs that may pass through, interfere with or otherwise be incompatible with POTW operations. CWA section 307(b). Generally, categorical pretreatment standards are designed such that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment.

EPA has promulgated such pretreatment standards for 35 industrial categories. EPA evaluated various indirect discharging industries without categorical pretreatment standards to determine whether their discharges were causing pass through or interference, in order to determine whether categorical pretreatment standards may be necessary for these industrial categories.

Stakeholder comments and pollutant discharge information have helped EPA identify industrial sectors for this review. In particular, EPA has looked more closely at sectors that are comprised entirely or nearly entirely of indirect dischargers, and is grouping them into the following eight industrial categories: Food Service Establishments; Industrial Laundries; Photoprocessing; Printing and Publishing; Independent and Stand Alone Laboratories; Industrial Container and Drum Cleaning (ICDC); Tobacco Products; and Health Services Industry. EPA is including within the Health Services Industry the following activities: Independent and Stand Alone Medical and Dental Laboratories, Offices and Clinics of Doctors of Medicine, Offices and Clinics of Dentists, Nursing and Personal Care Facilities, Veterinary Care Services, and Hospitals and Clinics. EPA solicited comment on that grouping (*see* EPA–HQ–OW–2004–0032–0038). For all eight of these industrial sectors, EPA evaluated (1) the ''Pass Through Potential'' of toxic pollutants and non-conventional pollutants through POTW operations; and (2) the ''Interference Potential'' of industrial indirect discharges with POTW operations. EPA also received, reviewed, and summarized suggestions from commenters on options for improving various categorical pretreatment standards (*see* EPA–HQ–OW–2004–0032–0020).

Documents discussing EPA's review of categories of indirect dischargers without categorical pretreatment standards are located in the docket (*see* DCN 2173, 3402, and Section 19 of the Final 2006 TSD). EPA solicits comment and data on categories not subject to categorical pretreatment standards for its 2007 review.

A. EPA's Evaluation of ''Pass Through Potential'' of Toxic and Non-Conventional Pollutants Through POTW Operations

For these eight industrial sectors, EPA evaluated the ''pass through potential'' of toxic pollutants and non-conventional pollutants through POTW operations. Historically, for most effluent guidelines rulemakings, EPA determines the ''pass through potential'' by comparing the percentage of the pollutant removed by well-operated POTWs achieving secondary treatment with the percentage of the pollutant removed by wastewater treatment options that EPA is evaluating as the bases for categorical pretreatment standards (January 28, 1981; 46 FR 9408).

For six industry sectors, however, EPA was unable to gather the data needed for a comprehensive analysis of the availability and performance (e.g., percentage of the pollutants removed) of treatment or process technologies that might reduce toxic pollutant discharges beyond that of technologies already in place at these facilities. Instead, EPA evaluated the ''pass through potential'' as measured by: (1) The total annual TWPE discharged by the industrial sector; and (2) the average TWPE discharge among facilities that discharge to POTWs.

EPA relied on a similar evaluation of ''pass through potential'' in its prior decision not to promulgate national categorical pretreatment standards for the Industrial Laundries industry. See 64 FR 45071 (August 18, 1999). EPA noted in this 1999 final action that, ''While EPA has broad discretion to promulgate such [national categorical pretreatment] standards, EPA retains discretion not to do so where the total pounds removed do not warrant national regulation and there is not a significant concern with pass through and interference at the POTW.'' See 64 FR 45077 (August 18, 1999). EPA solicited comment on this evaluation for determining the ''pass through potential'' for industrial categories comprised entirely or nearly entirely of indirect dischargers (*see* 70 FR 51054; August 29, 2005). In response to this solicitation, EPA only received two comments on this methodology and both comments were supportive of EPA's approach (*see* EPA–HQ–OW–2004–0032–1042, 1051).

EPA's 2005 and 2006 reviews of these eight industrial sectors used pollutant discharge information from TRI, PCS, and other publicly available data to

estimate the total annual TWPE discharged per facility. EPA also relied on wastewater sampling and site visits to better characterize the pollutant discharges from the ICDC and Tobacco Products categories. EPA's use of PCS data was limited as nearly all of the PCS discharge monitoring data is from direct dischargers. Consequently, EPA transferred pollutant discharges from direct dischargers to indirect dischargers in some of the seven industrial sectors when other data were not available. Based on these estimated toxic pollutant discharges, EPA's review suggests that there is a low pass through potential for seven of the eight industrial sectors and that categorical pretreatment standards for these seven industrial sectors are therefore not warranted at this time. These seven industrial sectors are: Food Service Establishments; Industrial Container and Drum Cleaning industry; Independent and Stand Alone Laboratories; Industrial Laundries; Photoprocessing; Printing and Publishing; and Tobacco Products. More information on EPA's detailed study of the Tobacco Products category is provided in section VIII.C below.

EPA did not have enough information to determine whether there was pass through potential for the remaining industrial sector: Health Services Industries. EPA will continue to evaluate the pass through potential for this industrial sector. In particular, EPA plans to conduct a detailed study of the Health Services Industry in the 2007 and 2008 annual reviews. More information on this industry is provided in section VIII.D below.

B. EPA's Evaluation of ''Interference Potential'' of Industrial Indirect Discharges

For each of these eight industrial sectors EPA evaluated the ''interference potential'' of indirect industrial discharges. The term ''interference'' means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with applicable regulations or permits. See 40 CFR 403.3(i). To determine the ''interference potential,'' EPA generally evaluates the industrial indirect discharges in terms of: (1) The compatibility of industrial wastewaters and domestic wastewaters (e.g., type of pollutants discharged in industrial wastewaters compared to pollutants typically found in domestic wastewaters); (2) concentrations of pollutants discharged in industrial wastewaters that might cause interference with the POTW collection system (e.g., fats, oil, and grease discharges causing blockages in the POTW collection system, hydrogen sulfide corrosion in the POTW collection system), the POTW treatment system (e.g., high ammonia mass discharges inhibiting the POTW treatment system; high oil and grease mass discharges can also promote the growth of filamentous bacteria that inhibit the performance of POTWs using trickling filters), or biosolids disposal options; and (3) the potential for variable pollutant loadings to cause interference with POTW operations (e.g., batch discharges or slug loadings from industrial facilities interfering with normal POTW operations).

EPA relied on readily available information from the literature and stakeholders to evaluate the severity, duration, and frequency of interference incidents caused by industrial indirect discharges. As part of its evaluation, EPA reviewed data from its report to Congress on one type of interference incidents, blockages in the POTW collection system leading to combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs). See Impacts and Controls of CSOs and SSOs, EPA 833–R–04–001, August 2004. With respect to Food Service Establishments, EPA noted that ''grease from restaurants, homes, and industrial sources is the most common cause (47%) of reported blockages. Grease is problematic because it solidifies, reduces conveyance capacity, and blocks flow.'' Other major sources of blockages are grit, rock, and other debris (27%), roots (22%), and roots and grease (4%).

Fats, oil, and grease (FOG) wastes are generated at food service establishments as byproducts from food preparation activities. FOG captured on-site is generally classified into two broad categories: Yellow grease and grease trap waste (*see* DCN 2606). Yellow grease is derived from used cooking oil and waste greases that are separated and collected at the point of use by the food service establishment. Food service establishments can adopt a variety of best management practices or install interceptor/collector devices to control and capture the FOG material before discharge to the POTW collection system (*see* DCN 3040, 3046). For example, instead of discharging yellow grease to POTWs, food service establishments usually accumulate this material for pick-up by consolidation service companies for re-sale or re-use in the manufacture of tallow, animal feed supplements, fuels, or other products (*see* Technical Development Document for the Final Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category (40 CFR 432), EPA–821–R–04–011, July 2004).

Additionally, food service establishments can install interceptor/collector devices (e.g., grease traps in sinks and dish washer drain lines) in order to accumulate grease on-site and prevent it from entering the POTW collection system. Proper design, installation, and maintenance procedures are critical for these devices to control and capture the FOG (*see* DCN 3043, 3265). For example, interceptor/collector devices must be designed and sized appropriately to allow for emulsified FOG to cool and separate in a non-turbulent environment (*see* DCN 3265). Additionally, it is particularly important for food service establishments to be diligent in having their interceptor/collector devices serviced at regular intervals (*see* DCN 2606, 2610, 2616, 3039). The required maintenance frequency for interceptor/collector devices depends greatly on the amount of FOG a facility generates as well as any best management practices (BMPs) that the establishment implements to reduce the FOG discharged into its sanitary sewer system. In many cases, an establishment that implements BMPs will realize financial benefit through a reduction in their required grease interceptor and trap maintenance frequency (*see* DCN 3045). The annual production of collected grease trap waste and uncollected grease entering sewage treatment plants can be significant and ranges from 800 to 17,000 pounds/year per restaurant (*see* DCN 2606).

Information collected from control authorities and stakeholders indicate that a growing number of control authorities are using their existing authority (e.g., general pretreatment standards in Part 403 or local authority) to establish and enforce more FOG regulatory controls (e.g., numeric pretreatment limits, best management practices including the use of interceptor/collector devices) for food service establishments to reduce interferences with POTW operations (e.g., blockages from fats, oils, and greases discharges, POTW treatment interference from *Nocardia* filamentous foaming, damage to collection system from hydrogen sulfide generation) (*see* DCN 3044, 3039). For example, since

identifying a 73% non-compliance rate with its grease trap ordinance among restaurants, New York City has instituted a $1,000-per-day fine for FOG violations (*see* DCN 2616). Likewise, more and more municipal wastewater authorities are addressing FOG discharges by imposing mandatory measures of assorted kinds, including inspections, periodic grease pumping, stiff penalties, and even criminal citations for violators, along with 'strong waste' monthly surcharges added to restaurant sewer bills. Surcharges are reportedly ranging from $100 to as high as $700 and more; the fees being deemed necessary to cover the cost of inspections and upgraded infrastructure (*see* DCN 2616). Pretreatment programs are developing and using inspection checklists for both food service establishments and municipal pretreatment inspectors to control FOG discharges (*see* DCN 3040). Additionally, EPA identified typical numeric local limits controlling oil and grease in the range of 50 mg/L to 450 mg/L with 100 mg/L as the most common reported numeric pretreatment limit (*see* DCN 3131). Finally, EPA expects that blockages from FOG discharges will decrease as POTWs incorporate Capacity, Management, Operations, and Maintenance (CMOM) program activities into their daily practices. Collection system owners or operators who adopt CMOM program activities are likely to reduce the occurrence of sewer overflows and improve their operations and maintain compliance with their NPDES permit (*see* DCN 2847, 3416). In summary, EPA finds that controlling FOG discharges from this industrial category is an essential element in controlling CSOs and SSOs and ensuring the proper operations for many POTWs. However, national categorical standards are not needed for this industrial category at this time based on EPA's finding that control authorities can use their existing regulatory tools and authority for controlling the interference problems caused by this industrial category. EPA believes the interference incidents identified in CSO/SSO report to Congress may indicate the need for additional oversight and enforcement of existing regulations and controls, but do not indicate a need for new categorical pretreatment standards for this industry at this time.

EPA received comments from stakeholders indicating that even with current authority provided in the general pretreatment regulations; some POTWs have difficulty controlling interference from specific categories of indirect industrial dischargers (*see* EPA–HQ–OW–2004–0032–0020, 1090). EPA notes, however, that the interference potential varies from POTW to POTW because interference problems depend not only on the nature of the discharge but also on local conditions (*e.g.*, the type of treatment process used by the POTW, local water quality, the POTW's chosen method for handling sludge) (*see* DCN 3252). Consequently, pollutants that interfere with the operation of one POTW may not adversely affect the operation of another. These differences are attributable to several factors including the varying sensitivities of different POTWs and the constituent composition of wastewater collected and treated by the POTW (46 FR 9406; January 28, 1981).

EPA believes that the national pretreatment program already provides the necessary regulatory tools and authority to local pretreatment programs for controlling interference problems. Under the provisions of part 403.5(c)(1) and (2), in defined circumstances, a POTW must establish specific local limits for industrial users to guard against interference with the operation of the municipal treatment works. *See* 46 FR 9406 (January 28, 1981). Consequently, pretreatment oversight programs should include activities designed to identify and control sources of potential interference and, in the event of actual interference, enforcement against the violator. EPA solicits comment on whether there are industrial sectors discharging pollutants that cause interference issues that cannot be adequately controlled through the existing pretreatment program.

Based on its review of current information, EPA has not identified interference potential from the eight industrial sectors that would warrant the development of national, categorical pretreatment standards.

C. Tobacco Products

One commenter on the preliminary 2004 Plan suggested that EPA consider developing effluent guidelines for the Tobacco Products industry due to the potential for facilities in this industrial sector to discharge nontrivial amounts of nonconventional and toxic pollutants. In particular, this commenter expressed concern over the quantity of toxics and carcinogens that may be discharged in wastewater associated with the manufacture of cigarettes. At the time of publication of the final 2004 Plan, EPA was unable to determine, based on readily available information, whether to identify the Tobacco Products industry as a potential new category in the Plan. In particular, EPA lacked information about whether Tobacco Products facilities discharge toxic and nonconventional pollutants in nontrivial amounts, whether the industry is composed entirely or almost entirely of indirect dischargers, and whether indirect dischargers in the industry caused pass-through or interference with POTWs. In order to better respond to these comments and determine whether to identify the tobacco products industrial sector as a potential new point source category, EPA conducted a detailed study of the pollutant discharges for this industrial sector. Based on this study, EPA is not identifying the Tobacco Products industry as a potential new category in this Plan, for the reasons discussed below.

1. Industry Profile

This industrial sector is divided into the following four industry groups: (1) SIC code 2111 (Cigarettes)—establishments primarily engaged in manufacturing cigarettes from tobacco or other materials; (2) SIC code 2121 (Cigars)—establishments primarily engaged in manufacturing cigars; (3) SIC code 2131 (Smokeless and Loose Chewing Tobacco)—establishments primarily engaged in manufacturing chewing and smoking tobacco and snuff; and (4) SIC code 2141 (Reconstituted Tobacco and Tobacco Stemming and Re-drying)—establishments primarily engaged in the stemming and re-drying of tobacco or in manufacturing reconstituted tobacco. Based on information in the 2002 Economic Census and reported in 2004 to the U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), EPA estimates there are 149 tobacco products facilities in the United States. The number of tobacco products processing facilities has been in decline as facilities consolidate. Of these facilities, EPA has identified 3 with active NPDES permits that discharge process wastewater directly to waters of the U.S. and at least 15 that discharge indirectly to POTWs. The remaining dischargers are either indirect dischargers or zero dischargers. As few tobacco products processing facilities discharge directly to waters of the U.S. (3 of the 149 facilities in this category), EPA determined that this category is almost entirely composed of indirect dischargers and therefore not subject to identification under section 304(m)(1)(B). EPA therefore proceeded to review this category in its review of indirect dischargers without categorical pretreatment standards to determine whether such standards were warranted under CWA sections 304(g) and 307(b).

2. Data Collection

In conducting its detailed study, EPA conducted outreach to the most significant dischargers in this category. These companies have provided extensive information on processes, pollutant discharges and existing permits. Based on information collected to date, EPA believes that primary processing at cigarette manufacturers and their related reconstituted tobacco operations is the main source of discharged wastewater pollution in this industrial sector. EPA conducted site visits at six cigarette manufacturing facilities with two of these facilities having dedicated reconstituted tobacco production lines.

In addition to collecting information on processes and wastewater generation, EPA also collected grab samples of wastewater during these site visits. EPA collected these wastewater samples to: (1) Further characterize wastewater generated and/or discharged at these facilities; and (2) evaluate treatment effectiveness, as applicable. For the sites visited, EPA also contacted states and POTWs to obtain existing permits and identify concerns. Finally, EPA reviewed and evaluated comments from the preliminary 2006 Plan regarding the tobacco products processing industry.

3. Review of Indirect Discharges From Tobacco Products Industry

EPA identified at least 15 tobacco products processing facilities that discharge to POTWs. None of the indirect dischargers treat their wastewater prior to discharge to the local POTW. EPA's review of effluent data from indirect discharging tobacco products processing facilities demonstrates that such discharges are generally characterized by low concentrations of toxic and non-conventional pollutants—primarily metals. One exception is nicotine, with discharge concentrations ranging from 7,500 ug/L to 31,000 ug/L. Nicotine and metal discharges account for approximately 93% of the total annual TWPE associated with indirect tobacco products processing discharges. Source water appears to be the biggest contributor to metal discharges at indirect facilities.

4. EPA's Evaluation of ''Pass Through Potential'' of Toxic and Non-conventional Pollutants Through POTW Operations From the Tobacco Products Industry

EPA used the two part evaluation described above to identify whether there is a significant ''pass-through potential'' of toxic pollutants and non-conventional pollutants through POTW operations. Specifically, EPA compared toxic pollutant loadings currently discharged by Tobacco Products facilities to POTWs and surface waters (baseline loadings) to toxic pollutant loadings that would be discharged to POTWs and surface waters upon compliance with pretreatment standards based on biological treatment with nutrient removal (potential post-regulatory loadings). Based on information obtained in this study, POTWs achieve nicotine removals in excess of 96%. EPA found the annual incremental toxic pollutant removals per facility would be small, approximately 28.6 TWPE/facility. This is comparable to the incremental removals for Industrial Laundries (32 TWPE/facility), which EPA determined in a proposed rulemaking did not warrant the development of pretreatment standards for that industry. See August 18, 1999 (64 FR 45071). Accordingly, EPA has determined that there is not evidence of significant ''pass-through potential'' for indirect dischargers in this industry.

5. EPA's Evaluation of ''Interference Potential'' of Industrial Indirect Discharges From the Tobacco Products Industry

EPA evaluated possible negative effects of discharges from tobacco products processing facilities to POTWs. As explained above, nicotine and metals account for approximately 93% of the total annual TWPE associated with indirect discharges from this category. EPA compared the concentrations of metals found in indirect tobacco products processing discharges to those typically found in POTW influent. This comparison demonstrated that metals concentrations discharged by tobacco products processing facilities are lower than those found in typical POTW influent. These findings indicate that discharges from tobacco products processing should not inhibit or disrupt operations of the receiving POTWs. To verify this finding, EPA contacted POTWs receiving significant tobacco products processing discharges. All POTWs contacted indicated they had experienced no problem handling and treating such discharges (*see* DCN 3395).

6. EPA's Evaluation of Direct Discharges From the Tobacco Products Industry

As discussed above, EPA found that this industry was composed almost entirely of industry dischargers and therefore reviewed it in assessing whether to establish categorical pretreatment standards under CWA sections 304(g) and 307(b). In the context of this review, EPA also examined discharges from the three directly discharging facilities in this industry.

Biological treatment with or without nutrient removal is the most commonly employed wastewater treatment technology by the direct discharging facilities. Treatability data collected from tobacco products processing facilities demonstrate on-site wastewater treatment systems are highly efficient with BOD_5 and nicotine removals in excess of 99%. Resulting discharges are characterized by low concentrations of toxic and non-conventional pollutants—primarily metals. These metal discharges largely result from source water contributions. Additionally, permitting authorities report few problems with these tobacco products processing discharges. Because EPA has identified only three tobacco products processing facilities discharging process wastewater directly to waters of the U.S. and because existing treatment systems are highly effective, EPA believes that national effluent guidelines for direct dischargers are unwarranted at this time. Such discharges can be appropriately addressed by site-specific effluent limitations established by NPDES permit writers on a BPJ basis.

7. Summary of EPA's Review of the Tobacco Products Industry

Because EPA found that this industry is composed almost entirely of indirect dischargers, EPA did not identify it as a new category under section 304(m)(1)(B) and instead considered whether to adopt pretreatment standards for this industry under CWA sections 304(g) and 307(b). EPA has concluded that national pretreatment standards are not warranted for this industry at this time because the incremental toxic pollutant removal would be small and discharges from this industry do not cause significant pass through or interference at POTWs.

D. Health Services Industry

The Health Services industry includes establishments engaged in various aspects of human health (*e.g.* hospitals, dentists, medical/dental laboratories) and animal health (*e.g.* veterinarians). These establishments fall under SIC Major Group 80 Health Services and Industry Group 074 Veterinary Services. According to the 2002 Census, there are over 500,000 facilities in the health services industries. In 1976, EPA promulgated effluent guidelines for direct discharging hospitals with greater than 1,000 occupied beds. 40 CFR part 460. The remaining facilities in the

Health Services industry are not subject to categorical limitations and standards.

In evaluating the health services industries to date, EPA has found little readily available information. Both PCS and TRI contain sparse information on health care service establishments. In 1989, EPA published a Preliminary Data Summary (PDS) for the Hospitals Point Source Category (*see* DCN 2231). Also, EPA's Office of Enforcement and Compliance Assistance (OECA) published a Healthcare Sector Notebook in 2005 (*see* DCN 2183). In addition, industry and POTWs have conducted studies to estimate discharges from some portions of this industry—such as dentists (*see* DCN 2237).

Based on preliminary information, EPA has found that nearly all health services establishments discharge indirectly to POTWs. The major source of concern for discharges from health care service establishments include mercury, silver, endocrine disrupting chemicals (EDCs), pharmaceuticals, and biohazards. While EPA has some information on mercury and silver discharges, EPA has little to no information on wastewater discharges of emerging pollutant concerns such as EDCs and pharmaceuticals.

EPA will conduct a more focused detailed review in the 2007 and 2008 annual reviews for the Health Services Industry. In this detailed study, EPA plans to better quantify pollutants—including EDCs—in wastewater discharged by health service facilities. EPA will also investigate whether there are technologies, process changes or pollution prevention alternatives that would significantly reduce discharges to POTWs. Finally, EPA will attempt to evaluate the pass-through and interference potential of such discharges.

VIII. The Final 2006 Effluent Guidelines Program Plan Under Section 304(m)

In accordance with CWA section 304(m)(2), EPA published the preliminary 2006 Plan for public comment prior to this publication of the final 2006 Plan. See August 29, 2005 (70 FR 51042). The Agency received 61 comments from a variety of commenters including industry and industry trade associations, municipalities and sewerage agencies, environmental groups, other advocacy groups, two tribal governments, two private citizens, two Federal agencies, and seven State government agencies. Many of these public comments are discussed in this notice. The Docket accompanying this notice includes a complete set of all of the comments submitted, as well as the Agency's responses (*see* DCN 3403). EPA carefully considered all public comments and information submitted to EPA in developing the final 2006 Plan.

A. EPA's Schedule for Annual Review and Revision of Existing Effluent Guidelines Under Section 304(b)

1. Schedule for 2005 and 2006 Annual Reviews Under Section 304(b)

As noted in section IV.B, CWA section 304(m)(1)(A) requires EPA to publish a Plan every two years that establishes a schedule for the annual review and revision, in accordance with section 304(b), of the effluent guidelines that EPA has promulgated under that section. This final 2006 Plan announces EPA's schedule for performing its section 304(b) reviews. The schedule is as follows: EPA will coordinate its annual review of existing effluent guidelines under section 304(b) with its publication of the preliminary and final Plans under CWA section 304(m). In other words, in odd-numbered years, EPA intends to complete its annual review upon publication of the preliminary Plan that EPA must publish for public review and comment under CWA section 304(m)(2). In even-numbered years, EPA intends to complete its annual review upon the publication of the final Plan. EPA's 2006 annual review is the review cycle ending upon the publication of this final 2006 Plan.

EPA is coordinating its annual reviews under section 304(b) with publication of Plans under section 304(m) for several reasons. First, the annual review is inextricably linked to the planning effort, because the results of each annual review can inform the content of the preliminary and final Plans, e.g., by identifying candidates for ELG revision for which EPA can schedule rulemaking in the Plan, or by calling to EPA's attention point source categories for which EPA has not promulgated effluent guidelines. Second, even though not required to do so under either section 304(b) or section 304(m), EPA believes that the public interest is served by periodically presenting to the public a description of each annual review (including the review process employed) and the results of the review. Doing so at the same time EPA publishes preliminary and final plans makes both processes more transparent. Third, by requiring EPA to review all existing effluent guidelines each year, Congress appears to have intended that each successive review would build upon the results of earlier reviews. Therefore, by describing the 2006 annual review along with the final 2006 Plan, EPA hopes to gather and receive data and information that will inform its reviews for 2007 and 2008 and the 2008 Plan.

2. Schedule for Possible Revision of Effluent Guidelines Promulgated Under Section 304(b)

EPA is currently conducting rulemakings to potentially revise existing effluent guidelines and pretreatment standards for the following categories: Organic Chemicals, Pesticides and Synthetic Fibers (OCPSF) and Inorganic Chemicals (to address discharges from Vinyl Chloride and Chlor-Alkali facilities identified for effluent guidelines rulemaking in the final 2004 Plan, now termed the ''Chlorine and Chlorinated Hydrocarbon (CCH) manufacturing'' rulemaking) and Concentrated Animal Feeding Operations (rulemaking on BCT technology options for controlling fecal coliform). For a summary of the status of the current effluent guidelines rulemakings, their schedules, and a list of completed effluent guidelines rulemakings conducted by EPA since 1992, see the Docket accompanying this notice (*see* DCN 3765). EPA emphasizes that identification of the rulemaking schedules for these effluent guidelines does not constitute a final decision to revise the guidelines. EPA may conclude at the end of the formal rulemaking process—supported by an administrative record following an opportunity for public comment—that effluent guidelines revisions are not appropriate for these categories. EPA is not scheduling any other existing effluent guidelines for rulemaking at this time.

B. Identification of Potential New Point Source Categories Under CWA Section 304(m)(1)(B)

The final Plan must also identify categories of sources discharging non-trivial amounts of toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards (NSPS) under section 306. See CWA section 304(m)(1)(B); S. Rep. No. 99–50, Water Quality Act of 1987, Leg. Hist. 31 (indicating that section 304(m)(1)(B) applies to ''non-trivial discharges''). The final Plan must also establish a schedule for the promulgation of effluent guidelines for the categories identified under section 304(m)(1)(B), providing for final action on such rulemaking not later than three years after the identification of the category in a final

Plan.[6] See CWA section 304(m)(1)(C). For the reasons discussed below, EPA is not at this time identifying any potential new categories for effluent guidelines rulemaking and therefore is not scheduling effluent guidelines rulemaking for any such categories in this Plan. EPA is, however, currently conducting rulemakings to determine whether to establish effluent guidelines for two potential new categories identified in the final 2004 Plan: Airport Deicing Operations and Drinking Water Treatment.

In order to identify industries not currently subject to effluent guidelines, EPA primarily used data from TRI and PCS. As discussed in the docket, facilities with data in TRI and PCS are identified by a four-digit SIC code (*see* DCN 3402). EPA performs a crosswalk between the TRI and PCS data, identified with a four digit SIC code, and the 56 point source categories with effluent guidelines or pretreatment standards to determine if a four-digit SIC code is currently regulated by existing effluent guidelines (*see* DCN 3402). EPA also relied on comments received on its previous 304(m) plans to identify potential new categories. EPA then assessed whether these industrial sectors not currently regulated by effluent guidelines meet the criteria specified in section 304(m)(1)(B), as discussed below.

First, section 304(m)(1)(B) specifically applies only to ''categories of sources'' for which EPA has not promulgated effluent guidelines. Because this section does not define the term ''categories,'' EPA interprets this term based on the use of the term in other sections of the Clean Water Act, legislative history, and Supreme Court case law, and in light of longstanding Agency practice. As discussed below, these sources indicate that the term ''categories'' refers to an industry as a whole based on similarity of product produced or service provided, and is not meant to refer to specific industrial activities or processes involved in generating the product or service. EPA therefore identifies in its biennial Plan only those new industries that it determines are properly considered stand-alone ''categories'' within the meaning of the Act—not those that are properly considered potential new subcategories of existing categories based on similarity of product or service.

The use of the term ''categories'' in other provisions of the CWA indicates that a ''category'' encompasses a broad array of industrial operations related by similarity of product or service provided. For example, CWA section 306(b)(1)(A) provides a list of ''categories of sources'' (for purposes of new source performance standards) that includes ''pulp and paper mills,'' ''petroleum refining,'' ''iron and steel manufacturing,'' and ''leather tanning and finishing.'' These examples suggest that a ''category'' is intended to encompass a diversity of facilities engaged in production of a similar product or provision of a similar service. See also CWA section 402(e) and (f) (indicating that ''categories'' are composed of smaller subsets such as ''class, type, and size''). In the effluent guidelines program, EPA uses these factors, among others, to define ''subcategories'' of a larger industrial category.

The legislative history of later amendments to CWA section 304 indicates that Congress was aware that there was a distinction between ''categories'' and ''subcategories'' in effluent guidelines. See Leg. Hist: Senate Committee on Environment and Public Works, A Legislative History of the Clean Water Act of 1977, prepared by the Environmental Policy Division of the Congressional Research Service of the Library of Congress (Comm. Print 1978) at 455 (indicating that BAT calls for the examination of ''each industry category or subcategory''). See also *Chemical Manufacturers' Association* v. *EPA*, 470 U.S. 116, 130 (1985) (interpreting this legislative history as ''admonish[ing] [EPA] to take into account the diversity within each industry by establishing appropriate subcategories.''). Therefore, in light of Congress's awareness of the distinction between categories and subcategories, EPA reasonably assumes that Congress's use in 1987 of the term ''categories'' in section 304(m)(1)(B) was intentional. If Congress had intended for EPA to identify potential new subcategories in the Plan, it would have said so. Congress's direction for EPA to identify new ''categories of sources'' cannot be read to constrain EPA's discretion over its internal planning processes by requiring identification of potential new ''subcategories'' in the Plan. See *Norton* v. *Southern Utah Wilderness Alliance et al.,* 124 S Ct. 2373, 2383 (2004) (finding that a statutory mandate must be sufficiently specific in order to constrain agency discretion over its internal planning processes).

Moreover, the distinction between a category and a subcategory has long been recognized by the Supreme Court. In *Chemical Manufacturers' Association* v. *EPA*, the Court recognized that categories are ''necessarily rough-hewn'' (*id.* at 120) and that EPA establishes subcategories to reflect ''differences among segments of the industry'' based on the factors that EPA must consider in establishing effluent limitations. Id. at 133, n. 24. See also *Texas Oil and Gas Assn.* v. *EPA*, 161 F.3d 923, 939 (5th Cir. 1998) (''The EPA is authorized—indeed, is required—to account for substantial variation within an existing category * * * of point sources.''). Indeed, the effluent guideline considered by the Supreme Court in the *Du Pont* case was divided into 22 subcategories, each with its own set of technology-based limitations, reflecting variations in processes and pollutants. Id. at 22 and nn. 9 and 10. See also *id.* at 132 (noting that legislative history ''can be fairly read to allow the use of subcategories based on factors such as size, age, and unit processes.'').

EPA's interpretation of the term ''categories'' is consistent with longstanding Agency practice. Pursuant to CWA section 304(b), which requires EPA to establish effluent guidelines for ''classes and categories of point sources,'' EPA has promulgated effluent guidelines for 56 industrial ''categories.'' Each of these ''categories'' consists of a broad array of facilities that produce a similar product or perform a similar service—and is broken down into smaller subsets, termed ''subcategories,'' that reflect variations in the processes, treatment technologies, costs and other factors associated with the production of that product that EPA is required to consider in establishing effluent guidelines under section 304(b). For example, the ''Pulp, Paper and Paperboard point source category'' (40 CFR part 430) encompasses a diverse range of industrial facilities involved in the manufacture of a like product (paper); the facilities range from mills that produce the raw material (pulp) to facilities that manufacture end-products such as newsprint or tissue paper. EPA's classification of this ''industry by major production processes addresses many of the statutory factors set forth in CWA Section 304(b), including manufacturing processes and equipment (*e.g.*, chemical, mechanical, and secondary fiber pulping; pulp bleaching; paper making); raw materials (*e.g.*, wood, secondary fiber, non-wood fiber, purchased pulp); products

[6] EPA recognizes that one court—the U.S. District Court for the Central District of California—has found that EPA has a duty to promulgate effluent guidelines within three years for new categories identified in the Plan. See *NRDC et al.* v. *EPA*, No. 04–8307, 2006 WL 1834260 (C.D. Ca, June 27, 2006). However, EPA continues to believe that the mandatory duty under section 304(m)(1)(c) is limited to providing a schedule for concluding the effluent guidelines rulemaking—not necessarily promulgating effluent guidelines—within three years, and is considering whether to appeal this decision.

manufactured (*e.g.*, unbleached pulp, bleached pulp, finished paper products); and, to a large extent, untreated and treated wastewater characteristics (*e.g.*, BOD loadings, presence of toxic chlorinated compounds from pulp bleaching) and process water usage and discharge rates.'' [7] Each subcategory reflects differences in the pollutant discharges and treatment technologies associated with each process. Similarly, the ''Iron and Steel Manufacturing point source category'' (40 CFR part 420) consists of various subcategories that reflect the diverse range of processes involved in the manufacture of iron and steel, ranging from facilities that make the basic fuel used in the smelting of iron ore (subpart A—Cokemaking) to those that cast the molten steel into molds to form steel products (subpart F—Continuous Casting). An example of an industry category based on similarity of service provided is the Transportation Equipment Cleaning Point Source Category (40 CFR Part 442), which is subcategorized based on the type of tank (e.g., rail cars, trucks, barges) or cargo transported by the tanks cleaned by these facilities, reflecting variations in wastewaters and treatment technologies associated with each.

Thus, EPA's first decision criterion asks whether a new industrial operation or activity in question is properly characterized as an industry ''category'' based on similarity of product produced or service provided, or whether it simply represents a variation (*e.g.* new process) among facilities generating the same product and is therefore properly characterized as a potential new subcategory. If it is properly considered a stand-alone category in its own right, EPA addresses it pursuant to sections 304(m)(1)(B) and (C). If EPA determines that it is a potential new ''subcategory,'' EPA reviews the activity in its section 304(b) annual review of the existing categories in which it would belong, in order to determine whether it would be appropriate to revise the effluent guidelines for that category to include limits for the new subcategory.

As a practical matter, this approach makes sense. There are constantly new processes being developed within an industry category—new ways of making paper or steel, new ways of cleaning transportation equipment, new ways of extracting oil and gas, for example. These new processes are closely interwoven with the processes already covered by the existing effluent guideline for the category—they often generate similar pollutants, are often performed by the same facilities, and their discharges can often be controlled by the same treatment technology. Therefore, it is more efficient for EPA to consider industry categories holistically by looking at these new processes when reviewing and revising the effluent guideline for the existing category. The opposite approach could lead to a situation when EPA would do a separate effluent guideline every time a new individual process emerges without considering how these new technologies could affect BAT for related activities. In revising effluent guidelines, EPA often creates new subcategories to reflect new processes. For example, the effluent guidelines for the pesticides chemicals category (40 CFR part 455) did not originally cover refilling establishments because this process was developed after the limitations were first promulgated. When EPA revised the effluent guidelines for the Pesticides Chemicals category, EPA included refilling establishments as a new subcategory subject to the effluent limits for this category. The issue is not whether a guideline should be developed for a particular activity, but whether the analysis should occur in isolation or as part of a broader review.

To ensure appropriate regulation of such new subcategories prior to EPA's promulgation of new effluent guidelines for the industrial category to which they belong, under EPA's regulations at 40 CFR part 125.3(c), a permit writer is required to establish technology-based effluent limitations for these processes on a case by case, ''Best Professional Judgment'' (BPJ) basis, considering the same factors that EPA considers in promulgating categorical effluent limitations guidelines. These new processes are covered by these BPJ-based effluent guidelines until the effluent guidelines for the industrial category is revised to include limits for these new subcategories.

EPA's approach to addressing new industries is analogous to EPA's approach to addressing newly identified pollutants. When EPA identifies new pollutants associated with the discharge from existing categories, EPA considers limits for those new pollutants in the context of reviewing and revising the existing effluent guidelines for that category. For example, EPA revised effluent limitations for the bleached papergrade kraft and soda and papergrade sulfite subcategories within the Pulp, Paper, and Paperboard point source category (40 CFR 430) to add BAT limitations for dioxin, which was not measurable when EPA first promulgated these effluent guidelines and pretreatment standards and was not addressed by the pollutant control technologies considered at that time. See 63 FR 18504 (April 15, 1998).

In short, for the reasons discussed above, EPA believes that the appropriateness of addressing a new process or pollutant discharge is best considered in the context of revising an existing set of effluent guidelines. Accordingly, EPA analyzed similar industrial activities not regulated by existing regulations as part of its annual review of existing effluent guidelines and pretreatment standards.

The second criterion EPA considers when implementing section 304(m)(1)(B) also derives from the plain text of that section. By its terms, CWA section 304(m)(1)(B) applies only to industrial categories to which effluent guidelines under section 304(b)(2) or section 306 would apply, if promulgated. Therefore, for purposes of section 304(m)(1)(B), EPA would not identify in the biennial Plan any industrial categories composed exclusively or almost exclusively of indirect discharging facilities regulated under section 307. For example, based on its finding that the Tobacco Products industry consists almost exclusively of indirect dischargers, EPA did not identify this industry in the Plan but instead considered whether to adopt pretreatment standards for this industry in the context of its section 304(g) / 307(b) review of indirect dischargers. Similarly, EPA would not identify in the Plan categories for which effluent guidelines do not apply, e.g., POTWs regulated under CWA section 301(b)(1)(B) or municipal storm water runoff regulated under CWA section 402(p)(3)(B).

Third, CWA section 304(m)(1)(B) applies only to industrial categories of sources that discharge toxic or non-conventional pollutants to waters of the United States. EPA therefore did not identify in the Plan industrial activities for which conventional pollutants, rather than toxic or non-conventional pollutants, are the pollutants of concern. For example, EPA did not identify in this Plan the construction industry because its discharges consist almost entirely of conventional pollutants. See DCN 04112. Therefore, section 304(m)(1)(B) does not apply to this point source category. EPA mistakenly identified this industry under section 304(m)(1)(B) in the 2002 Plan, not realizing at that time that its discharge consisted almost entirely of conventional pollutants. EPA corrected this mistake by removing this industry

[7] U.S. EPA, 1997. Supplemental Technical Development Document for Effluent Limitations Guidelines and Standards for the Pulp, Paper, and Paperboard Category, Page 5–3, EPA–821–R–97–011, October 1997.

from its 2004 Plan.[8] In addition, even when toxic and non-conventional pollutants might be present in an industrial category's discharge, section 304(m)(1)(B) does not apply when those discharges occur in trivial amounts. EPA does not believe that it is necessary, nor was it Congressional intent, to develop national effluent guidelines for categories of sources that discharge trivial amounts of toxic or non-conventional pollutants and therefore pose an insignificant hazard to human health or the environment. See Senate Report Number 50, 99th Congress, 1st Session (1985); WQA87 Legislative History 31 (*see* DCN 03911). This decision criterion leads EPA to focus on those remaining industrial categories where, based on currently available information, new effluent guidelines have the potential to address a non-trivial hazard to human health or the environment associated with toxic or non-conventional pollutants.

Finally, EPA interprets section 304(m)(1)(B) to give EPA the discretion to identify in the Plan only those potential new categories for which an effluent guideline may be an appropriate tool. Therefore, EPA does not identify in the Plan all potential new categories discharging toxic and non-conventional pollutants. Rather, EPA identifies only those potential new categories for which it believes that effluent guidelines may be appropriate, taking into account Agency priorities, resources and the full range of other CWA tools available for addressing industrial discharges.

This interpretation is supported by the Supreme Court's decision in *Norton* v. *Southern Utah Wilderness Alliance et al.* (124 S. Ct. 2373, 2383 (2004)), which recognized the importance of agency discretion over its internal planning processes. Specifically, the Court in *Norton* held that a statute requiring an agency to ''manage wilderness study areas * * * in a manner so as not to impair the suitability of such areas'' was too broad to constrain the agency's discretion over its internal land use planning processes. See also *Fund for Animals et al.* v. *U.S. Bureau of Land Management*, No. 04–5359, 2006 U.S. App. LEXIS 21206 (D.C. Cir., August 18, 2006); *Center for Biological Diversity* v. *Veneman*, 394 F.3d 1108 (9th Cir. 2005) (both cases following *Norton* line of reasoning to find that statutory mandate was not sufficiently specific to constrain agency discretion over its internal planning processes). In this case, the statutory mandate at issue—establish technology-based effluent limits that take into account a range of factors including ''such other factors as the Administrator deems appropriate''—also lacks the specificity to constrain the Agency's discretion over its effluent guidelines planning process. See CWA section 304(b)(2)(B). This broad statutory mandate gives EPA the discretion to identify in its section 304(m) Plan only those industrial categories for which it determines that effluent guidelines would be ''appropriate'' and to rely on other CWA tools—such as site-specific technology based limitations developed by permit writers on a BPJ basis—when it determines that such tools would be a more effective and efficient way of increasing the stringency of pollution control through NPDES permits.

Congress specifically accorded EPA with the discretion to choose the appropriate tool for pressing the development of new technologies, authorizing EPA to develop technology-based effluent limitations using a site-specific BPJ approach under CWA section 402(a)(1), rather than pursuant to an effluent guideline. See CWA section 301(b)(3)(B). Significantly, section 301(b)(3)(B) was enacted contemporaneously with section 304(m) and its planning process, suggesting that Congress contemplated the use of both tools, with the choice of tools in any given 304(m) plan left to the Administrator's discretion. The Clean Water Act requirement that EPA develop an effluent guideline plan—when coupled with the broad statutory mandate to consider ''appropriate'' factors in establishing technology-based effluent limitations and the direction to establish such limitations either through effluent guidelines or site-specific BAT decision-making—cannot be read to constrain the Agency's discretion over what it includes in its plan.

Moreover, because section 304(m)(1)(C) requires EPA to complete an effluent guidelines rulemaking within three years of identifying an industrial category in a 304(m) Plan,[9] EPA believes that Congress intended to give EPA the discretion under section 304(m)(1)(B) to prioritize its identification of potential new industrial categories so that it can use available resources effectively. Otherwise, EPA might find itself conducting rushed, resource-intensive effluent guidelines rulemakings where none is actually needed for the protection of human health and the environment, or where such protection could be more effectively achieved through other CWA mechanisms. Considering the full scope of the mandates and authorities established by the CWA, of which effluent guidelines are only a part, EPA needs the discretion to promulgate new effluent guidelines in a phased, orderly manner, consistent with Agency priorities and the funds appropriated by Congress to execute them. By crafting section 304(m) as a planning mechanism, Congress has given EPA that discretion.

Like the land use plan at issue in *Norton*, EPA's plan is ultimately ''a statement of choices and priorities.'' *See Norton* v. *Southern Utah Wilderness Alliance, et al.,* 124 S. Ct. 2373, 2383 (2004). By requiring EPA to publish its plan, Congress assured that EPA's priority-setting processes would be available for public viewing. By requiring EPA to solicit comments on preliminary plans, Congress assured that interested members of the public could contribute ideas and express policy preferences. EPA has given careful consideration and summarized its findings with respect to all industries suggested by commenters as candidates for inclusion in the Plan. Finally, by requiring publication of plans every two years, Congress assured that EPA would regularly re-evaluate its past policy choices and priorities (including whether to identify an industrial activity for effluent guidelines rulemaking) to account for changed circumstances. Ultimately, however, Congress left the content of the plan to EPA's discretion—befitting the role that effluent guidelines play in the overall structure of the CWA and their relationship to other tools for addressing water pollution.

[8] EPA recognizes that a district court recently held that EPA lacked the discretion to remove the construction industry from the Plan (see *NRDC et al.* v. *EPA*, No. CV–04–8307 (GHK) (C.D. Ca., June 27, 2006))—but notes that the court did not order EPA to put this industry back on the Plan. Moreover, EPA continues to believe that section 304(m)(1)(B) does not apply to this point source category—and that it must have the authority to correct this mistaken identification.

[9] EPA recognizes that a recent district court held that section 304(m)(1)(c) requires EPA to promulgate effluent guidelines within three years for new categories identified in the Plan—not simply to conclude rulemaking in three years. See *NRDC et al.* v. *EPA*, No. 04–8307, 2006 WL 1834260 (C.D. Ca, June 27, 2006). EPA disagrees with this interpretation and is considering whether to appeal this decision. If upheld on appeal, this decision would limit EPA's discretion regarding whether or not to promulgate effluent guidelines for new categories identified in the Plan. However, it would not affect EPA's discretion under section 304(m)(1)(B) to identify new industries in the Plan in the first place.

IX. Status of ''Strategy for National Clean Water Industrial Regulations'' and EPA's Effluent Guidelines Reviews

A. Review of the Draft Strategy

EPA first solicited public comment on the draft Strategy for National Clean Water Industrial Regulations (''Strategy'') on November 29, 2002 (67 FR 71165) and again on August 29, 2005 (70 FR 51042). EPA has used the draft Strategy and comments on the draft Strategy to shape the methodology for its annual reviews of existing effluent guidelines and pretreatment standards and effluent guidelines planning. In doing so, EPA has found that its effluent guidelines reviews and planning are an on-going and iterative process, and that its methodology for conducting these reviews and planning must continually be updated to reflect available data and tools and respond to public comments. Consequently, rather than publishing a ''final'' Strategy as a separate static document, EPA has chosen instead to use the **Federal Register** notices accompanying the preliminary and final 304(m) plans to describe and solicit comment on its evolving process and criteria for conducting annual reviews and planning, building upon the major elements of the draft Strategy. EPA encourages the public to continue to provide comments on how EPA can improve its effluent guidelines reviews and planning processes.

B. Changes to Annual Review Methodology Since First Publication of the Draft Strategy

EPA first solicited public comments in the November 29, 2002, **Federal Register** notice (67 FR 71165) announcing the availability of the draft Strategy. In response, EPA received 22 public comments on the draft Strategy. EPA requested comment a second time in the same notice as the preliminary 2006 Plan (August 29, 2005; 70 FR 51042). In particular, EPA used this second comment period to request comments on its proposed use of the four factors for identifying existing effluent guidelines for revision described in the draft Strategy and invited the public to identify additional factors for EPA's consideration. The Agency was also interested in receiving comments on whether each of these four factors should be ranked, and if so, whether different weights should be applied to each. EPA received two additional public comments. These 24 public comments are included in Docket ID No. EPA-HQ-OW–2002–0020.

After reviewing public comments on the draft Strategy and on the annual reviews described in the **Federal Register** notices accompanying the section 304(m) plans, EPA has essentially retained the four factor approach for its annual reviews of existing effluent guidelines and pretreatment standards. However, EPA has modified some of the four factors and how they are applied in the annual reviews, as described below.

In the initial screening analysis of existing effluent guidelines and pretreatment standards, EPA gives the most weight to the first factor—amount and toxicity of the pollutants in an industrial category's discharge—in deciding which effluent guidelines to review in more detail. This enables the Agency to set priorities for rulemaking in order to achieve the greatest environmental and health benefits. EPA's assessment of hazard also enables the Agency to indirectly assess the effectiveness of pollution control technologies and processes currently in use by an industrial category, based on the amount and toxicity of its discharges. This also helps the Agency to assess the extent to which additional regulation may contribute reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as specified in section 301(b)(2)(A).

The value of using a comparative risk approach to prioritize environmental actions has been noted by others including EPA's Science Advisory Board. See U.S. EPA (1993), A Guidebook to Comparing Risks and Setting Environmental Priorities, EPA 230–B–93–003. EPA's use of the first factor is similar to the use of a comparative risk analysis, which is ''intended principally as a policy-development and broad resource-allocation tool.'' See DCN 3576. To the extent possible with the available data, EPA has tried to incorporate risk as a factor in its reviews by using the approach to ranking point source categories outlined in the draft Strategy. However, there are limitations in the data and tools. In particular, EPA presently lacks on a national scale the detailed exposure assessment data and tools necessary to complete a risk assessment (e.g., analyze for each industrial facility the fate and transport of discharged pollutants in an actual waterbody, exposure pathways of pollutants to populations in a watershed, and uptake of the discharged pollutants) (*see* DCN 3037). Consequently, EPA ranks point source categories according to their discharges of toxic and non-conventional pollutants to evaluate the relative hazard of these discharges as one measure of potential for impacts to human health and the environment.

EPA has also given added weight to the fourth factor, implementation and efficiency considerations, in deciding which effluent guidelines to review in more detail. Here, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or opportunities to promote innovative approaches such as water quality trading, including within-plant trading. For example, in the 1990s, industry requested in comments on the Offshore and Coastal Oil and Gas Extraction (40 CFR part 435) effluent guidelines rulemakings that EPA revise these effluent guidelines because they inhibited the use of a new pollution prevention technology (synthetic-based drilling fluids). EPA agreed that revisions to these effluent guidelines were appropriate for promoting synthetic-based drilling fluids as a pollution prevention technology and promulgated revisions to the Oil and Gas Extraction point source category. See 66 FR 6850 (Jan. 22, 2001). This factor might also prompt EPA, during an annual review, to decide against identifying an existing set of effluent guidelines or pretreatment standards for revision where the pollutant source is already efficiently and effectively controlled by other regulatory or non-regulatory programs.

As previously noted, current data limitations make it difficult to directly evaluate in the initial screening analysis the second factor—the availability of technology to reduce the pollutants remaining in the industrial category's wastewater. Similarly, EPA has not been able to find a tool to enable it to consider the third factor—economic achievability of candidate treatment technologies—in its initial screening analysis. EPA anticipates that over time more information related to the second and third factors will become available and may permit the Agency to incorporate these two factors into the initial screening analysis. For now, EPA assesses the second and third factors in conducting its detailed reviews of those industries that rank highest with respect to hazard. In its detailed reviews, EPA typically examines: (1) Wastewater characteristics and pollutant sources; (2) pollutants driving the total amount of toxic and non-conventional pollutant discharges; (3) treatment technology and pollution prevention information; (4) the geographic distribution of facilities in the industry; (5) any pollutant discharge trends within the industry; and (6) any relevant economic factors.

After consideration of public comment and further analyses based on all four factors, EPA prioritizes the categories for effluent guidelines rulemakings and publishes the rulemaking schedules in the final biennial plan issued in August of every even-numbered year. By using this multi-layered screening approach, the Agency concentrates its resources on those point source categories with the highest estimated hazard associated with toxic and non-conventional pollution (based on best available data), while assigning a lower priority to categories that the Agency believes are not good candidates for effluent guidelines or pretreatment standards revisions at that time.

Dated: December 15, 2006.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E6–21825 Filed 12–20–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8259–3]

Proposed Reissuance of the NPDES General Permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed NPDES General Permit Reissuance.

SUMMARY: The Regional Administrator of Region 6 today proposes to reissue the National Pollutant Discharge Elimination System (NPDES) general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (No. GMG290000) for discharges from existing and new dischargers and New Sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category as authorized by section 402 of the Clean Water Act. The permit, previously reissued on October 7, 2004, and published in the **Federal Register** at 69 FR 60150, authorizes discharges from exploration, development, production, and transmission facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas off Louisiana and Texas. Discharges of produced water to Federal waters from facilities located in the territorial seas are also authorized when all conditions of the permit are met. The following changes to the expiring permit are proposed to be made as a part of the permit reissuance. Requirements to comply with new cooling water intake structure regulations are included. Sub-lethal effects are required to be measured for whole effluent toxicity testing. New test methods are allowed for monitoring cadmium and mercury in stock barite. Clarifications have been added to the permit requirements for: Types of activities covered; pit cleaning and other wash water; end of well monitoring; sediment toxicity test averaging; the drilling fluids discharge rate limitation; discharges associated with dual gradient drilling; toxicity testing for miscellaneous discharges; and calculation of the produced water critical dilution for toxicity testing. Other minor changes in wording are also proposed to clarify EPA's intent regarding the permit's requirements.

DATES: Comments must be received by February 20, 2007.

ADDRESSES: Comments should be sent to: Ms. Diane Smith, Water Quality Protection Division, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Comments may also be submitted via e-mail to the following address: *smith.diane@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, Region 6, U.S. Environmental Protection Agency (6WQ–CA), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone: (214) 665–2145.

A copy of the proposed permit, and the fact sheet more fully explaining the proposal may be obtained from Ms. Smith. The Agency's current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Smith 24 hours advance notice. Additionally, a copy of the proposed permit, fact sheet, and this **Federal Register** Notice may be obtained on the Internet at: *http://www.epa.gov/earth1r6/6wq/6wq.htm.*

SUPPLEMENTARY INFORMATION:

Regulated entities. EPA intends to use the proposed reissued permit to regulate oil and gas extraction facilities located in the Outer Continental Shelf of the Western Gulf of Mexico, *e.g.,* offshore oil and gas extraction platforms, but other types of facilities may also be subject to the permit. To determine whether your facility, company, business, organization, etc., may be affected by today's action, you should carefully examine the applicability criteria in Part I, Section A.1 of the draft permit. Questions on the permit's application to specific facilities may also be directed to Ms. Smith at the telephone number or address listed above.

The permit contains limitations conforming to EPA's Oil and Gas extraction, Offshore Subcategory Effluent Limitations Guidelines at 40 CFR Part 435 and additional requirements assuring that regulated discharges will cause no unreasonable degradation of the marine environment, as required by section 403(c) of the Clean Water Act. Specific information on the derivation of those limitations and conditions is contained in the fact sheet.

Other Legal Requirements

Oil Spill Requirements. Section 311 of the CWA, (the Act), prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges that are in compliance with NPDES permits are excluded from the provisions of Section 311. However, the permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by Section 311 of the Act.

Endangered Species Act. As explained at 69 FR 39478 (June 30, 2004), EPA previously found that re-issuance of the General Permit for the Outer Continental Shelf of the Western Gulf of Mexico would not adversely affect any listed threatened or endangered species or designated critical habitat. EPA requested written concurrence on that determination from the National Marine Fisheries Service (NMFS). In a letter dated July 12, 2004, NMFS provided such concurrence on the proposed NPDES General Permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico. No changes are proposed which would decrease the level of protection the permit affords threatened or endangered species. The main changes include new intake structure requirements and more stringent whole effluent toxicity limits based on sub-lethal effects. Since those changes increase the level of protection EPA again finds that issuance of the permit will not adversely affect any listed threatened or endangered species or their critical habitat. Concurrence with this determination will be obtained from NMFS before the final permit is issued.

Ocean Discharge Criteria Evaluation. For discharges into waters of the territorial sea, contiguous zone, or oceans CWA section 403 requires EPA to consider guidelines for determining potential degradation of the marine environment in issuance of NPDES permits. These Ocean Discharge Criteria

(40 CFR part 125, Subpart M) are intended to ''prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal'' (45 FR 65942, October 3, 1980). EPA Region 6 has previously determined that discharges in compliance with the Western Gulf of Mexico Outer Continental Shelf general permit (GMG290000) will not cause unreasonable degradation of the marine environment. Since this proposed permit contains limitations which will protect water quality and in general reduce the discharge of toxic pollutants to the marine environment, the Region finds that discharges proposed to be authorized by the reissued general permit will not cause unreasonable degradation of the marine environment.

Coastal Zone Management Act. When the current permit was issued, EPA determined that the activities which were authorized were consistent with the local and state Coastal Zone Management Plans. Those determinations were submitted to the appropriate State agencies for certification. Certification was received from the Coastal Management Division of the Louisiana Department of Natural Resources in a letter dated July 12, 2004 and from the Railroad Commission of Texas by a letter dated August 20, 2004. EPA has again determined that activities proposed to be authorized by this reissued permit are consistent with the local and state Coastal Zone Management Plans. The proposed permit and consistency determination will be submitted to the State of Louisiana and the State of Texas for interagency review at the time of public notice.

Marine Protection, Research, and Sanctuaries Act. The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate certain ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. Pursuant to the Marine Protection and Sanctuaries Act, NOAA has designated the Flower Garden Banks, an area within the coverage of the OCS general permit, a marine sanctuary. The OCS general permit prohibits discharges in areas of biological concern, including marine sanctuaries. The current permit authorizes historic discharges incidental to oil and gas production from a facility which predates designation of the Flower Garden Banks National Marine Sanctuary as a marine sanctuary. EPA has previously worked extensively with NOAA to ensure that authorized discharges are consistent with regulations governing the National Marine Sanctuary. NOAA concurred on the permit conditions when the current permit was issued.

State Water Quality Standards and State Certification. The permit does not authorize discharges to State Waters; therefore, the state water quality certification provisions of CWA section 401 do not apply to this proposed action.

Executive Order 12866. Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

Paperwork Reduction Act. The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

Since this permit reissuance will not significantly change the reporting and application requirements which are required under the previous Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000), the paperwork burdens are expected to be nearly identical. When it issued the previous OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for the reissued permit will be the same and will not be affected by this action.

However, the alternative to obtaining authorization to discharge under this general permit is to obtain an individual permit. The application and reporting burden of obtaining authorization to discharge under the general permit is expected to be significantly less than that under an individual permit.

Regulatory Flexibility Act. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As indicated below, the permit reissuance proposed today is not a ''rule'' subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that issuance of this permit will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act. Section 201 of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1501, *et seq.,* generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (*See, e.g.,* UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law * * *''.

NPDES general permits are not ''rules'' under the APA and thus not

subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA has determined that the proposed permit reissuance would not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the permit would not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The permit, as proposed, also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit. Additionally, EPA does not expect small governments to operate facilities authorized to discharge by this permit.

National Environmental Policy Act. The Minerals Management Service (MMS) examined the environmental consequences of oil and gas exploration activities in a 2002 EIS on Gulf of Mexico OCS Oil and Gas Lease Sales: 2003–2007, Central Planning Area Sales 185, 190, 194, 198, and 201 and Western Planning Area Sales 187, 192, 196, and 200. When the current permit was issued, EPA has adopted that EIS and prepared a Supplemental Environmental Assessment (SEA) to allow for additional consideration and evaluation of potential impacts on the hypoxic zone in the Gulf of Mexico. EPA also determined that the 2004 reissuance of the NPDES general permit for New and Existing Sources in the Western Portion of the Outer Continental Shelf of the Gulf of Mexico would result in no significant impacts other than those considered in the MMS EIS. MMS is currently developing the 2007–2012 Multisale EIS for the Central and Western Planning Areas of the Gulf of Mexico. EPA Region 6 is a cooperating agency on that EIS and has signed a Memorandum of Understanding (MOU) with MMS. EPA intends to use that EIS to fulfill the National Environmental Policy Act obligations for this permit issuance.

Magnuson-Stevens Fisheries Conservation and Management Act. The Magnuson-Stevens Fisheries Conservation and Management Act requires federal agencies proposing to authorize actions that may adversely affect essential fish habitat to consult with NMFS. The entire Gulf of Mexico has been designated Essential Fish Habitat. EPA has adopted the essential fish habitat analysis in the 2002 MMS EIS referenced above and finds that issuance of the proposed permit will not adversely affect essential fish habitat.

Dated: December 12, 2006.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. E6–21890 Filed 12–20–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. First Sleepy Eye Bancorporation, Inc., Sioux Falls, South Dakota; to acquire 100 percent of the voting shares of Lake Benton Bancorporation, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire voting shares of First Security Bank–Lake Benton, Lake Benton, Minnesota.

Board of Governors of the Federal Reserve System, December 18, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–21844 Filed 12–20–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0000, 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Existing collection in use without an OMB control number.

Title of Information Collection: National Blood Collection and Utilization Survey.

Form/OMB No.: 0990–0000.

Use: The Advisory Committee on Blood Safety and Availability, HHS, was established to provide policy advice to the Secretary and the Assistant Secretary for Health. The advice of the committee is partly dependent on the analysis of relevant blood collection and utilization data which is also widely distributed to and used by the transfusion medicine community. To that end, the Office of Public Health and Science (OPHS) is responsible for conducting a bi-annual cross-sectional national blood products survey. OPHS performed the 2005 National Blood Collection and Utilization Survey (NBCUS) using a nationally representative sample of hospitals and blood collection centers. Previously private and government financed versions of the NBCUS have successfully surveyed greater than 90% of the U.S. blood collection and processing facilities and more than 2900 hospital based transfusion blood banks in the United States. The objective of the 2007 NBCUS is to produce reliable and accurate estimates of national and regional collections, utilization, and safety of all blood products—red blood cells, fresh frozen plasma, and platelets. Additionally, data regarding billing and payment for blood and blood products will be collected. New to the 2007 NBCUS is the identification and collection of baseline data for biovigilance blood safety monitoring. An important purpose of the survey is to help the federal government implement a blood safety public health monitoring system. The survey will be mailed to approximately 3000 institutions that include hospitals, blood collection facilities, and cord blood banks selected from the American Hospital Association annual survey database and AABB member list of blood collection facilities, respectively. The maximum length of the instrument will be 13 to 18 pages and the estimated number of data elements will be 200 to 300. The survey will include questions about the institution, blood collection and processing, blood transfusion, cellular therapy products, and product modification and final disposition. The 2007 NBCUS will also include additional questions on issues of biovigilance patient safety monitoring. Facilities will be surveyed regarding their 2006 calendar year activities. A toll-free hotline service for survey inquiries will be made available. Follow-up procedures will be in place to address survey non-responders. Following data collection, statistical tabulations of results for each question will be performed. The survey data will be analyzed by institution type, services provided, USPHS region, etc. A final comprehensive report on blood collection and transfusion-related activities in the United States will be issued by HHS.

Frequency: Once.

Affected Public: Business or other for-profit.

Annual Number of Respondents: 3,000.

Total Annual Responses: 3,000.

Average Burden per Response: 3 hrs.

Total Annual Hours: 9,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Resources and Technology, Office of Resources Management, Attention: Sherrette Funn-Coleman (0990–0000), Room 537–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: December 13, 2006.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–21783 Filed 12–20–06; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Personalized Healthcare Workgroup

ACTION: Announcement of meeting.

SUMMARY: This notice announces the first meeting of the American Health Information Community Personalized Healthcare Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: January 4, 2007 from 1 p.m. to 4 p.m., EST.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. (You will need a photo ID to enter a Federal building.)

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/workgroups.html.*

SUPPLEMENTARY INFORMATION: At this inaugural meeting, the Workgroup members will be introduced and will introduced and will begin discussion of the charges to the group on making recommendations to the American Health Information Community.

The meeting will be available via internet access. Go to *http://www.hhs.gov/healthit/ahic/workgroups.html* for additional information on the meeting.

Dated: December 14, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–9803 Filed 12–20–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Biosurveillance Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 13th meeting of the American Health Information Community Biosurveillance Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: January 5, 2007 from 12 to 3 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/bio_main.html.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue discussing the Biosurveillance Priority Area matrix.

The meeting will be available via internet access. For additional information, go to *http://www.hhs.gov/healthit/ahic/bio_instruct.html.*

Dated: December 14, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the national Coordinator for Health Information Technology.

[FR Doc. 06–9804 Filed 12–20–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology, American Health Information Community Confidentiality, Privacy and Security Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the sixth meeting of the American Health Information Community Confidentiality, Privacy and Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: January 8, 2007, from 1 p.m. to 5 p.m. EST.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. (Please bring photo ID for entry to a Federal building.)

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/health/ahic.html.*

SUPPLEMENTARY INFORMATION: The workgroup members will continue their discussion of Identity Proofing recommendations and work on prioritizing issues for future work.

The meeting will be available in Web cast at *http://www.hhs.gov/healthit/ahic/cps_instruct.html.*

Dated: December 14, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–9805 Filed 12–20–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology, American Health Information Community Chronic Care Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 12th meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: January 18, 2007, from 1 p.m. to 5 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. (Please bring photo ID for entry to a Federal building.)

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/cc_main.html.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue discussing secure messaging.

The meeting will be available via internet access. For additional information, go to *http://www.hhs.gov/healthit/ahic/cc_instruct.html.*

Dated: December 14, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–9806 Filed 12–20–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Electronic Health Records Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 12th meeting of the American Health Information Community Electronic Health Records Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: January 11, 2007 from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. [Please bring photo ID for entry to a Federal building.]

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/ehr_main.html.*

SUPPLEMENTARY INFORMATION: The workgroup will continue its discussion on the barriers and drivers of EHR adoption.

The meeting will be available via internet access. For additional information, go to *http://www.hhs.gov/healthit/ahic/ehr_instruct.html.*

Dated: December 14, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–9807 Filed 12–20–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 13th meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: January 10, 2007, from 1 p.m. to 4 p.m. EST.

ADDRESSES: Marcy C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/ce__main.html.*

SUPPLEMENTARY INFORMATION: The Workgroup members will continue its discussion about potential recommendations to the AHIC addressing the broad charge to the Workgroup, and hear about recent research on interoperability issues.

The meeting will be available via internet access. For additional information, go to *http://www.hhs.gov/healthit/ahic/ce__instruct.html.*

Dated: December 14, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–9808 Filed 12–20–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Quality Workgroup

ACTION: Announcement of meeting.

SUMMARY: This notice announces the fifth meeting of the American Health Information Community Quality Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: January 9, 2007, from 1 p.m. to 5 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. (You will need a photo ID to enter a Federal building.)

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/quality_main.html.*

SUPPLEMENTARY INFORMATION: During the meeting, the Workgroup will continue their discussion on a core set of quality measures and on the specific charge to the Workgroup. The Workgroup members will continue discussion on their work to envision and describe a world in which quality measurement and reporting are automated and clinical decision support is used to improve performance on those quality measures. This shared vision will be used to inform potential recommendations to the AHIC addressing the broad and specific charges to the Workgroup.

The meeting will be available via internet access. For additional information, go to *http://www.hhs.gov/healthit/ahic/quality_instruct.html.*

Dated: December 14, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–9809 Filed 12–20–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–0612]

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

Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) Reporting System—EXTENSION—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The WISEWOMEN program, which focuses on reducing cardiovascular disease risk factors among at-risk women, was in response to the Secretary of Health and Human Services' Continuous Improvement Initiative, asking for the development of programs that examine ways in which service delivery can be improved for select populations. Title XV of the Public Health Service Act, Section 1509 originally authorized the secretary of the Department of Health and Human Services to establish up to three demonstration projects. Through appropriations language, the CDC WISEWOMAN program is now allowed to fund up to 15 projects. Currently, WISEWOMAN funds 12 demonstration projects, which at full implementation are expected to screen approximately 30,000 women annually for cardiovascular disease risk factors. The program targets women already participating in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and provides screening for select cardiovascular disease risk factors (including elevated cholesterol, hypertension and abnormal blood glucose levels), lifestyle interventions, and medical referrals as required in an effort to improve cardiovascular health among participants.

The CDC proposes to collect and analyze baseline and follow-up date (12 months post enrollment) for all participants. These data called the minimum data elements (MDE's), includes demographic and risk factor information about women served in each program and information concerning the number and type of intervention sessions attended. The MDE's will be reported to CDC in April and October each year. The MDE allows or an assessment of how effective WISEWOMAN is at reducing the burden of cardiovascular disease risk factors among participants. The CDC also proposes to collect programmatic data for all WISEWOMAN programs. Programmatic data includes information related to grantee management, public education and outreach professional education service delivery, cost, and an assessment of how well each program is meeting their stated objectives.

All required data will be submitted electronically to the contractor hired by CDC to conduct the WISEWOMAN evaluation. MDE and cost data will be submitted to RTI twice a year. All information collected as part of the WISEWOMAN evaluation will be used to assess the costs, effectiveness and cost-effectiveness of WISEWOMAN in reducing cardiovascular disease risk factors, for obtaining more complete health data among vulnerable populations, promoting public education of disease incidence and risk-factors, improving the availability of screening and diagnostic services for under-served women, ensuring the quality of services provided to women and developing strategies for improved interventions. Because certain demographic data are already collected as part of NBCCEDP, the additional burden on grantees will be modest.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 2,160.

ESTIMATED ANNUALIZED BURDEN TABLE

Report	Number of respondents	Responses per respondent	Average burden per response (in hours)
Screening MDE Report	15	2	16
Intervention MDE Report	15	2	8
Cost Report	15	2	16
Quarterly Report	15	4	16

Dated: December 15, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–21809 Filed 12–20–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0348]

Guidance for Industry and Food and Drug Administration Staff; Procedures for Handling Post-Approval Studies Imposed by Premarket Approval Application Order; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Procedures for Handling Post-Approval Studies Imposed by PMA Order.'' The guidance provides a standard format and content for submitting post-approval studies. The guidance is issued to help ensure that sponsors provide adequate information about the conduct of post-approval studies and that the Center for Devices and Radiological Health (CDRH) can properly track and evaluate post-approval studies.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Procedures for Handling Post-Approval Studies Imposed by PMA Order'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Steven H. Chasin, Center for Devices and Radiological Health (HFZ– 520), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3421.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance provides recommendations to sponsors and CDRH staff on expectations concerning format, content, and review of reports related to post-approval studies imposed by premarket approval application order to help ensure that the studies are conducted effectively and efficiently, and in a least burdensome manner. The guidance has been drafted in response to concerns by Congress, the Institute of Medicine, and FDA about the agency's ability to monitor and track these studies and industry's requests for more clarity about the agency's expectations. FDA received a few comments on the draft document (announced at 70 FR 54561, September 15, 2005) and has made minor changes to the guidance.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on post-approval studies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Procedures for Handling Post-Approval Studies Imposed by PMA Order,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number (1561) to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA's regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 814 have been approved under OMB Control No. 0910–0231; the collections of information in 21 CFR part 822 have been approved under OMB Control No. 0910–0449.

V. Comments

Interested persons may submit to the Division of Dockets Management (See **ADDRESSES**), written or electronic

comments regarding this document at any time. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Submit two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 13, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–21901 Filed 12–20–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

OFFICE OF INSPECTOR GENERAL

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part A (Office of the Secretary), chapter AF of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS) to reflect title changes and responsibilities within the Office of Inspector General's (OIG) Office of Evaluation and Inspections (OEI), Office of Management and Policy (OMP), Office of Investigations (OI), and Office of Audit Services (OAS). The statement of organization, functions, and delegations of authority conforms to and carries out the statutory requirements for operating OIG. Chapter AF was last published in its entirety on April 18, 2005 (70 FR 20147).

These organizational changes are primarily to realign the functions of OMP, OAS, OI, and OEI to better reflect the current work environment and priorities and to more clearly delineate responsibilities for the various activities within these offices.

As amended, sections AFC.00, AFC.10, AFC20, AFE.10, AFE.20, AFH10, AFH.20, and AFJ.20 of Chapter AF now reads as follows:

* * * * *

Section AFC.00, Office of Management and Policy—Mission

The Office of Management and Policy (OMP) provides mission support services to the Inspector General and other OIG components by formulating and executing the budget, developing policy, disseminating OIG information in the form of publications, managing information technology, human resources, executive resources and OIG space management. OMP also executes and maintains an internal quality assurance system, which includes quality control reviews of OMP processes and products, to ensure that OIG policies and procedures are followed effectively and function as intended.

Section AFC.10, Office of Management and Policy—Organization

The office is comprised of the following components.

A. Immediate Office
B. Budget Operations
C. Information Technology
D. Planning, Reporting, and Analysis
E. Administrative Services

Section AFC.20, Office of Management and Policy—Functions

A. Immediate Office of the Deputy Inspector General for OMP

This office is directed by the Deputy Inspector General for OMP who, aided by an Assistant Inspector General, is responsible for assuring that the OIG has the financial and administrative resources necessary to fulfill its mission. The Deputy Inspector General supervises the Directors for the Budget Division, Corporate Business Division, and Service and Support Division within the Office of Information Technology, Planning, Reporting and Analysis Division, and Administrative Services Division.

B. Budget

This office formulates and oversees the execution of the budget and confers with the Office of the Secretary, the Office of Management and Budget, and Congress on budget issues. It also issues quarterly grants to States for Medicaid Fraud Control Units and arranges internal control reviews for OIG, including the development of Government Performance and Results Act goals.

C. Information Technology

This office is directed by the Assistant Inspector General for Management and Policy who also serves as the Chief Information Officer for the Office of Inspector General. The office is responsible to support the Office of Inspector General and its components in completing their missions, by providing quality services for managing and processing information through the selected application of technology in a collaborative and secure manner. The office operates under the guidelines of Federal regulations, mandates, and directives for the development and operation of information technology systems. Organizational focus includes four key areas of (1) Technology planning and governance, (2) information assurance, (3) infrastructure and communications, and (4) systems and applications support. Technology projects provide a basic network infrastructure for a widely distributed organization across the nation, and mission-related technology to conduct the business of OIG.

D. Planning, Reporting, and Analysis

This office is responsible for coordinating the development and preparation of the work plan, including coordinating strategic long-range planning, tactical planning, and the annual work plan organization and production. It compiles the *Office of Inspector General Semiannual Report to Congress* and manages updates of the *Unimplemented OIG Recommendations* report, which is a compendium of significant OIG recommendations to reduce fraud, waste and abuse that have not been fully implemented.

E. Administrative Services

This office is responsible for overseeing emergency operations and national security classification policy. The office conducts management studies and analyzes, establishes, and coordinates general management policies for OIG and publishes those policies in the *OIG Administrative Manual.* This office is also accountable for the OIG framework for the organizational assessment, and space management for Washington, DC headquarters and over 90 geographic locations nationwide.

The office serves as OIG liaison to the Office of the Secretary for personnel issues and other administrative policies and practices; including human resources (HR), training, facilities, asset management, executive resources, and the performance management system, in addition to equal employment opportunity and other civil rights matters. These functions support all components of the OIG organization, except the HR function, which services all OMP staff.

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Section AFE.10, Office of Evaluation and Inspections—Organization

This office is comprised of the following components:

A. Immediate Office
B. Budget and Administrative Resources Division
C. Evaluation Planning and Support Division
D. Regional Operations

E. Technical Support Staff
F. Medicaid Oversight Staff

Section AFE.20, Office of Evaluation and Inspections—Function

A. Immediate Office of the Deputy Inspector General for OEI

This office is directed by the Deputy Inspector General for OEI who, with the assistance of an Assistant Inspector General, is responsible for carrying out OIG's evaluations mission. The Deputy Inspector General supervises the Assistant Inspector General, the Director for Budget and Administrative Resources, and the Director of the Medicaid Fraud Unit Oversight Division. The Assistant Inspector General supervises the Directors of Evaluation and Planning and Support and Technical Support, as well as all Regional Operations.

B. Budget and Administrative Resources

This office develops OEI's evaluation and inspection policies, procedures and standards. It manages OEI's human and financial resources; develops and monitors OEI's management information systems; and conducts management reviews within the HHS/OIG and for other OIGs upon request. The office carries out and maintains an internal quality assurance system that includes quality assessment studies and quality control reviews of OEI processes and products to ensure that policies and procedures are effective, followed, and function as intended.

C. Evaluation Planning and Support

This office manages OEI's work planning process, and develops and reviews legislative, regulatory and program proposals to reduce vulnerabilities to fraud, waste, and mismanagement. It develops evaluation techniques and coordinates projects with other OIG and departmental components. It provides programmatic expertise and information on new programs, procedures, regulations, and statutes to OEI regional offices. This office maintains liaison with other components in the Department, follows up on implementation of corrective action recommendations, evaluates the actions taken to resolve problems and vulnerabilities identified, and provides additional data or corrective action options, where appropriate.

D. Regional Operations

Regional Offices comprise OEI's offices in the field. The regional offices conduct extensive evaluations of HHS programs and produce the results in inspection reports. They conduct data and trend analyses of major HHS initiatives to determine the effects of current policies and practices on program efficiency and effectiveness. These offices recommend changes in program policies, regulations, and laws to improve efficiency and effectiveness and to prevent fraud, abuse, waste, and mismanagement. They analyze existing policies to evaluate options for future policy, regulatory, and legislative improvement.

F. Medicaid Oversight Staff

The Medicaid Oversight Staff is responsible for overseeing the activities of the 49 State Medicaid Fraud Control Units (MFCUs). The division ensures the MFCUs' compliance with Federal grant regulations, administrative rules, and performance standards. The division is also responsible for certifying and recertifying the MFCUs on an annual basis.

Section AFH.10, Office of Audit Services—Organization

The office is comprised of the following components:

A. Immediate Office
B. Financial Management and Regional Operations
C. Centers for Medicare and Medicaid Services Audits
D. Grants, Internal Activities, and Information Technology Audits
E. Audit Management and Policy

Section AFH.20, Office of Audit Services—Functions

* * * * *

D. Grants, Internal Activities, and Information Technology Audits

This office is directed by the Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits. The office conducts and oversees audits of the operations and programs of the Administration for Children and Families, the Administration on Aging, and the Public Health programs, as well as Statewide cost allocation plans. It maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in its audit activities. The office reviews the design, development and maintenance of Department computer-based systems through the conduct of comprehensive audits of general and application controls in accordance with applicable requirements and develops and applies advanced computer-based audit techniques for use in detecting fraud, waste and abuse in HHS programs.

E. Audit Management and Policy

This office is directed by the Assistant Inspector General for Audit Management and Policy. The office manages OAS's human and financial resources by developing staff allocation plans, monitoring budget execution, overseeing recruiting and training, and participating in the development of administrative policies and procedures. It maintains a professional development program for office staff, which meets the requirements of Government auditing standards. The office evaluates audit work, including performing quality control reviews of audit reports, and coordinates the development of and monitors audit work plans. It operates and maintains an OAS-wide quality assurance program that includes the conduct of periodic quality control reviews. It develops audit policy, procedures, standards, criteria and instructions to be followed by OAS staff in conducting audits of departmental programs, grants, contracts or operations. Such policy is developed in accordance with GAGAS and other legal, regulatory and administrative requirements. The office tracks, monitors and reports on audit resolution and follow-up in accordance with OMB Circular A–50, ''Audit Follow-up,'' and the 1988 Inspector General Act Amendments. The office coordinates with other OIG components in developing input to the *Office of Inspector General Annual Work Plan*, to the Office of Inspector General's *Unimplemented OIG Recommendations*, and to the *Office of Inspector General Semiannual Report to the Congress*.

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Section AFJ.20, Office of Investigations—Functions

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B. Investigative Operations

The Assistant Inspector General for Investigative Operations, who supervises a headquarters staff and the Special Agents in Charge, directs this office.

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4. The regional offices conduct investigations of allegations of fraud, waste, abuse, mismanagement, and violations of standards of conduct within the jurisdiction of OIG in their assigned geographic areas. They coordinate investigations and confer with HHS operating division, staff divisions, OIG counterparts, and other investigative and law enforcement

agencies. They prepare investigative and management improvement reports.

C. Investigative Oversight and Support

This office is directed by the Assistant Inspector General for Investigative Oversight and Support, who performs the general management functions of the Office of Investigations.

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9. The office directs and manages extremely sensitive and complex investigations into alleged misconduct by OIG and Departmental employees, as well as criminal investigations into electronic and/or computer-related violations.

Dated: December 18, 2006.

Daniel R. Levinson,

Inspector General.

[FR Doc. E6–21857 Filed 12–20–06; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–25747]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0086

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) to request a revision of a currently approved collection of information. The ICR is 1625–0086, Great Lakes Pilotage. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before January 22, 2007.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2006–25747] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 or by contacting (b) OIRA at (202) 395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System (DMS) at *http://dms.dot.gov*. (b) By e-mail to *nlesser@omb.eop.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at 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 also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR is available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 10–1236 (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents; or Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICRs addressed. Comments to DMS must contain the docket number of this request, [USCG 2006–25747]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before January 22, 2007.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2006–25747], indicate the specific section of this document or the ICR 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 them 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 to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. 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 in 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 Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (71 FR 57986, October 2, 2006) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

Title: Great Lakes Pilotage.

OMB Control Number: 1625–0086.

Type of Request: Revision of a currently approved collection.

Affected Public: Three U.S. Pilot Associations and Individual Pilots on the Great Lakes.

Forms: None.

Abstract: The Office of Great Lakes Pilotage is seeking OMB's approval to change Great Lakes Pilotage data collection requirements for the three U.S. pilot associations it regulates. This change would require submission of data to an electronic data collection system. This new system is identified as the Great Lakes Electronic Pilot Management System. This electronic system replaces the manual paper submissions previously used to collect data on bridge hours, vessel delay, detention, cancellation/movement, pilot travel, revenues, pilot availability, and related data. This change will ensure that the required data is available in a timely manner and will allow immediate accessibility to data crucial from both an operational and ratemaking standpoint. Currently, this information is being recorded manually.

Burden Estimate: The estimated burden remains 18 hours a year.

Dated: December 15, 2006.

R. T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E6–21835 Filed 12–20–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1670–DR]

New York: Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1670–DR), dated December 12, 2006, and related determinations.

EFFECTIVE DATE: December 12, 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 December 12, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe storms and flooding during the period of November 16–17, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Marianne C. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster: Broome, Chenango, Delaware, Hamilton, Herkimer, Montgomery, Otsego, and Tioga Counties for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–21808 Filed 12–20–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1671–DR]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–1671–DR), dated December 12, 2006, and related determinations.

EFFECTIVE DATE: December 12, 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 December 12, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Washington

resulting from severe storms, flooding, landslides, and mudslides during the period of November 2–11, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Elizabeth Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster: Clark, Cowlitz, Grays Harbor, King, Lewis, Pierce, Skagit, Skamania, Snohomish, Thurston, and Wahkiakum Counties for Individual Assistance.

All counties within the State of Washington are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–21806 Filed 12–20–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5044–N–24]

Notice of Proposed Information Collection for Public Comment; Public Housing Inventory Removal Application on Reporting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* February 20, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Inventory Removal Application.

OMB Control Number: 2577–0075.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) are required to submit information to HUD to request permission to remove from inventory all or a portion of a public housing development (*i.e.* dwelling unit(s), non-dwelling property or vacant land) owned by a Public Housing Authority (PHA). The information requested in this application is based on requirements of Sections 18, 22, 32, and 33 of the United States housing Act of 1937 as amended (''Act''), 24 CFR Parts 906, 970, and 972 (HUD Regulations), and HUD's interest in property of PHAs under Annual Contribution Contracts and Declarations of Trust. The Department will use this information to determine whether, and under what circumstances, to permit PHAs to remove from their inventories all or a portion of a public housing development, as well as to track removals for other record keeping requirements. Responses to this collection of information are statutory and regulatory to obtain a benefit. The Department has automated the application process by instituting an inventory removal module in the Public and Indian Housing Information Center (PIC) System.

Agency form numbers:

HUD–52860: Inventory Removal Application
HUD–52860–B: Total Development Cost (TDC) Calculation
HUD–52860–C: Homeownership
HUD–52860–D: Required Conversion
HUD–52860–E: Voluntary Conversion
HUD–52860–F: Eminent Domain

Members of affected public: State or Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

Number respondents	Frequency of submissions	Hours of responses	Burden hours
851	1	38	6010

Status of the proposed information collection: Reinstatement, with change, of previous approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 13, 2006.

Bessy Kong,

Deputy Assistant Secretary for Office of Policy, Program and Legislative Initiative.

[FR Doc. E6–21865 Filed 12–20–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5116–N–01]

Establishment of Office of Hearings and Appeals

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: In this notice, HUD announces the establishment of an Office of Hearings and Appeals within the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Earnestine T. Pruitt, Deputy Assistant Secretary, Office of Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2158, Washington, DC 20410, telephone (202) 7080–1381 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has established an Office of Hearings and Appeals within the Office of the Secretary, under the supervision of the Director of the Office of Hearings and Appeals. The Office of Hearings and Appeals consists of two separate divisions: the Office of Administrative Law Judges and the Office of Appeals. The Director of the Office of Hearings and Appeals shall supervise and manage the administrative activities of the Office of Administrative Law Judges and the Office of Appeals.

The Office of Administrative Law Judges shall have independent jurisdiction in deciding cases consistent with statutes and HUD regulations. The Office of Appeals shall have judicial review and jurisdiction of non-contract cases currently handled by the HUD Board of Contract Appeals in accordance with following regulatory sections in title 24 of the Code of Federal Regulations: §§ 17.150 through 17.170 20.4(b), 24.947, 25.3 and 26.2, and consistent with applicable statutes, regulations, agreements, or such other matters as may be assigned by the Secretary of HUD or the Secretary's designee.

The establishment of an Office of Hearings and Appeals facilitates operations within HUD relating to the implementation of section 847 of Title VIII of the National Defense Authorization Act of Fiscal Year 2006 (Public Law 109–613, approved January 6, 2006).

Dated: December 15, 2006.

Alphonso Jackson,

Secretary.

[FR Doc. E6–21867 Filed 12–20–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0007; Annual Certification of Hunting and Sport Fishing Licenses Issued, 50 CFR 80.10

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. This ICR is scheduled to expire on December 31, 2006. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before January 22, 2007.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at one of the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0007.

Title: Annual Certification of Hunting and Sport Fishing Licenses Issued, 50 CFR 80.10.

Service Form Number(s): 3–154a and 3–154b.

Type of Request: Revision of currently approved collection.

Affected Public: States and territories (Commonwealth of Puerto Rico, District of Columbia, Commonwealth of the Northern Mariana Islands, Guam, Virgin Islands, and American Samoa).

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Annual Number of Respondents: 56.

Frequency of Collection: Annually.

Estimated Number of Responses: 112 (one per respondent for each form).

Estimated Time Per Response: Average of 12 hours for FWS Form 3–154a and 20 hours for FWS Form 3–154b.

Estimated Total Annual Burden Hours: 1,792.

Abstract: The Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i) and the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k) provide Federal assistance to the States for management and restoration of fish and wildlife. These Acts and our regulations at 50 CFR 80.10 require that States and territories annually certify their hunting and fishing license sales. States and territories that receive grants under these Acts use FWS Forms 3–154a (Part I—Certification) and 3–154b (Part II—Summary of Hunting and Sport Fishing Licenses Issued) to certify the number and amount of hunting and fishing license sales. We use the information collected to determine apportionment and distribution of funds according to the formula specified in each Act.

Comments: On July 24, 2006, we published in the **Federal Register** (71 FR 41831) a notice of our intent to

request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on September 22, 2006. We did not receive any comments.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(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. Comments submitted in response to this notice are a matter of public record.

Dated: November 20, 2006.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–21891 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0012; Declaration for Importation or Exportation of Fish or Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden. This ICR is scheduled to expire on December 31, 2006. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before January 22, 2007.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at one of the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0012.

Title: Declaration for Importation or Exportation of Fish or Wildlife.

Service Form Number(s): 3–177 and 3–177a.

Type of Request: Revision of a currently approved collection.

Affected Public: Businesses or individuals that import or export fish, wildlife, or wildlife products; scientific institutions that import or export fish or wildlife scientific specimens; government agencies that import or export fish or wildlife specimens for various purposes.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Collection: On occasion.

Estimated Number of Respondents: 30,600.

Estimated Total Annual Responses: 170,000.

Estimated Time Per Response: 15 minutes for hard copy; 10 minutes for electronic completion.

Estimated Total Annual Burden Hours: 34,000.

Abstract: The Endangered Species Act (16 U.S.C. 1531 et seq.) makes it unlawful to import or export fish, wildlife, or plants without filing a declaration or report deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)). With a few exceptions, businesses or individuals importing into or exporting from the United States any fish, wildlife, or wildlife product must complete and submit to the Service an FWS Form 3–177 (Declaration for Importation or Exportation of Fish or Wildlife). This form as well as FWS Form 3–177a (Continuation Sheet) and instructions for completion are available for electronic submission at *https://edecs.fws.gov.* These forms are also available in hard copy at *http://www.fws.gov/forms/.*

The information that we collect is unique to each wildlife shipment and enables us to (1) Accurately inspect the contents of the shipment; (2) enforce any regulations that pertain to the fish, wildlife, or wildlife products contained in the shipment; and (3) maintain records of the importation and exportation of these commodities. Additionally, since the United States is a member of CITES, we compile much of the collected information in an annual report that we provide to the CITES Secretariat in Geneva, Switzerland. This annual report on the number and types of imports and exports of fish, wildlife, and wildlife products is one of our treaty obligations under CITES. We also use the information obtained from FWS Form 3–177 as an enforcement tool and management aid to monitor the international wildlife market and detect trends and changes in the commercial trade of fish, wildlife, and wildlife products. Our Division of Scientific Authority and Division of Management Authority use this information to assess the need for additional protection for native species.

Businesses or individuals must file FWS Forms 3–177/3–177a with us at the time and port where they request clearance of the import or export of wildlife or wildlife products. In certain instances, they may file the forms with U.S. Customs and Border Protection. The information we collect includes:

(1) Name of the importer or exporter and broker.

(2) Scientific and common name of the fish or wildlife.

(3) Permit numbers (if permits are required).

(4) Description, quantity, and value of the fish or wildlife.

(5) Natural country of origin of the fish or wildlife.

In addition, certain information, such as the airway bill or bill of lading number, the location of the fish or wildlife for inspection, and the number of cartons containing fish or wildlife, assists our wildlife inspectors if a physical examination of the shipment is necessary. This information collection is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Comments: On June 20, 2006, we published in the **Federal Register** (71 FR 35444) a notice that we planned to ask OMB to renew approval for this information collection. In that notice, we solicited public comments for 60 days, ending August 21, 2006. We received one comment, which did not address the information collection requirements. We did not make any changes as a result of this comment.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(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. Comments submitted in response to this notice are a matter of public record.

Dated: November 16, 2006.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–21893 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0067; Approval Procedures for Nontoxic Shot and Shot Coatings (50 CFR 20.134)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on December 31, 2006. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before January 22, 2007.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at one of the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0067.

Title: Approval Procedures for Nontoxic Shot and Shot Coatings (50 CFR 20.134).

Service Form Number: None.

Type of Request: Revision of a currently approved collection.

Affected Public: Businesses that produce and/or market shot or shot coatings.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Collection: On occasion.

Estimated Number of Respondents: 2 per year.

Estimated Total Annual Responses: 2.

Estimated Time per Response: 3,200 hours.

Estimated Total Nonhour Cost Burden: $34,000 per year.

Abstract: This information collection is associated with regulations implementing the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*). The MBTA prohibits the unauthorized take of migratory birds and authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations in 50 CFR part 20. On January 1, 1991, we banned lead shot for hunting waterfowl and coots in the United States. At that time, only steel shot was available as a nontoxic alternative to lead shot. Over the years, we have encouraged manufacturers to develop types of shot for waterfowl hunting that are not toxic to migratory birds or other wildlife when ingested and are not harmful to the environment.

The regulations at 50 CFR 20.134 outline the application and approval process for new types of nontoxic shot. When considering approval of a candidate material as nontoxic, we must ensure that it is not hazardous in the environment and that secondary exposure (ingestion of spent shot or its components) is not a hazard to migratory birds. To make that decision, we require each applicant to collect information about the solubility and toxicity of the candidate material. Additionally, for law enforcement purposes, a noninvasive field detection device must be available to distinguish candidate shot from lead shot. This information constitutes the bulk of an application for approval of nontoxic shot.

Comments: On June 23, 2006, we published in the **Federal Register** (71 FR 36131) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on August 22, 2006. We received one comment expressing the opinion that all shot material is harmful to the environment and that hunting is unethical. We have not made any changes to our information collection as a result of these comments.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(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. Comments submitted in response to this notice are a matter of public record.

Dated: November 16, 2006.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–21894 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of

1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) The application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
130553	Gibbon Conservation Center, Santa Clarita, CA.	71 FR 53464; September 11, 2006	November 2, 2006.
124346	University of Texas at Austin, Austin, Texas	71 FR 46503; August 14, 2006	November 27, 2006.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
127012	Levi J. Britton	71 FR 43207; July 31, 2006	November 20, 2006.
127274	Douglas Jayo	71 FR 48938; August 22, 2006	November 28, 2006.
128377	Jerry G. Scolari	71 FR 48938; August 22, 2006	November 15, 2006.
134833	Dennis R. Leistico	71 FR 60561; October 13, 2006	November 30, 2006.

Dated: December 1, 2006.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–21830 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 22, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: U.S. Fish and Wildlife Service/National Black-footed Ferret Conservation Center, Carr, CO, PRT–037824.

The applicant requests a renewal of their permit to export, import, and re-import live captive-born and wild specimens, biological samples, and salvaged material of black-footed ferret (*Mustela nigripes*) to/from Mexico for completion of identified tasks and objectives mandated under the Black-footed Ferret Recovery Plan. Salvaged materials may include but are not limited to: whole or partial specimens, blood, tissue, hair, and fecal swabs. This notification covers activities to be conducted by the applicant over a five year period.

Applicant: Carroll E. Moran, Corsicana, TX, PRT–140644. The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: November 24, 2006.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–21828 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 22, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Tommy E. Morrison, Channelview, TX, PRT–139635.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republican of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: George Carden Circus International, Inc., Springfield, MO, PRT–070854, 079868, 079870, 079871, and 079872.

The applicant requests the re-issuance of their permits to re-export and re-import five female Asian elephants (*Elephas maximus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 070854 Bimbo Jr.; 079868 Vickie; 079870 Jenny; 079871 Judy and 079872 Cyd. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Kelly J. Powell, Cedar Springs, MI, PRT–137039.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Michael J. Lenarduzzi, Sobieski, WI, PRT–138216.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: November 10, 2006.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–21824 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*),] the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) The application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
131525	Michael P. Cummings	71 FR 60561; October 13, 2006	November 13, 2006.
132412	David J. Merkel	71 FR 60561; October 13, 2006	November 13, 2006.
131586	Hugh V. Sanderson	71 FR 60561; October 13, 2006	November 13, 2006.
132159	Patricia A. Winger	71 FR 60561; October 13, 2006	November 13, 2006.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
134585	SeaWorld San Diego	71 FR 53464; September 11, 2006	November 15, 2006.
134586	SeaWorld San Diego	71 FR 53464; September 11, 2006	November 15, 2006.

Dated: November 17, 2006.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–21826 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 22, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Mitchel Kalmanson, Maitland, FL, PRT–131582, 131583.

The applicant requests a permit to import one male and one female captive born cheetah (*Acinonyx jubatus*) from the Herne Breeding Center, Belgium, for the purpose of enhancement of the survival of the species through captive breeding and conservation education.

Applicant: Robert W. Allen, North Platte, NC, PRT–132859.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Michael L. Fetterolf, Franklin, PA, PRT–139893.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James M. Shook, Clarkston, MI, PRT–140189.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John R. Luckasen, Omaha, NE, PRT–132445.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Jerry L. Brenner, West Olive, MI, PRT–130142.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal, noncommercial use.

Dated: November 17, 2006.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–21827 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) The application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
125918	Jerry E. Bateman	71 FR 43207; July 31, 2006	September 27, 2006.

ENDANGERED SPECIES—Continued

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
127693	Gary F. Silc	71 FR 48938; August 22, 2006	October 13, 2006.
844694	Southwest Fisheries Science Center, National Marine Fisheries Service.	71 FR 52816; September 7, 2006	October 20, 2006.

Dated: October 27, 2006.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–21820 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by January 22, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Leslie I. Barnhart, Houston, TX, PRT–128056.

The applicant requests a permit to authorize interstate and foreign commerce, export, and cull of excess barasingha (*Cervus duvauceli*) from his captive herd for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Kathlyn C. Story, Tyler, TX, PRT–138823.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Anson M.K. Lum, Kaneohe, HI, PRT–138944.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kenneth E. Clifton, Greenville, SC, PRT–134777.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: October 27, 2006.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–21821 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) The application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
117195	Zoological Society of San Diego	71 FR 10700, March 2, 2006	October 13, 2006.
119215	Wildlife Conservation Society	71 FR 35692, June 21, 2006	August 10, 2006.
119866	Zoological Society of Philadelphia	71 FR 26554, May 5, 2006	June 9, 2006.

ENDANGERED SPECIES—Continued

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
120528	St. Louis Zoo	71 FR 26554, May 5, 2006	June 9, 2006.
124435	Zoological Society of San Diego	71 FR 37604, June 30, 2006	September 1, 2006.

Dated: November 3, 2006.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–21822 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by January 22, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application to import birds for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Zoological Society of San Diego, Escondido, CA, PRT–140973.

The applicant requests a permit to export captive-hatched Andean condors (*Vultur gryphus*) to Colombia for reintroduction into the wild. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Mary E. Blair, Columbia University, New York, NY, PRT–138896.

The applicant requests a permit to import blood samples from red-back squirrel monkeys (*Saimiri oerstedii*) for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant over a five-year period.

Applicant: Safari West, Santa Rosa, CA, PRT–140068.

The applicant requests a permit to import one male and one female captive bred cheetah (*Acinonyx jubatus*) from the DeWildt Cheetah and Wildlife Trust, DeWildt, South Africa, for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Claire L. Yoshida, Kealakekua, HI, PRT–125757.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: December 1, 2006.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–21832 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
125872	Warren A. Sackman, III	71 FR 48938; August 22, 2006	November 15, 2006.
127617	Donald M. Sitton	71 FR 48938; August 22, 2006	November 14, 2006.
128206	John C. Kirkland	71 FR 48938; August 22, 2006	November 14, 2006.
128617	Donald J. Giottonini, Jr.	71 FR 48938; August 22, 2006	November 15, 2006.
130729	James R. Martell	71 FR 56544; September 27, 2006	November 16, 2006.
128485	Rodney W. Brandenberg	71 FR 56544; September 27, 2006	November 14, 2006.
132536	John J. Meldrum	71 FR 60561; October 13, 2006	November 20, 2006.

Dated: November 24, 2006.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–21829 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST] Group No. 23, Maine

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Maine.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Township 2, Range 8, North of Waldo Patent (T. 2, R. 8, N. W. P.), Penobscot County, Maine

The plat of survey represents the dependent resurvey and survey of the boundaries of lands held in trust for the Penobscot Indian Nation in Township 2, Range 8, North of Waldo Patent Penobscot County, Maine and was accepted December 8, 2006. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information. If BLM receives a protest against this survey, as shown in the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: December 14, 2006.

Michael W. Young,

Chief Cadastral Surveyor.

[FR Doc. 06–9796 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST] Group No. 18, North Carolina

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; North Carolina.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Tract Number 32 and a portion of Tract Number 35, Cherokee County, North Carolina

The plat of survey represents the dependent resurvey of Tract number 32 and a portion of Tract Number 35, and was accepted December 7, 2006. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information. If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: December 14, 2006.

Michael W. Young,

Chief Cadastral Surveyor.

[FR Doc. 06–9795 Filed 12–20–06; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

National Park Service

Ecological Restoration Plan, Draft Environmental Impact Statement, Bandelier National Monument, NM

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for the Ecological Restoration Plan, Bandelier National Monument.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a Draft Environmental Impact Statement for the Ecological Restoration Plan for Bandelier National Monument, New Mexico.

DATES: The National Park Service will accept comments on the Draft Environmental Impact Statement from the public. Comments will be accepted for 60 days from the date the Environmental Protection Agency publishes the Notice of Availability. No public meetings are scheduled at this time.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov* and in the office of the Superintendent, Darlene Koontz, Bandelier National Monument, 15 Entrance Road, Los Alamos, New Mexico 87544, 505–672–3861, extension 502.

FOR FURTHER INFORMATION CONTACT: John Mack, Chief of Resource Management, Bandelier National Monument, 15 Entrance Road, Los Alamos, New Mexico 87544, 505–672–3861, extension 540, *john_mack@nps.gov*.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent Darlene Koontz, Bandelier National Monument, 15 Entrance Road, Los Alamos, New Mexico 87544. You may also comment via the Internet at *http://parkplanning.nps.gov.* If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the office of the Superintendent, 505–672–3861, extension 502. Finally, you may hand-deliver comments to Bandelier National Monument, 15 Entrance Road, Los Alamos, New Mexico 87544. Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In

the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Dated: August 9, 2006.

Hal J. Grovert,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. E6–21488 Filed 12–20–06; 8:45 am]

BILLING CODE 4312–EW–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America and Blue Tee Corp., Under CERCLA

Under 28 CFR 50.7, notice is hereby given that on December 12, 2006, a proposed Consent Decree (Consent Decree) with Blue Tee Corp., in the case of *United States* v. *Blue Tee Corp.,* Civil Action No. 06–5128–CV–SW–REL, has been lodged concurrently with the filing of a complaint in the United States District Court for the Western District of Missouri.

This Consent Decree resolves the United States' claims against Blue Tee Corp. under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, at the Granby Subdistrict of the Newton County Mine Tailings Superfund Site in Newton County, Missouri (Granby Subdistrict). Under the terms of the Consent Decree Blue Tee shall: (1) Pay to the United States $198,645.11 for past response costs, (2) pay future response costs as defined in the consent decree, and (3) implement a removal action to provide a safe and permanent drinking water source for residents affected by releases and threatened releases of hazardous substances at and from the Granby Subdistrict.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Blue Tee Corp.,* Civil Action No. 06–5128–CV–SW–REL, D.J. Ref. 90–11–2–07088/1.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Missouri, Charles Evans Whittaker Courthouse, 400 East Ninth Street, Room 5510, Kansas City, Missouri 64106, and at the Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.25 (25 cents per page reproduction cost) payable to the United States Treasury for payment.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 06–9790 Filed 12–20–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America and Southgate Development Co., Inc. Under Section 107 of CERCLA

Under 28 CFR 50.7, notice is hereby given that on December 14, 2006, a proposed Consent Decree (Consent Decree) with Southgate Development Co., Inc., in the case of *United States* v. *State of Washington Dept. of Transportation and Southgate Development Co., Inc.,* Civil Action No. 05–5447–RLB, has been lodged in the United States District Court for the Western District of Washington.

This Consent Decree resolves the United States' claims against Southgate Development Co., Inc., under Sections 106 and 107 of CERLA, 42 U.S.C. 9606 and 9607, at the Palermo Wellfield Superfund Site in Tumwater, Washington (''The Site''). Under the terms of the Consent Decree, Southgate shall: (1) Pay to the United States $1,095,000.00 for response costs, (2) pay $30,000 to the Palermo Wellfield Environmental Trust, and (3) assign to the Palermo Wellfield Environmental Trust certain claims under insurance policies previously issued to Southgate.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *State of Washington Dept. of Transportation and Southgate Development Co., Inc.,* Civil Action No. 05–5447–RLB, D.J. Ref. 90–11–2–07975.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Washington, 700 Stewart Street, Seattle, Washington 98101, and at the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.00 (25 cents per page reproduction cost) payable to the United States Treasury for payment.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 06–9791 Filed 12–20–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0006]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: Revision of a currently approved collection; Law Enforcement Officers Killed or Assaulted.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 20, 2007. This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional LEOKA information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Law Enforcement Officers Killed or Assaulted.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form 1–705; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, State, Federal, and tribal law enforcement agencies.

This collection is needed to collect information on officers killed or assaulted in the line of duty committed throughout the United States. Data are tabulated and published in the annual Law Enforcement Officers Killed and Assaulted publication.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,499 law enforcement agency participants; calculated estimates indicate 7 minutes for respondents to complete hard copy and 5 minutes for electronic submission completion.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 20,448 hours, annual burden, associated with this information collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 15, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6–21817 Filed 12–20–06; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 15, 2006.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained from *RegInfo.gov* at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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 technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Ethylene Oxide (EtO) (29 CFR 1910.1047).

OMB Number: 1218–0108.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profits.

Number of Respondents: 5,474.

Number of Annual Responses: 209,328.

Estimated Time per Response: Varies by task.

Total Burden Hours: 42,732.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $6,369,781.

Description: The standard requires employers to monitor employee exposure to EtO, to provide medical surveillance, to train employees about the hazards of EtO, and to establish and maintain accurate records of employee exposure to EtO. These records will be used by employers, employees, physicians, and the Government to ensure that employees are not harmed by exposure to EtO.

Agency: Occupational Safety and Health Administration.

Type of Review: New collection (request for a new OMB control number).

Title: OSHA's Conflict of Interest and Disclosure Form.

OMB Number: 1218–0NEW.

Type of Response: Reporting.

Affected Public: Individuals or Households.

Number of Respondents: 36.

Number of Annual Responses: 36.

Estimated Time per Response: Varies from 30 minutes to 1 hour.

Total Burden Hours: 27.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Office of Management and Budget (OMB) published the Final Information Quality Bulletin for Peer Review on December 15, 2004. The Bulletin established that important scientific information shall be peer reviewed by qualified specialists before it is disseminated by the federal government. Peer review is one of the important procedures used to ensure that the quality of published information meets the standards of the scientific and technical community. It is a form of deliberation involving an exchange of judgments about the appropriateness of methods and the strength of the author's inferences. Peer review involves the review of a draft product for quality by specialists in the field who were not involved in producing the draft. The selection of participants in a peer review is based on expertise, with due consideration of independence and conflict of interest. The Bulletin states ''* * * the agency must address reviewers' potential conflicts of interest (including those stemming from ties to regulated businesses and other stakeholders) and independence from the agency.'' The Conflict of Interest and Disclosure form will be used to determine whether or not a conflict of interest exists for a potential peer review panel member.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E6–21797 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 15, 2006.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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 technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Ethylene Oxide (EtO) (29 CFR 1910.1047).

OMB Number: 1218–0108.

Type of Response: Recordkeeping and Third Party disclosure.

Affected Public: Business or other for-profits.

Number of Respondents: 5,474.

Number of Annual Responses: 209,328.

Estimated Time per Response: Varies by task.

Total Burden Hours: 42,732.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $6,369,781.

Description: The standard requires employers to monitor employee exposure to EtO, to provide medical surveillance, to train employees about the hazards of EtO, and to establish and maintain accurate records of employee exposure to EtO. These records will be used by employers, employees, physicians, and the Government to ensure that employees are not harmed by exposure to EtO.

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Type of Review: New collection (request for a new OMB control number).

Title: OSHA's Conflict of Interest and Disclosure Form.

OMB Number: 1218–0NEW.

Type of Response: Reporting.

Affected Public: Individuals or Households.

Number of Respondents: 36.

Number of Annual Responses: 36.

Estimated Time per Response: Varies from 30 minutes to 1 hour.

Total Burden Hours: 27.

Total Annualized capital/startup costs: $0.

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Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E6–21798 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Notice of Reassignment of Functions of Office of Trade Agreement Implementation to Office of Trade and Labor Affairs; Notice of Procedural Guidelines

December 14, 2006.

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of Reassignment of Functions of Office of Trade Agreement Implementation to Office of Trade and Labor Affairs; Notice of Procedural Guidelines.

SUMMARY: The Secretary of Labor announces that the functions of the Office of Trade Agreement Implementation (OTAI) of the Bureau of International Labor Affairs (ILAB) have been reassigned to the newly established Office of Trade and Labor Affairs (OTLA). The OTLA will serve as the Contact Point for purposes of administering the labor chapters of the U.S.-Australia, U.S.-Bahrain, U.S.-Chile, U.S.-Morocco, U.S.-Singapore, and U.S.-Dominican Republic-Central America (CAFTA–DR) Free Trade Agreements, as well as labor provisions of other free trade agreements to which the United States may become a party to the extent authorized in such agreements, implementing legislation, or accompanying statements of administrative action. The OTLA will maintain the designation of the National Administrative Office and continue its function to administer Departmental responsibilities under the North American Agreement on Labor Cooperation. The address for this office is: Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5303, Washington, DC 20210. The telephone numbers are (office) 202–693–4887 and (facsimile) 202–693–4851.

In addition, this notice sets out revised procedural guidelines for the Department of Labor's receipt and review of public submissions on matters related to Free Trade Agreement (FTA) labor chapters and the North American Agreement on Labor Cooperation (NAALC), and describes functions of the OTLA.

DATES: *Effective Date:* This document is effective as of December 21, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5303, Washington, DC 20210. Telephone: (202) 693–4887 (this is not a toll-free number). Facsimile: 202–693–4851. E-mail: *OTLA@dol.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of International Labor Affairs (ILAB) has undertaken a reorganization that combines all of ILAB's trade-related responsibilities into a new office, the Office of Trade and Labor Affairs (OTLA). The OTLA is comprised of three new divisions: the Trade Policy and Negotiations Division; the Economic and Labor Research Division; and the Trade Agreement Administration and Technical Cooperation Division. This reorganization will enhance coordination and synergy among the various ILAB organizational units conducting trade negotiations, research, reporting, and implementation of the labor provisions of free trade agreements. The OTLA will exercise all functional responsibilities formerly exercised by the OTAI.

The OTLA is responsible for implementing trade-related labor policy and coordinating international technical cooperation in support of the labor provisions in FTAs and the NAALC. The OTLA's functions include: (1) Coordinating the development and implementation of cooperative activities stipulated in the NAALC and FTA labor chapters; (2) Providing for the receipt and consideration of public submissions on matters related to the NAALC and FTA labor chapters; (3) Serving as the U.S. government contact point and resource for information on matters related to the NAALC and FTA labor chapters for the general public, the National Administrative Offices (NAOs) of Canada and Mexico, for the Secretariat of the Commission for Labor Cooperation and other such entities created under the FTA labor chapters.

The NAALC and the labor provisions in several recently concluded FTAs require that the OTLA provide for the receipt and review of submissions on labor law matters in the countries signatories to the Agreements. Further details concerning submissions, cooperative activities, and information available to the public appear in the body of the **Federal Register** notice, Sections C through I below.

On December 23, 2004, the Bureau of International Labor Affairs published a **Federal Register** notice informing the public of the renaming of the National Administrative Office as the Office of Trade Agreement Implementation; designating the office as the contact point for the NAALC and the labor provisions of FTAs; and requesting comments on the proposed procedural guidelines for the receipt and review of public submissions (69 FR 77128 (Dec. 23, 2004)). The notice provided a 60-day period for submitting written comments, which closed on February 22, 2005. During this period, comments were received from three parties: the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO), the U.S. Chamber of Commerce, and Mexico's NAO. The comments were given careful consideration and where appropriate, resulted in modifications to the proposed procedural guidelines.

AFL–CIO Comments

The AFL–CIO commented that the U.S.-Jordan FTA was excluded from the list of agreements that will be administered by the OTLA and requested that this omission be remedied. The Agreement was excluded because the Department of Labor is not designated as the contact point for the labor provisions of the Jordan Agreement. The four FTAs (Morocco, Australia, Dominican Republic-Central America, and Bahrain) that became effective after the publication of the Department's December 2004 Notice have been added to the list of covered FTAs, and future FTAs will be covered by these procedures to the extent authorized in such agreements, implementing legislation, or accompanying statements of administrative action.

The AFL–CIO commented that the proposed guidelines are more restrictive than the current procedural guidelines for the NAALC, and could reduce the number of meritorious complaints that are accepted. In this regard, the AFL–CIO contends that the proposed procedural guidelines may exceed the Department's authority because they expand the grounds upon which the OTLA may reject a submission, narrow the class of acceptable submissions, and lack ''broad direction to accept most submissions.'' For example, the AFL–CIO commented that Section F.2 of the proposed guidelines adds new requirements for including copies of relevant laws and regulations in submissions, and improperly requires a statement of whether the issue affects trade between the parties.

It is not the Department's intent to limit the acceptance of public submissions under the new procedural guidelines. The criteria for evaluating submissions in section F.2 are intended to encourage the submission of relevant information to improve the OTLA's ability to consider and review submissions. Moreover, section F.2

provides that a submission address the criteria ''as relevant * * * [and] to the fullest extent possible.'' The OTLA recognizes that there may be circumstances where a factor is not relevant to a submission or where information on that factor is unavailable. Under those circumstances, the absence of such information would not be determinative in the OTLA's consideration and review of submissions. For example, the instruction that submissions include copies of relevant laws and regulations to the extent practicable reflects the OTLA's goal of obtaining the maximum amount of information relevant to the matters raised in the submission. Similarly, the instruction that submitters state whether the issues raised in a submission affect trade between the parties is a relevant factor relating to a potential decision to invoke dispute settlement under the FTAs.

The AFL–CIO commented that section C.7 of the proposed guidelines limits the basis for consultations by restricting consultations to ''any matter arising under a labor chapter or the NAALC,'' instead of ''any matter relating to another Party's labor laws, administration, or labor market conditions.'' The AFL–CIO notes, correctly, that Article 21.1 of the NAALC allows consultations regarding ''any matter relating to another Party's labor laws, administration, or labor market conditions.'' The intent of section C.7 was to allow for consultations regarding any matter for which consultations are expressly contemplated under the labor chapters of existing and future FTAs. Therefore, in response to the AFL–CIO's comment, the OTLA has revised section C.1 and C.7 to make clear that the basis for consultations under the NAALC has not changed.

The AFL–CIO commented that section F.2(e) of the proposed guidelines unnecessarily requires a submission to address whether or not the violation alleged in the submission reflects something other than a reasonable exercise of discretion or a bona fide decision regarding the allocation of resources. The AFL–CIO contends that this factor is irrelevant to many submissions, and burdensome to document inasmuch as it requires submitters to demonstrate a negative. The Department concurs with the AFL–CIO, and therefore this criterion has been omitted from the final notice.

Finally, the AFL–CIO commented that section G.2 of the proposed guidelines ''eliminates the presumption in favor of acceptance'' of a submission, and is likely to result in the rejection of meritorious submissions. The AFL–CIO also commented that the proposed guidelines are likely to create confusion and produce inconsistent rulings by the OTLA because of the broad range of factors to be considered before the OTLA may accept or reject submissions. The AFL–CIO contends it is not clear how the OTLA will weigh the G.2 factors in considering whether to accept or reject a submission.

Section G.2 clearly sets forth the criteria to be considered by the OTLA in deciding whether to accept a submission. The purpose of the change to section G.2 was to combine all the factors to be considered by the OTLA when deciding to accept or reject a submission; it was not intended as a functional change in how the OTLA reviews submissions for acceptance. The change to section G.2 was intended to eliminate any perception that the OTLA's review process resulted in the automatic acceptance of submissions. Under the procedural guidelines established in 1994, acceptance of submissions under the NAALC was always conditioned on whether a submission raised issues relevant to labor law matters in the territory of another party and whether a review would further the objectives of the Agreement. Further, submissions were always subject to rejection on several grounds (*e.g.*, failure to seek domestic remedies, similarity to a recent submission without significant new information, etc.). Section G.2 of the revised guidelines retains the factors established by the 1994 guidelines for the OTLA to consider when deciding whether to accept a submission for review, and thus the OTLA maintains the same level of flexibility in making such decisions. Accordingly, there is no basis for the AFL–CIO's assertion that section G.2 would result in the rejection of meritorious submissions, and it is not necessary to revise Section G.2 in order to assure consideration of meritorious submissions.

U.S. Chamber of Commerce Comments

The U.S. Chamber of Commerce (''Chamber'') commented generally that the submission process is subject to abuse by labor organizations seeking to put public pressure on an employer. The Chamber proposed that the Department establish additional requirements to be met before a submission is accepted by the OTLA: (1) That the OTLA decline a submission based on a single incident; (2) that the OTLA decline a submission that has not been fully adjudicated in the country of jurisdiction; (3) that there should be no presumption that a submission should be accepted; (4) that the OTLA decline to identify a submission by the name of the employer; (5) that the OTLA establish a presumption against holding a public hearing on a submission; and, (6) that the OTLA adopt procedures to prevent the submission process from being used to interfere with an ongoing labor dispute.

The OTLA declines to adopt the Chamber's proposal that it decline a submission based on a single incident, or because it has not been fully adjudicated in the country of jurisdiction. Submission of evidence of a single incident does not preclude the possibility that, upon further investigation, a pattern or practice of non-compliance might be found; indeed it may be difficult for a submitter to compile evidence of multiple instances of non-compliance. As to the proposed exhaustion requirement, neither the NAALC nor the FTA labor chapters require submitters to exhaust their domestic remedies before filing a submission with a Party's contact point. Further, the scope of public submissions under an FTA or the NAALC is not limited to matters that may come before an adjudicatory body. Moreover, allegations that a Party's administrative, quasi-judicial, judicial, and labor tribunal proceedings are not fair, equitable, or transparent may form the basis of a submission asserting that Party's failure to meet its commitments under the NAALC or an FTA. Finally, to accept the Chamber's proposal to require full adjudication in the country of origin would provide a means for a government party to veto, through inaction, the OTLA's consideration of a particular submission.

The Chamber of Commerce supports the Department's revision of section G.2 as an effective means of eliminating any presumption that a submission will be accepted. As explained above in response to the AFL–CIO's comments, the change in section G.2 was not intended as a functional change in how the OTLA reviews submissions for acceptance. A review of the disposition of public submissions to the OTLA since 1994 indicates that, in practice, the OTLA has not read the guidelines to create a presumption that a submission will be accepted.

In response to the Chamber's comment that a submission not be identified by the name of the employer, the OTLA notes that submissions have not been identified by employer name since 2001. The OTLA currently uses the geographical location of the subject of the submission to identify the submission.

Concerning public hearings, the OTLA's experience is that hearings can be effective means of gathering information and testimony from witnesses. A public hearing is also an important means of assuring transparency in the OTLA's functioning. In section H.3 of both the current and proposed guidelines, the OTLA retains the flexibility to hold a public hearing as a means of acquiring information relevant to its review of a submission. In addition, in the proposed guidelines, holding a public hearing is mentioned as one of many potential means for the public to submit relevant information. Therefore, the Department finds it inadvisable to create a presumption against holding a public hearing, and the guidelines will retain the flexibility for the OTLA to hold public hearings in appropriate cases.

The Chamber recommended that the Department adopt further guidelines to ensure that the submission process not be used to intervene or interfere with labor disputes. As the contact point on the labor chapters of an FTA and the NAALC, the OTLA must provide for the receipt of public submissions on any matter relating to a labor chapter of an FTA or the NAALC. In the past, submissions have often referred to an ongoing labor dispute, and, in some instances, information about a labor dispute has provided useful context for the alleged violations and facilitated the OTLA's review of the allegations. In the context of the review process, however, the OTLA's role is not to assess the merits of the labor dispute, but to assist in the resolution of issues related to a Party's obligations under the NAALC or the labor chapter of an FTA. The proposed guidelines do not alter the focus of the review, which continues to be on assessing government action or inaction and not on the behavior of particular employers or workers.

Mexican NAO Comments

The Mexican NAO commented that proposed section C.1, which ''encourages'' public input and provides for the receipt of communications relating to the NAALC or a labor chapter of an FTA, exceeds the authority given to the OTLA by Article 16.3 of the NAALC to merely ''provide for the submission and receipt'' of public communications. The word ''encourage'' in the first sentence of section C.1 of the proposed guidelines referred to the receipt of input from the public on a broad range of issues related to a labor chapter of an FTA or the NAALC. It did not refer to the receipt of submissions, which specifically deal with possible violations of a labor chapter of an FTA or the NAALC, and was not intended to encourage the filing of submissions against Parties. However, to clarify any possible ambiguities in the language of section C.1, the section has been revised to state that the OTLA shall ''receive and consider'' public communications on matters relating to a labor chapter of an FTA and the NAALC, and the objective of encouraging public comments on labor issues has been moved to section C.3.

Mexico also commented that consultations with foreign government representatives of NAALC Parties should be undertaken only through the NAO of the party against whom a submission was filed. The language of section C.1 has been revised to clarify that consultations with a foreign government shall take place with foreign government officials, the designated contact point (in the case of the NAALC, the Mexican or Canadian NAO), and non-government representatives, as appropriate.

Time Frames for Agency Action on Submissions

In addition to addressing the public comments on the proposed procedural guidelines, the Department has determined it is appropriate to reconsider whether the time frames for OTLA action on submissions contained in the proposed guidelines are realistic. Section G.1 of the proposed guidelines provides that OTLA must decide whether to accept a submission for review within 60 days of the receipt of the submission, the same time period as provided in section G.1 of the current procedural guidelines. 59 FR 16660 (1994). In addition, section H.7 of the proposed guidelines provides that OTLA must issue a public report on a submission ''[w]ithin 120 days of the acceptance of a submission for review, unless circumstances require an extension of time of up to 60 additional days * * *,'' the same time period provided in section H.8 of the current procedural guidelines. 59 FR 16660 (1994). These time periods are not mandated by any statute or other authority, and are matters of agency procedure. Experience under the current guidelines has demonstrated that these periods of time for accepting submissions and issuing final reports are not always sufficient, for example, in cases where significant supplemental materials are provided by the submitters, where issues are particularly complex, or where on-site investigations are conducted outside of the United States.

Upon further consideration, OTLA has determined that the guidelines should provide additional flexibility in the time periods for accepting submissions and preparation of public reports, to establish a more realistic timeframe. Accordingly, section G.1 has been revised to allow extension of the 60-day period for accepting submissions, and section H.7 has been revised to allow an initial period of 180 days to issue a public report, and to remove the 60-day limitation on an extension of time. OTLA believes these revisions strike an appropriate balance between the need to resolve submissions promptly, and the need for careful research, investigation, and analysis in deciding whether to accept a submission and in preparation of public reports in cases that often present complex legal and factual issues.

Designation of the Secretary of the National Administrative Office

Article 15.1 of the NAALC requires the Parties to establish a National Administrative Office (NAO) at the Federal government level and to notify the other Parties of its location. Article 15.2 requires each Party to designate a Secretary for its NAO, who shall be responsible for its administration and management. Pursuant to the NAALC, the Secretary of Labor established the U.S. NAO in 1994 (59 FR 16660 (Apr. 1, 1994) and is responsible for its administration. To clarify that the Secretary of Labor has the authority to designate the Secretary of the NAO and retains flexibility in making the designation, Section A.3 of the Guidelines has been revised to indicate that the Director of the OTLA shall be the Secretary of the NAO unless the Secretary of Labor directs otherwise.

The attached notice reassigns the functions of the Office of Trade Agreement Implementation to the Office of Trade and Labor Affairs and sets out revised procedural guidelines pertaining to public submissions, superseding the Revised Notice of Establishment and Procedural Guidelines published on April 7, 1994 (59 FR 16660) and the Notice of Renaming the National Administrative Office as the Office of Trade Agreement Implementation; Designation of the Office as the Contact Point for Labor Provisions of Free Trade Agreements; and Request for Comments on Procedural Guidelines published on December 23, 2004 (69 FR 77128).

Signed at Washington, DC, on December 14, 2006.

Elaine L. Chao,

Secretary of Labor.

The Notice Is Set Out Below.

Notice of Procedural Guidelines

Section A. Designation of Contact Point

1. The Office of Trade and Labor Affairs is designated as the contact point as required by Article 15.4.2 and Annex 15–A of the U.S.-Bahrain FTA, Article 18.4.3 and Annex 18.5 of the U.S.-Chile FTA, Article 17.4.2 and Annex 17A of the U.S.-Singapore FTA, Article 16.4.1 and Annex 16–A of the U.S.-Morocco FTA, Article 18.4.2 of the U.S.-Australia FTA, and Article 16.4.3 and Annex 16.5 of the U.S.-Dominican Republic-Central America FTA (CAFTA–DR).

2. The Office of Trade and Labor Affairs is designated as the contact point for labor chapters of other FTAs to which the United States may become a party to the extent provided for in such agreements, implementing legislation, or accompanying statements of administrative action.

3. The Office of Trade and Labor Affairs retains the functions of, and designation as, the National Administrative Office to administer Departmental responsibilities under the North American Agreement on Labor Cooperation. Unless the Secretary of Labor directs otherwise, the Director of the Office of Trade and Labor Affairs retains the functions of, and designation as, the Secretary of the National Administrative Office under Article 15 of the North American Agreement on Labor Cooperation.

Section B. Definitions

As used herein:

FTA means the U.S.-Bahrain Free Trade Agreement, the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the U.S.-Australia Free Trade Agreement, the U.S.-Morocco Free Trade Agreement, the CAFTA–DR, or other free trade agreement to which the United States may become a party under which the Department is given a role in administering the labor provisions of the agreement;

Another Party or other Party means a country other than the United States that is a Party to an FTA or the NAALC;

Commission for Labor Cooperation means the Commission for Labor Cooperation established pursuant to Article 8 of the NAALC;

Labor chapter means Chapter 15 of the U.S.-Bahrain FTA, Chapter 18 of the U.S.-Chile FTA, Chapter 17 of the U.S.-Singapore FTA, Chapter 16 of the U.S.-Morocco FTA, Chapter 18 of the U.S.-Australia FTA, Chapter 16 of the CAFTA–DR, or a labor chapter of any other FTA;

Labor committee refers to (1) The Labor Affairs Council established pursuant to Article 18.4.1 of the U.S.-Chile Free Trade Agreement, Article 16.4.1 of the CAFTA–DR, or pursuant to any other FTA and (2) a Subcommittee on Labor Affairs that may be established by the Joint Committee pursuant to Article 15.4 of the Bahrain FTA, Article 17.4.1 of the U.S.-Singapore FTA, Article 18.4.1 of the U.S.-Australia FTA, Article 16.6.3 of the U.S.-Morocco FTA, or pursuant to any other FTA;

Labor cooperation program refers to (1) The Cooperative Activities Program undertaken by the Parties to the NAALC and (2) a Labor Cooperation Mechanism established pursuant to Article 15.5 of the U.S.-Bahrain FTA, Article 18.5 of the U.S.-Chile FTA, Article 17.5 of the U.S.-Singapore FTA, Article 16.5 of the U.S.-Morocco FTA, Article 18.5 of the U.S.-Australia FTA, Article 16.5 of the CAFTA–DR, or a similar mechanism established pursuant to any other FTA;

Labor organization includes any organization of any kind, including such local, national, and international organizations or federations, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

NAALC means the North American Agreement on Labor Cooperation;

Non-governmental organization means any scientific, professional, business, or public interest organization or association that is neither affiliated with, nor under the direction of, a government;

Party means a Party to an FTA or the NAALC;

Person includes one or more individuals, non-governmental organizations, labor organizations, partnerships, associations, corporations, or legal representatives; and

Submission means a communication from the public containing specific allegations, accompanied by relevant supporting information, that another Party has failed to meet its commitments or obligations arising under a labor chapter or Part Two of the NAALC.

Section C. Functions of the Office of Trade and Labor Affairs

1. The OTLA shall receive and consider communications from the public on any matter related to the NAALC or a labor chapter of an FTA. The OTLA shall consider the views expressed by the public; consult, as appropriate, with foreign government officials, the designated contact point, and non-government representatives; and provide appropriate and prompt responses.

2. The OTLA shall provide assistance to the Secretary of Labor on all matters concerning a labor chapter of an FTA or the NAALC, including the development and implementation of a labor cooperation program.

3. The OTLA shall serve as a contact point with agencies of the United States government, counterparts from another Party, the public, governmental working or expert groups, business representatives, labor organizations, and non-governmental organizations concerning matters under a labor chapter or the NAALC. The OTLA encourages comments on relevant labor issues from the public at large and will consider them as appropriate.

4. The OTLA shall promptly provide publicly available information pursuant to Article 16.2 of the NAALC as requested by the Secretariat of the Commission for Labor Cooperation, the National Administrative Office of another Party, or an Evaluation Committee of Experts.

5. The OTLA shall receive, determine whether to accept for review, and review submissions on another Party's commitments and obligations arising under a labor chapter or the NAALC, as set out in Sections F, G, and H.

6. The OTLA may initiate a review of any matter arising under a labor chapter or the NAALC.

7. The OTLA may request, undertake, and participate in consultations with another Party pursuant to Parts One, Four and Five of the NAALC, or pursuant to the consultation provisions of FTAs, such as Article 15.6 of the U.S.-Bahrain FTA, Article 18.6 of the U.S.-Chile FTA, Article 17.6 of the U.S.-Singapore FTA, Article 18.6 of the U.S.-Australia FTA, Article 16.6 of the U.S.-Morocco FTA, and Article 16.6 of the CAFTA–DR, and respond to requests for such consultations made by another Party.

8. The OTLA shall assist a labor committee or the Commission for Labor Cooperation on any relevant matter.

9. The OTLA shall, as appropriate, establish working or expert groups; consult with and seek advice of non-governmental organizations or persons; prepare and publish reports as set out in Section J and on matters related to the implementation of a labor chapter pursuant to Article 15.4.3 and 15.4.5 of the U.S.-Bahrain FTA, Article 18.4.4 and 18.4.6 of the U.S.-Chile FTA, Article 17.4.3 and 17.4.5 of the U.S.-Singapore FTA, Article 16.4.4 and 16.4.6 of the CAFTA–DR, Article 18.4.3 of the U.S.-Australia FTA, Article 16.4.2 and 16.4.4 of the U.S.-Morocco FTA, or

pursuant to any other FTA; collect and maintain information on labor law matters involving another Party; and compile materials concerning labor law legislation of another Party.

10. The OTLA shall consider the views of any advisory committee established or consulted to provide advice in administering a labor chapter or the NAALC.

11. In carrying out its responsibilities under the labor chapters and the NAALC, the OTLA shall consult with the Office of the United States Trade Representative, the Department of State, and other appropriate entities in the U.S. government.

Section D. Cooperation

1. The OTLA shall conduct at all times its activities in accordance with the principles of cooperation and respect embodied in the FTAs and the NAALC. In its dealings with a contact point of another Party and all persons, the OTLA shall endeavor to the maximum extent possible to resolve matters through consultation and cooperation.

2. The OTLA shall consult with the contact point of another Party during the submission and review process set out in Sections F, G and H in order to obtain information and resolve issues that may arise.

3. The OTLA, on behalf of the Department of Labor and with other appropriate agencies, shall develop and implement cooperative activities under a labor cooperation program. The OTLA may carry out such cooperative activities through any means the Parties deem appropriate, including exchange of government delegations, professionals, and specialists; sharing of information, standards, regulations and procedures, and best practices; organization of conferences, seminars, workshops, meetings, training sessions, and outreach and education programs; development of collaborative projects or demonstrations; joint research projects, studies, and reports; and technical exchanges and cooperation.

4. The OTLA shall receive and consider views on cooperative activities from worker and employer representatives and from other members of civil society.

Section E. Information

1. The OTLA shall maintain public files in which submissions, transcripts of hearings, **Federal Register** notices, reports, advisory committee information, and other public information shall be available for inspection during normal business hours, subject to the terms and conditions of the Freedom of Information Act, 5 U.S.C. 552.

2. Information submitted by a person or another Party to the OTLA in confidence shall be treated as exempt from public inspection if the information meets the requirements of 5 U.S.C. 552(b) or as otherwise permitted by law. Each person or Party requesting such treatment shall clearly mark ''submitted in confidence'' on each page or portion of a page so submitted and furnish an explanation as to the need for exemption from public inspection. If the material is not accepted in confidence it will be returned promptly to the submitter with an explanation for the action taken.

3. The OTLA shall be sensitive to the needs of an individual's confidentiality and shall make every effort to protect such individual's interests.

Section F. Submissions

1. Any person may file a submission with the OTLA regarding another Party's commitments or obligations arising under a labor chapter or Part Two of the NAALC. Filing may be by electronic e-mail transmission, hand delivery, mail delivery, or facsimile transmission. A hard copy submission must be accompanied by an electronic version in a current PDF, Word or Word Perfect format, including attachments, unless it is not practicable.

2. The submission shall identify clearly the person filing the submission and shall be signed and dated. It shall state with specificity the matters that the submitter requests the OTLA to consider and include supporting information available to the submitter, including, wherever possible, copies of laws or regulations that are the subject of the submission. As relevant, the submission shall address and explain to the fullest extent possible whether:

(a) The matters referenced in the submission demonstrate action inconsistent with another Party's commitments or obligations under a labor chapter or the NAALC, noting the particular commitment or obligation;

(b) there has been harm to the submitter or other persons, and, if so, to what extent;

(c) the matters referenced in the submission demonstrate a sustained or recurring course of action or inaction of non-enforcement of labor law by the other Party;

(d) the matters referenced in the submission affect trade between the parties;

(e) relief has been sought under the domestic laws of the other Party, and, if so, the status of any legal proceedings; and

(f) the matters referenced in the submission have been addressed by or are pending before an international body.

Section G. Acceptance of Submissions

1. Within 60 days after the filing of a submission, unless circumstances as determined by the OTLA require an extension of time, the OTLA shall determine whether to accept the submission for review. The OTLA may communicate with the submitter during this period regarding any matter relating to the determination.

2. In determining whether to accept a submission for review, the OTLA shall consider, to the extent relevant, whether:

(a) The submission raises issues relevant to any matter arising under a labor chapter or the NAALC;

(b) a review would further the objectives of a labor chapter or the NAALC;

(c) the submission clearly identifies the person filing the submission, is signed and dated, and is sufficiently specific to determine the nature of the request and permit an appropriate review;

(d) the statements contained in the submission, if substantiated, would constitute a failure of the other Party to comply with its obligations or commitments under a labor chapter or the NAALC;

(e) the statements contained in the submission or available information demonstrate that appropriate relief has been sought under the domestic laws of the other Party, or that the matter or a related matter is pending before an international body; and

(f) the submission is substantially similar to a recent submission and significant, new information has been furnished that would substantially differentiate the submission from the one previously filed.

3. If the OTLA accepts a submission for review, it shall promptly provide written notice to the submitter, the relevant Party, and other appropriate persons, and promptly publish in the **Federal Register** notice of the determination, a statement specifying why review is warranted, and the terms of the review.

4. If the OTLA declines to accept a submission for review, it shall promptly provide written notice to the submitter stating the reasons for the determination.

Section H. Reviews and Public Reports

1. Following a determination by the OTLA to accept a submission for review, the OTLA shall conduct such

further examination of the submission as may be appropriate to assist it to better understand and publicly report on the issues raised. The OTLA shall keep the submitter apprised of the status of a review.

2. Except for information exempt from public inspection pursuant to Section E, information relevant to a review shall be placed in a public file.

3. The OTLA shall provide a process for the public to submit information relevant to the review, which may include holding a public hearing.

4. Notice of any such hearing under paragraph 3 shall be published in the **Federal Register** 30 days in advance. The notice shall contain such information as the OTLA deems relevant, including information pertaining to requests to present oral testimony and written briefs.

5. Any hearing shall be open to the public. All proceedings shall be conducted in English, with simultaneous interpretation provided as the OTLA deems necessary.

6. Any hearing shall be conducted by an official of the OTLA or another Departmental official, assisted by staff and legal counsel, as appropriate. The public file shall be made part of the hearing record at the commencement of the hearing.

7. Within 180 days of the acceptance of a submission for review, unless circumstances as determined by the OTLA require an extension of time, the OTLA shall issue a public report.

8. The report shall include a summary of the proceedings and any findings and recommendations.

Section I. Recommendations to the Secretary of Labor

1. The OTLA may make a recommendation at any time to the Secretary of Labor as to whether the United States should request consultations with another Party pursuant to Article 15.6.1 of the U.S.-Bahrain FTA, Article 18.6.1 of the U.S.-Chile FTA, Article 17.6.1 of the U.S.-Singapore FTA, Article 18.6.1 of the U.S. Australia FTA, Article 16.6.1 of the U.S. Morocco FTA, Article 16.6.1 of the CAFTA–DR, pursuant to the labor provisions of any other FTA, or consultations with another Party at the ministerial level pursuant to Article 22 of the NAALC. As relevant and appropriate, the OTLA shall include any such recommendation in the report prepared in response to a submission.

2. If, following any such consultations, the matter has not been resolved satisfactorily, the OTLA shall make a recommendation to the Secretary of Labor concerning the convening of a labor committee in accordance with an FTA, or the establishment of an Evaluation Committee of Experts in accordance with Article 23 of the NAALC, as appropriate.

3. If the mechanisms referred to in paragraph 2 are invoked and the matter subsequently remains unresolved, and the matter concerns whether a Party is conforming with an obligation under a labor chapter, such as Article 16.2.1.a of the CAFTA–DR, Article 18.2.1.a of the U.S.-Chile FTA, or Part Two of the NAALC, that is subject to the dispute settlement provisions of an FTA or the NAALC, the OTLA shall make a recommendation to the Secretary of Labor concerning pursuit of dispute resolution under such provisions.

4. Before making such recommendations, OTLA shall consult with the Office of the United States Trade Representative, the Department of State, and other appropriate entities in the U.S. government

Section J. Periodic and Special Reports

1. The OTLA shall publish periodically a list of submissions presented to it, including a summary of the disposition of such submissions.

2. The OTLA shall obtain and publish periodically information on public communications considered by the other Parties.

3. The OTLA may undertake reviews and publish special reports on any topics under its purview on its own initiative or upon request from the Secretary of Labor.

[FR Doc. E6–21837 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,770]

Charleston Hosiery, Inc. Currently Known as Renfro Charleston, LLC Fort Payne, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 7, 2005, applicable to workers of Charleston Hosiery, Inc., Fort Payne, Alabama. The notice was published in the **Federal Register** on May 16, 2005 (70 FR 25862).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of socks.

The subject firm originally named Charleston Hosiery, Inc. was renamed Renfro Charleston, LLC on November 16, 2006 due to a change in ownership. The State agency reports that workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Renfro Charleston, LLC, Fort Payne, Alabama. Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Charleston Hosiery, Inc. who were adversely affected by increased company imports.

The amended notice applicable to TA–W–56,770 is hereby issued as follows:

All workers of Charleston Hosiery, currently known as Renfro Charleston, LLC, Fort Payne, Alabama, who became totally or partially separated from employment on or after March 7, 2004, through April 7, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 8th day of December 2006.

Linda G. Poole,

Certifying Officer, Division, of Trade Adjustment Assistance.

[FR Doc. E6–21786 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,405]

Employment Solutions Workers Employed at Water Pik, Inc. Loveland, CO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 13, 2006 in response to a worker petition filed the Colorado Department of Labor and Employment on behalf of workers of Employment Solutions employed at Water Pik, Inc, Loveland, Colorado.

The workers of Employment Solutions employed at Water Pik, Inc,

Loveland, Colorado are covered by a certification that was amended to include them and issued officially on November 30, 2006 (TA–W–58,831).

Therefore, this investigation is terminated.

Signed at Washington, DC this 13th day of December, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment, Assistance.

[FR Doc. E6–21795 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,504]

Ford Motor Company; St. Louis Assembly Plant Hazelwood, MO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 21, 2006 in response to a petition filed on behalf of workers of Ford Motor Company, St. Louis Assembly Plant, Hazelwood, Missouri.

The petitioning group of workers is covered by an earlier petition filed on November 24, 2006 (TA–W–60,478) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 11th day of December, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment, Assistance.

[FR Doc. E6–21789 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,434]

HI Specialty America Division of Hitachi Metals America, Ltd. Irwin, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 15, 2006, in response to a worker petition filed by a company official on behalf of workers at Hi Specialty America, Division of Hitachi Metals America, Ltd., Irwin, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 11th day of December 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment, Assistance.

[FR Doc. E6–21788 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,206; TA–W–60,206A]

Kentucky Derby Hosiery Company, Inc. Currently Known as Kentucky Derby Hosiery/Gildan Plant 6 Also Known as Lynne Plant and Plant 7 Also Known as Forest Drive Plant Including On-Site Leased Workers of Ablest Staffing and Randstand Temporary Services; Including On-Site Leased Workers of Ablest Staffing and Randstand Temporary Services; Mount Airy, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 25, 2006, applicable to workers of Kentucky Derby Hosiery Company, Inc., Plant 6, also known as Lynne Plant, Mount Airy, North Carolina and Kentucky Derby Hosiery Company, Inc., Plant 7, also known as Forest Drive Plant, including on-site leased workers from Ablest Staffing and Randstand Temporary Services, Mount Airy, North Carolina. The notice was published in the **Federal Register** on November 16, 2006 (71 FR 66799).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produce socks.

New information shows that Gildan purchased the Kentucky Derby Hosiery Company, Inc. on December 1, 2006. The subject firm is currently known as Kentucky Derby Hosiery/Gildan, Plant 6, also known as Lynne Plant, and Plant 7, also known as Forest Drive Plant, Mount Airy, North Carolina.

Workers separated from employment at Plant 6 and Plant 7 of the subject firm have their wages reported under a separate unemployment insurance (UI) tax account for Kentucky Derby Hosiery/Gildan.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Kentucky Derby Hosiery Company, Inc., Plant 6, also known as Lynne Plant and Plant 7, also known as Forest Drive Plant, who were adversely affected by a shift in production to the Dominican Republic, Costa Rica and Honduras.

The amended notice applicable to TA–W–60,206 and TA–W–60,206A are hereby issued as follows:

All workers of Kentucky Derby Hosiery Company, Inc., currently known as Kentucky Derby Hosiery/Gildan, Plant 6, also known as Lynne Plant, Mount Airy, North Carolina (TA–W–60,206) and Kentucky Derby Hosiery Company, Inc., currently known as Kentucky Derby Hosiery/Gildan, Plant 7, also known as Forest Drive Plant, including on-site leased workers from Ablest Staffing and Randstand Temporary Staffing, Mount Airy, North Carolina (TA–W–60,206A), who became totally or partially separated from employment on or after October 2, 2005, through October 25, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 12th day of December 2006.

Linda G. Poole,

Certifying Officer, Division, of Trade Adjustment Assistance.

[FR Doc. E6–21787 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,564]

Lee Middleton Original Dolls, Inc. Belpre, OH; Notice of Termination Of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 8, 2006, in response to a petition filed on behalf of workers of Lee Middleton Original Dolls, Inc., Belpre, Ohio.

The petition has been deemed invalid. The petition contained petitioner information for three workers but was not signed by all three workers.

Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of December 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–21796 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 2, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 2, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of December 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment, Assistance.

APPENDIX—TAA

[Petitions instituted between 12/4/06 and 12/8/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60521	P.H. Precision products Corp. (Comp)	Pembroke, NH	12/04/06	11/28/06
60522	Michaels of Oregon (Comp)	Meridian, ID	12/04/06	12/01/06
60523	Brunswick Family Boat Group (Comp)	Cumberland, MD	12/04/06	12/01/06
60524	Eaton Paperboard Converters (Wkrs)	Booneville, MS	12/04/06	11/27/06
60525	Special Tool (Wkrs)	Fraser, MI	12/04/06	11/29/06
60526	Hardwick Knitted Fabrics, Inc. (Comp)	West Warren, MA	12/04/06	11/30/06
60527	Anchor Danley/Danley IEM, LLC (Comp)	Cleveland, OH	12/04/06	11/13/06
60528	Sherwood Harsco (UAW)	Niagara Falls, NY	12/04/06	11/28/06
60529	Hospira, Inc. (Comp)	Rocky Mount, NC	12/05/06	12/04/06
60530	Tower Automotive, Inc. (Comp)	Upper Sandusky, OH	12/05/06	12/05/06
60531	Intelliden, Inc. (Wkrs)	Colorado Springs, CO	12/05/06	11/29/06
60532	Auburn Apparel, Inc. (Comp)	Auburn, PA	12/05/06	12/06/06
60533	International Filing Company (Wkrs)	Waukegan, IL	12/05/06	12/04/06
60534	Ceramaspeed, Inc. (State)	Maryville, TN	12/05/06	12/04/06
60535	Broyhill Lenoir Furniture Corp. (Comp)	Lenoir, NC	12/05/06	12/04/06
60536	Accotex, Inc. (Comp)	Mauldin, SC	12/05/06	12/04/06
60537	Plastex Extruders, Inc. USA (Comp)	Fort Payne, AL	12/05/06	12/01/06
60538	Hipwell Manufacturing Co. (Wkrs)	Pittsburgh, PA	12/05/06	12/04/06
60539	Moll Industries, Inc. (Wkrs)	New Braunfels, TX	12/05/06	12/05/06
60540	Lundia Division of MII, Inc. (Union)	Jacksonville, IL	12/05/06	12/01/06
60541	Siemens VDO (IBT)	Elkhart, IN	12/06/06	12/04/06
60542	GreatBatch Hittman (State)	Columbia, MD	12/06/06	12/05/06
60543	Edscha Jackson (Comp)	Jackson, MI	12/06/06	12/05/06
60544	Schiffer Dental Care Products, LLC (Comp)	Agawam, MA	12/06/06	12/05/06
60545	NICE Systems, Inc. (Wkrs)	Shelton, CT	12/06/06	12/05/06
60546	Phillips Diversified Mfg., Inc. (Comp)	Annville, KY	12/06/06	11/28/06
60547	Enterprise Die, Inc. (Wkrs)	Grandville, MI	12/06/06	11/29/06
60548	Alan White Company (Wkrs)	Sulligent, AL	12/07/06	11/22/06
60549	Blue Holdings, Inc. (State)	Commerce, CA	12/07/06	11/27/06
60550	V H Furniture Corporation (Comp)	Atkins, VA	12/07/06	12/06/06
60551	Haggar Clothing Company (Wkrs)	Dallas, TX	12/07/06	12/05/06
60552	American Specialty Cars, Inc. (Wkrs)	Livonia, MI	12/07/06	12/05/06
60553	Graftech (UCAR Carbon) (Comp)	Clarksville, TN	12/07/06	12/07/06
60554	Spectrum Brands, Inc. (Comp)	Fennimore, WI	12/07/06	12/06/06
60555	Beard Hosiery, Inc. (Wkrs)	Lenoir, NC	12/07/06	12/07/06
60556	Hitachi Electronic Devices (USA), Inc. (Comp)	Greenville, SC	12/07/06	12/05/06
60557	Burley Design (State)	Eugene, OR	12/07/06	12/06/06
60558	Super Value Distribution Center (Wkrs)	Pleasant Prairie, WI	12/07/06	12/07/06
60559	ESCO Company, Ltd. Partnership (State)	Muskegon, MI	12/08/06	12/07/06
60560	Electronic Data Systems (EDS) (Union)	Rochester, NY	12/08/06	11/21/06
60561	Aramark Uniform and Career Apparel (State)	Lawrenceville, GA	12/08/06	12/07/06
60562	Seagate (State)	Bloomington, MN	12/08/06	12/07/06
60563	General Chemical Performance Products—Gibbstown (Comp)	Gibbstown, NJ	12/08/06	12/06/06
60564	Lee Middleton Original Dolls, Inc. (Wkrs)	Belpre, OH	12/08/06	11/21/06

APPENDIX—TAA—Continued

[Petitions instituted between 12/4/06 and 12/8/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60565	Briggs and Stratton, P.P.G. (Wkrs)	Jefferson, WI	12/08/06	11/20/06
60566	E Trade Mortgage Corporation (Wkrs)	Coraopolis, PA	12/08/06	12/06/06
60567	Accordis Chicago Service Ctr. (Wkrs)	Chicago, IL	12/08/06	12/04/06

[FR Doc. E6–21790 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,083]

QPM Aerospace, Inc. Portland, OR; Notice of Negative Determination Regarding Application for Reconsideration

By application of November 1, 2006, a petitioner representative requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on September 29, 2006 and published in the **Federal Register** on October 16, 2006 (71 FR 60763).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, which was filed by a State agency representative on behalf of workers at QPM Aerospace, Inc., Portland, Oregon engaged in the production of aircraft precision machine parts, was denied based on the findings that during the relevant time periods, the subject company did not separate or threaten to separate a significant number or proportion of workers, as required by Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner states that there were seven workers laid off from the subject firm during the relevant time period.

For companies with a workforce of over fifty workers, a significant proportion of worker separations or threatened separations is five percent. Significant number or proportion of the workers in a firm or appropriate subdivision with a workforce of fewer than 50 workers is at least three workers. In determining whether there were a significant proportion of workers separated or threatened with separations at the subject company during the relevant time periods, the Department requested employment figures for the subject firm for 2004, 2005, January–August 2005 and January–August 2006. A careful review of the information provided in the initial investigation revealed that there were layoffs at the subject during the relevant time period, however, overall employment has increased during the relevant time period.

A review of the initial investigation also revealed that the subject company sales and production increased from 2004 to 2005, and also increased during January through August of 2006 when compared with the same period in 2005, and that the subject company did not shift production abroad.

As employment levels, sales and production at the subject facility did not decline in the relevant period, and the subject firm did not shift production to a foreign country, criteria (a)(2)(A)(I.A), (a)(2)(B)(II.A), (a)(2)(A)(I.B), and (a)(2)(B)(II.B) have not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

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

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment, Assistance.

[FR Doc. E6–21793 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,572; TA–W–60,572A]

Senco Products, Inc. Plant 1 and 2; Cincinnati, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 11, 2006 in response to a petition filed on behalf of workers at Senco Products, Plant 1, Cincinnati, Ohio (TA–W–60,572) and Senco Products, Plant 2, Cincinnati, Ohio (TA–W–60,572A).

The petitioning workers are covered by a certification of eligibility to apply for worker adjustment assistance and alternative trade adjustment assistance issued on December 12, 2006 (TA–W–60,250 and TA–W–60,250A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of December 2006

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–21785 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,056]

Short Bark Industries, Tellico Plains, TN; Notice of Negative Determination Regarding Application for Reconsideration

By application of October 20, 2006 a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on October 3, 2006 and

published in the **Federal Register** on October 31, 2006 (71 FR 63800).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Short Bark Industries, Tellico Plains, Tennessee engaged in production of cut pieces for camouflage clothing was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974 was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed no imports of cut pieces for camouflage clothing in 2004, 2005 and January through August of 2006 when compared with the same period in 2005. The subject firm did not import cut pieces for camouflage clothing in the relevant period nor did it shift production to a foreign country.

In the request for reconsideration, the petitioner alleges that the layoffs at the subject firm are attributable to a shift in production to Honduras and Puerto Rico.

Two company officials were contacted regarding the above allegations. The company officials stated that the subject firm did not shift production from the subject facility to Honduras. The officials stated that the subject firm exported cut pieces for camouflage clothing abroad to a customer with the foreign facility for further production. This ceased its business with the subject firm in order to perform all the cutting abroad. The Short Bark Industries decided not to pursue the cutting business any longer and sold some of the machinery from the subject firm to the customer. Both of the officials confirmed that there is no affiliation between Short Bark Industries, Tellico Plains, Tennessee and its major customer.

Contact with an official of the subject firm's customer confirmed that all production for this customer was exclusively for export purposes. As trade adjustment assistance is concerned exclusively with whether imports impact layoffs of petitioning worker groups, the above-mentioned allegations regarding agreements between the subject firm and their foreign customer base are irrelevant.

The official also confirmed that some of the production was shifted from the subject facility to a plant in Puerto Rico during the relevant time period.

In the request for reconsideration, the petitioner seems to imply that a shift of production to Puerto Rico on the part of the company constitutes a shift of production to a country included in Caribbean Basin Economic Recovery Act. The petitioner seems to conclude that this shift to Puerto Rico is responsible for separations at the subject facility.

Puerto Rico is a U.S. Territory and therefore any movement of production to this region would not constitute a shift of production to a foreign source.

The petitioner provided the name of the former supervisor who according to the petitioner is currently in Honduras training workers.

The official confirmed this statement and added that this supervisor in question is now employed by subject firm's customer and is working in Honduras on behalf of this customer.

The petitioner also provided a name of the subject firm's employee who is allegedly currently making patterns for the Honduras plant.

The Department contacted this employee to verify the above information. The employee stated that he is still employed by Short Bark Industries and that he does not make markers or patterns for the Honduras plant.

The petitioner attached an article, with no reference to the source or the date of the article. The article is a short biography on the founder of Short Bark Industries, and refers to the activities of the subject firm from 1991 to 2003.

In its investigation, the Department considers events and facts that occurred within a year prior to the date of the petition. Thus, the period between 1991 and 2003 is outside of the relevant period as established by the current petition date of November 9, 2006.

The officials of the subject firm confirmed directly that Short Bark Industries did not shift production from the subject firm to any facility abroad in the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of December, 2006

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment, Assistance.

[FR Doc. E6–21791 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,306]

United Auto Workers, Local 969 Columbus, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at United Auto Workers, Local 969, Columbus, Ohio. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–60,306; United Auto Workers, Local 969 Columbus, Ohio (December 8, 2006)

Signed at Washington, DC this 13th day of December 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment, Assistance.

[FR Doc. E6–21794 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,078]

Weyerhaeuser Company Lebanon Lumber Division Lebanon, OR; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated November 27, 2006, the Carpenter's Industrial Council, United Brotherhood of Carpenters and Joiners of America (Union), requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination was issued on October 19, 2006. The Department's

Notice of determination was published in the **Federal Register** on November 6, 2006 (71 FR 65004).

The denial was based on the Department's findings that, during the relevant period, the subject company did not import lumber studs or shift production of lumber studs overseas and that the subject company's major declining customers had negligible imports of green df studs during the surveyed periods.

The Union alleges that the Weyerhaeuser Company purchased a softwood lumber production facility in Canada, inferring that the firm has increased imports of lumber or articles like or directly competitive with lumber produced at the subject facility.

The Department has carefully reviewed the Union's request for reconsideration and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

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

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–21792 Filed 12–20–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[06–089]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In response to NASA's change in mission, i.e., to explore the solar system, NASA is reexamining approaches to structuring, sizing, and managing its programs by benchmarking best practices in select successful programs in corporate America.

II. Method of Collection

Approximately 50% of the data collection will be electronic.

III. Data

Title: NASA Benchmarking of Program Office Size, Structure, and Performance.

OMB Number: 2700–XXXX.

Type of Review: New collection.

Affected Public: For-profit and not-for-profit institutions.

Number of Respondents: 30 Corporations.

Responses per Respondent: 1.

Annual Responses: 30.

Hours per Request: 124.

Annual Burden Hours: 3720.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary L. Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–21774 Filed 12–20–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–093]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to 35 U.S.C. 209, applicants for a license under a patent or patent application must submit information in support of their request for a license. NASA uses the submitted information to grant the license.

II. Method of Collection

The current paper-based system is used to collect the information. It is deemed not cost effect to collect the information using a Web site form since the applications submitted vary significantly in format and volume.

III. Data

Title: Application for Patent License.

OMB Number: 2700–0039.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit, and individuals or households.

Number of Respondents: 60.

Responses per Respondent: 1.

Annual Responses: 60.

Hours per Request: 10 hours.

Annual Burden Hours: 600.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–21852 Filed 12–20–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–098]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, Mail Code JE000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., Mail Code JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to evaluate bids and proposals from offerors to award contracts for required goods and services in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, bids and proposals for contracts with an estimated value more than $500,000.

OMB Number: 2700–0085.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, local or tribal government.

Estimated Number of Respondents: 1148.

Estimated Annual Responses: 1148.

Estimated Time per Response: 600 hours.

Estimated Total Annual Burden Hours: 688,800.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or the use of other forms of information technology.

Gary L. Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–21853 Filed 12–20–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–096]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, Mail Code JE000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., Mail Code JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to evaluate bids and proposals from offerors to award Purchase Orders and to use bank cards for required goods and services in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, Purchase Orders and the use of bank cards for purchases with an estimated value less than $100,000.

OMB Number: 2700–0086.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, local or tribal government.

Estimated Number of Respondents: 137,086.

Estimated Annual Responses: 137,086.

Estimated Time per Response: 0.25 hours.

Estimated Total Annual Burden Hours: 43,245.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance

of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or the use of other forms of information technology.

Gary L. Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–21854 Filed 12–20–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–097]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, Mail Code JE000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., Mail Code JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to evaluate bids and proposals from offerors to award contracts with an estimated value less than $500,000 for required goods and services in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, bids and proposals for contracts with an estimated value less than $500,000.

OMB Number: 2700–0087.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, local or tribal government.

Estimated Number of Respondents: 3,772.

Estimated Annual Responses: 3,772.

Estimated Time per Response: 325 hours.

Estimated Total Annual Burden Hours: 1,225,900.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or the use of other forms of information technology.

Gary L. Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–21856 Filed 12–20–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–092]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA grants patent licenses for the commercial application of NASA-owned inventions. Each licensee is required to report annually on its activities in commercializing its licensed inventions(s) and on any royalties due. NASA attorneys use this information to determine if a licensee is achieving and maintaining practical application of the licensed inventions as required by its license agreement.

II. Method of Collection

The current paper-based system is used to collect the information. It is deemed not cost effective to collect the information using a Web site form since the reports submitted vary significantly in format and volume.

III. Data

Title: Patent License Report.

OMB Number: 2700–0010.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit; individuals or households.

Number of Respondents: 90.

Responses per Respondent: 1.

Annual Responses: 90.

Hours per Request: 0.5 hour.

Annual Burden Hours: 45.

Frequency of Report: Annually.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary L. Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–21859 Filed 12–20–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–095]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, Mail Code JE000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., Mail Code JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to effectively manage and administer contracts with an estimated value more than $500,000 for required goods and services in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, reports required for contracts with an estimated value more than $500,000.

OMB Number: 2700–0089.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, local or tribal government.

Estimated Number of Respondents: 1,700.

Estimated Annual Responses: 93,500.

Estimated Time per Response: 7 hours.

Estimated Total Annual Burden Hours: 654,500.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or the use of other forms of information technology.

Gary L. Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–21860 Filed 12–20–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–094]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The LIST System form is used primarily to support services at GSFC dependent upon accurate locator type information. The Personal Identifiable Information (PII) is maintained, protected, and used for mandatory security functions. The system also serves as a tool for performing short and long-term institutional planning.

II. Method of Collection

Approximately 46% of the data is collected electronically by means of the data entry screen that duplicates the Goddard Space Flight Center form GSFC 24–27 in the LISTS system. The remaining data is keyed into the system from hardcopy version of form GSFC 24–27.

III. Data

Title: Locator and Information Services Tracking System (LISTS) Form.

OMB Number: 2700–0064.

Type of Review: Extension of currently approved collection.

Affected Public: Federal government, individuals or households, and business or other for-profit.

Responses per Respondent: 1.

Annual Responses: 8,455.

Hours per Request: 0.08 hours/5 minutes.

Annual Burden Hours: 702.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–21862 Filed 12–20–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–091]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The analysis of the Effective Messaging Research survey will position NASA to effectively communicate Agency messages.

II. Method of Collection

All survey responses will be collected by telephone and tabulated electronically.

III. Data

Title: Effective Messaging Research.

OMB Number: 2700–0113.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals and households, Business or other for-profit, not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 2700.

Responses per Respondent: 1.

Annual Responses: 2700.

Hours per Request: 0.33 hours.

Annual Burden Hours: 900.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–21863 Filed 12–20–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–090)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in U.S. Patent No. 6,027,954, Gas Sensing Diode and Method of Manufacturing; U.S. Patent No. 6,291,838, Gas Sensing Diode Comprising SiC; and U.S. Patent No. 6,763,699, Gas Sensors Using SiC Semiconductors and Method of Fabrication to Makel Engineering, Inc., having its principal place of business in Chico, California. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Glenn Research Center, MS 500–118, 21000 Brookpark Rd., Cleveland, OH 44135, telephone (216) 433–8878, facsimile (216) 433–6790.

FOR FURTHER INFORMATION CONTACT: Kent Stone, Patent Attorney, Office of Chief Counsel, NASA Glenn Research Center, MS 500–118, 21000 Brookpark Road, Cleveland, OH 44135, telephone (216) 433–8878, facsimile (216) 433–6790. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: December 18, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–21858 Filed 12–20–06; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Dominion Nuclear North Anna, LLC

[Docket No. 52–008]

Notice of Availability of Final Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP Site

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC)

has published NUREG–1811, ''Environmental Impact Statement (EIS) for an Early Site Permit (ESP) at the North Anna ESP Site: Final Report'' (FEIS). The FEIS contains two volumes. The site is located in Louisa County, Virginia, near the Town of Mineral. A notice of availability of the draft EIS was published in the **Federal Register** on December 12, 2004 (69 FR 71854), and a supplement to the draft EIS was subsequently published on July 12, 2006 (71 FR 39372).

The purpose of this notice is to inform the public that the FEIS is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS), and will also be placed directly on the NRC Web site at *www.nrc.gov*. ADAMS is accessible from the NRC Web site at *www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff by telephone at 1–800–397–4209 or 1–301–415–4737, or by e-mail at *pdr@nrc.gov*. In addition, the following public libraries in the vicinity of the North Anna ESP Site have agreed to make the FEIS available for public inspection:

Louisa County Library, Jefferson-Madison Regional Library, 881 Davis Highway, Mineral, Virginia 23117.

Hanover Branch Library, 7527 Library Drive, Hanover, Virginia 23069.

Salem Church Library, 2607 Salem Church Road, Fredericksburg, Virginia 22407.

FOR FURTHER INFORMATION CONTACT: Jack Cushing, Environmental Projects Branch 1, Division of Site and Environmental Reviews, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Cushing may be contacted by telephone at 301–415–1424, or by e-mail at *jxc9@nrc.gov*.

Dated at Rockville, Maryland, this 14th day of December, 2006.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E6–21804 Filed 12–20–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NOS. 50–387 AND 50–388]

PPL Susquehanna, LLC; Notice of Correction to the Public Scoping Comment Period for the Environmental Impact Statement for the License Renewal of Susquehanna Steam Electric Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has corrected the public scoping comment period for the plant-specific supplement to the ''Generic Environmental Impact Statement (GEIS),'' NUREG–1437, regarding the renewal of operating licenses NPF–14 and NPF–22 for an additional 20 years of operation at the Susquehanna Steam Electric Station (SSES), Units 1 and 2.

The application for renewal was received on September 13, 2006, pursuant to 10 CFR Part 54. A notice of Receipt and Availability of the license renewal application (LRA), was published in the **Federal Register** on October 2, 2006 (71 FR 58014). A notice of acceptability for docketing, notice of opportunity for a hearing and notice of intent to prepare an environmental impact statement and conduct scoping process, was published in the **Federal Register** on November 2, 2006 (71 FR 64566).

The purpose of this notice is to inform the public that the NRC has corrected the end of the comment period on the environmental scope of the SSES license renewal review from December 18, 2006, to January 2, 2007.

Any interested party may submit comments on the environmental scope of the SSES license renewal review for consideration by the NRC staff. To be certain of consideration, comments on the scoping process to the GEIS must be received by January 2, 2007. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the environmental scope of the SSES license renewal review should be sent to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:45 a.m. until 4:15 p.m. on Federal workdays. Electronic comments may be sent via the Internet to the NRC at *SusquehannaEIS@nrc.gov.* All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically and accessible from the Agencywide Documents Access and Management System (ADAMS) Public Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or encounter problems in accessing the documents located in ADAMS, should contact the NRC's Public Document Room reference staff at 1–800–397–4209, or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Alicia Mullins, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Ms. Mullins may also be contacted at (301) 415–1224, or by e-mail at *axm7@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of December 2006.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Acting Director Division of License Renewal Office of Nuclear Reactor, Regulation.

FR Doc. E6–21807 Filed 12–20–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Station; Notice of Availability of the Draft Supplement 30 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, and Public Meeting for the License Renewal of Vermont Yankee Nuclear Power Station

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–28 for an additional 20 years of operation for the Vermont Yankee Nuclear Power Station (Vermont Yankee). Vermont Yankee is located in the town of Vernon, Vermont, in Windham County on the west shore of the Connecticut River. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft Supplement 30 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://www.nrc.gov/reading-rm/adams/web-based.html*. The Accession Number for the draft Supplement 30 to the GEIS is ML063390344. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or via e-mail at *pdr@nrc.gov*. In addition, the following libraries have agreed to make the draft supplement to the GEIS available for public inspection: Vernon Free Library, 567 Governor Hunt Road, Vernon, Vermont; Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont; Hinsdale Public Library, 122 Brattleboro Road, Hinsdale, New Hampshire; and Dickinson Memorial Library, 115 Main Street, Northfield, Massachusetts.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be considered, comments on the draft supplement to the GEIS and the proposed action must be received by March 7, 2007; the NRC staff is able to assure consideration only for comments received on or before this date. Comments received after the due date will be considered only if it is practical to do so. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Room T–6D59, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *VermontYankeeEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and through ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on January 31, 2007, at the Latchis Theatre, 50 Main Street, Brattleboro, Vermont. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include:

(1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Richard L. Emch, Jr., the Senior Project Manager, at 1–800–368–5642, extension 1590, or via e-mail at *VermontYankeeEIS@nrc.gov* no later than January 24, 2007. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to the attention of Mr. Emch's attention no later than January 24, 2007, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Emch, Jr., Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC, 20555–0001. Mr. Emch may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 13th day of December, 2006.

For the Nuclear Regulatory Commission,

Rani L. Franovich,

Branch Chief, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E6–21805 Filed 12–20–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Materials, Metallurgy, and Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy, and Reactor Fuels will hold a meeting on January 19, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, January 19, 2007—8:30 a.m. until the conclusion of business.

The Subcommittee will review the NRC staff's proposed technical basis for supporting a revision to the technical acceptance criteria for fuel during a LOCA. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, their contractors, representatives of the nuclear industry, 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.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:15 a.m. and 5 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: December 14, 2006.

Antonio F. Dias,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–21815 Filed 12–20–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Power Uprates; Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on January 16–17, 2007 at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 16, 2007—8:30 a.m. until the conclusion of business.

Wednesday, January 17, 2007—8:30 a.m. until the conclusion of business.

The Subcommittee will review the proposed 5% power uprate for the Browns Ferry Nuclear Plant, Unit 1. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Tennessee Valley Authority (the licensee), 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.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:15 a.m. and 5 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: December 14, 2006.

Antonio F. Dias,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–21816 Filed 12–20–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar Containing Products of Chile, Morocco, El Salvador, Guatemala, Honduras, and Nicaragua

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In accordance with relevant provisions of the Harmonized Tariff Schedule of the United States (HTS), the Office of the United States Trade Representative (USTR) is providing notice of its determination of the trade surplus in certain sugar and syrup goods and sugar-containing products of Chile, Morocco, El Salvador, Guatemala, Honduras, and Nicaragua. As described below, the level of a country's trade surplus in these goods relates to the quantity of sugar and syrup goods and sugar-containing products for which the United States grants preferential tariff treatment under (i) The United States—Chile Free Trade Agreement (Chile FTA), in the case of Chile; (ii) the United States—Morocco Free Trade Agreement (Morocco FTA), in the case of Morocco; and (iii) the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA–DR), in the case of El Salvador, Guatemala, Honduras, and Nicaragua.

EFFECTIVE DATE: December 21, 2006.

ADDRESSES: Inquiries may be mailed or delivered to Leslie O'Connor, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Leslie O'Connor, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION:

Chile: Pursuant to section 201 of the United States—Chile Free Trade Agreement Implementation Act (Pub. Law 108–77; 19 U.S.C. 3805 note), Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789) implemented the Chile FTA on behalf of the United States and modified the HTS to reflect the tariff and rules of origin treatment provided for in the Chile FTA.

U.S. Note 12(a) to subchapter XI of HTS chapter 99 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Chile's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.20, 1702.30, 1702.40, 1702.60, 1702.90, 1806.10, 2101.12, 2101.20, and 2106.90, except that Chile's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Chile FTA are not included in the calculation of Chile's trade surplus.

U.S. Note 12(b) to subchapter XI of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.05 in an amount equal to the lesser of Chile's trade surplus or the specific quantity set out in that note for that calendar year.

U.S. Note 12(c) to subchapter XI of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.10 through 9911.17.85 in an amount equal to the amount by which Chile's trade surplus exceeds the specific quantity set out in that note for that calendar year.

During calendar year (CY) 2005, the most recent year for which data is available, Chile's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 287,203 metric tons according to data published by its customs authority, the Servicio Nacional de Aduana. Based on this data, USTR determines that Chile's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XI of HTS chapter 99, goods of Chile are not eligible to enter the United States duty-free under subheading 9911.17.05 or at preferential tariff rates under subheading 9911.17.10 through 9911.17.85 in CY2006 or CY2007.

Morocco: Pursuant to section 201 of the United States—Morocco Free Trade Agreement Implementation Act (Pub. Law 108–302; 19 U.S.C. 3805 note), Presidential Proclamation No. 7971 of December 22, 2005 (70 FR 76651) implemented the Morocco FTA on behalf of the United States and modified the HTS to reflect the tariff and rules of origin treatment provided for in the Morocco FTA.

U.S. Note 12(a) to subchapter XII of HTS chapter 99 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Morocco's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that Morocco's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Morocco FTA are not included in the calculation of Morocco's trade surplus.

U.S. Note 12(b) to subchapter XII of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.05 in an amount equal to the lesser of Morocco's trade surplus or the specific quantity set out in that note for that calendar year.

U.S. Note 12(c) to subchapter XII of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.10 through 9912.17.85 in an amount equal to the amount by which Morocco's trade surplus exceeds the specific quantity set out in that note for that calendar year.

During CY2005, the most recent year for which data is available, Morocco's

imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 553,535 metric tons according to data published by its Customs authority, the Office des Changes. Based on this data, USTR determines that Morocco's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XII of HTS chapter 99, goods of Morocco are not eligible to enter the United States duty-free under subheading 9912.17.05 or at preferential tariff rates under subheading 9912.17.10 through 9912.17.85 in CY2006 or CY2007.

CAFTA–DR: Pursuant to section 201 of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (Pub. Law 109–53; 19 U.S.C. 4031), Presidential Proclamation No. 7987 of February 28, 2006 (71 FR 10827), Presidential Proclamation No. 7991 of March 24, 2006 (71 FR 16009), Presidential Proclamation No. 7996 of March 31, 2006 (71 FR 16971), and Presidential Proclamation No. 8034 of June 30, 2006 (71 FR 38509) implemented the CAFTA–DR on behalf of the United States and modified the HTS to reflect the tariff and rules of origin treatment provided for in the CAFTA–DR.

U.S. Note 25(b)(i) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of each CAFTA–DR country's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that each CAFTA–DR country's exports to the United States of goods classified under HS subheadings 1701.11, 1701.12, 1701.91, and 1701.99 and its imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the CAFTA–DR are not included in the calculation of that country's trade surplus.

U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of each CAFTA–DR country entered under subheading 9822.05.20 in an amount equal to the lesser of that country's trade surplus or the specific quantity set out in that note for that country and that calendar year.

During CY2005, the most recent year for which data is available, El Salvador's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 293,500 metric tons according to data published by the Salvadoran Central Bank. Based on this data, USTR determines that El Salvador's trade surplus is 293,500 metric tons. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, the aggregate quantity of goods of El Salvador that may be entered duty-free under subheading 9822.05.20 in CY2007 is 24,480 metric tons (*i.e.*, the amount set out in that note for El Salvador for 2007).

During CY2005, the most recent year for which data is available, Guatemala's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 891,159 metric tons according to data published by the World Trade Atlas. Based on this data, USTR determines that Guatemala's trade surplus is 891,159 metric tons. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, the aggregate quantity of goods of Guatemala that may be entered duty-free under subheading 9822.05.20 in CY2007 is 32,640 metric tons (*i.e.*, the amount set out in that note for Guatemala for 2007).

During CY2005, the most recent year for which data is available, Honduras' exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 56,955 metric tons according to data published by the Central Bank of Honduras. Based on this data, USTR determines that Honduras' trade surplus is 56,955 metric tons. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, the aggregate quantity of goods of Honduras that may be entered duty-free under subheading 9822.05.20 in CY2007 is 8,160 metric tons (*i.e.*, the amount set out in that note for Honduras for 2007).

During CY2005, the most recent year for which data is available, Nicaragua's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 208,257 metric tons according to data published by the World Trade Atlas. Based on this data, USTR determines that Nicaragua's trade surplus is 208,257 metric tons. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, the aggregate quantity of goods of Nicaragua that may be entered duty-free under subheading 9822.05.20 in CY2007 is 22,440 metric tons (*i.e.*, the amount set out in that note for Nicaragua for 2007).

Richard T. Crowder,

Chief Agricultural Negotiator.

[FR Doc. E6–21778 Filed 12–20–06; 8:45 am]

BILLING CODE 3190–W7–P

OFFICE OF PERSONNEL MANAGEMENT

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations—Charity Recoding

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is assigning new, unique code numbers to charitable organizations that participate in the Combined Federal Campaign (CFC). The number of participating charitable organizations is increasing and will soon exceed the number of codes available under the current CFC coding procedure. In addition, the assignment of new, unique code numbers will allow OPM to improve the efficiency and effectiveness of the CFC by assisting in future promotion of the use of electronic giving technology and future revision to geographic restrictions to donor giving.

DATES: The Office of Personnel Management's Office of the CFC Operations (OCFCO) will issue new code numbers to charities and provide them to local campaigns and charities no later than March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mark W. Lambert, Senior Compliance Officer for the Office of CFC Operations, by telephone at (202) 606–2564; by fax at (202) 606–0902; or by e-mail at *cfc@opm.gov*.

SUPPLEMENTARY INFORMATION: Currently, the CFC coding procedure is based on a four-digit number. Charitable organizations that are approved to participate in the CFC as national or international organizations are assigned a four-digit code by OPM. Local CFCs assign a four-digit code to organizations approved to participate in that local CFC. OPM informs local CFCs of which four-digit codes were not used for national and international organizations and that are, therefore, available for local use. There are approximately 2,000 participating national and international organizations and an estimated additional 20,000 local organizations. With a four-digit coding procedure, there are only 9,999 available codes. Charitable organizations in different

local CFCs often have identical codes because of the independent assignment process and the limits of the current four-digit code structure. At the same time, OPM has reclaimed all or part of a code series in the past several years to accommodate the ever-expanding list of national/ international federations. Consequently, redundant code assignments can lead to the misdirection of donor funds, as donor choices in giving currently remain limited to the national/international list and to local charities located within the employee's designated duty station campaign.

In recently issued CFC regulations, set forth at 5 CFR Part 950, the OPM Director has the authority, upon implementation of appropriate electronic technology, to remove the restriction that limits donors to contributing only to local charities within their geographic campaign area, based on their official duty station. A first step in implementing electronic technology that would allow donors to contribute to local organizations in other campaign areas is to make sure that each organization has its own unique code. Being able to identify all participating charitable organizations by a unique code will also allow OPM to better monitor compliance with CFC eligibility standards and sanctions compliance requirements. In order to be eligible to participate in the CFC, each charitable organization must be determined to be a tax-exempt public charity under section 501(c)(3) of the Internal Revenue Code. In order to demonstrate compliance with this eligibility standard, each charitable organization must provide a copy of its IRS determination letter. However, many of the IRS determination letters provided by charitable organizations are dated at the time of the initial IRS determination. That determination could have been made many years prior to the current CFC to which the charitable organization is applying for participation. To ensure that each charitable organization meets the 501(c)(3) eligibility standard, OPM will compare the applicant organization against an IRS database to determine that the charitable organization is still recognized as a 501(c)(3) tax-exempt public charity by the IRS. The newly assigned unique codes will assist OPM in identifying each charitable organization against the IRS database. In addition, OPM requires each charitable organization participating in the CFC to complete a certification that it is in compliance with all statutes, Executive orders, and regulations restricting or prohibiting U.S. persons from engaging in transactions and dealings with countries, entities or individuals subject to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). Currently, OPM checks each participating national and international organization against the OFAC list of sanctioned organizations and requests local campaigns to do the same. The newly assigned unique codes will assist OPM in performing this check against the OFAC list for all national, international, and local, organizations participating in the CFC and relieve a burden from the local campaigns.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. E6–21904 Filed 12–20–06; 8:45 am]

BILLING CODE 6325–46–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27599; 812–13029]

ProFunds, et al.; Notice of Application

December 14, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of the Application: The order would permit certain management investment companies and unit investment trusts registered under the Act to acquire shares of certain open-end management investment companies and unit investment trusts registered under the Act, including those that operate as exchange-traded funds, that are outside the same group of investment companies as the acquiring investment companies.

Applicants: ProFunds, Access One Trust, ProShares Trust (''ETF Trust,'' and together with ProFunds and Access One Trust, the ''Trusts''), ProShare Advisors LLC (''ProShare Advisors''), and ProFund Advisors LLC (''ProFund Advisors,'' and together with ProShare Advisors, the ''Advisers'').

Filing Dates: The application was filed on October 7, 2003, and amended on June 3, 2004, July 15, 2005, and October 6, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 8, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 7501 Wisconsin Avenue, Suite 1000, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551–6878, or Michael W. Mundt, Senior Special Counsel, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act and are each comprised of separate series (''Funds'') that pursue distinct investment objectives and strategies. Shares of certain Funds of ProFunds and Access One Trust are sold publicly to retail investors, and shares of other such Funds are sold to insurance company separate accounts funding variable life and variable annuity contracts. The Funds of the ETF Trust (''ETF Funds'') rely on an order from the Commission that allows the ETF Funds to operate as exchange-traded funds and to redeem their shares in large aggregations (''Creation Units'').[1] Certain Funds pursue their investment objectives

[1] ProShares Trust, *et al.*, Investment Company Act Release Nos. 27323 (May 18, 2006) (notice) and 27394 (June 13, 2006) (order) (''ETF Order'').

through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the Act.[2] ProFund Advisors is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each Fund of ProFunds and Access One Trust. ProShare Advisors is registered as an investment adviser under the Advisers Act and serves as investment adviser to each ETF Fund.

2. Applicants request relief to permit registered management investment companies and unit investment trusts registered under the Act that are not part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts (such management investment companies are ''Investing Management Companies,'' such unit investment trusts are ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively ''Funds of Funds''), to acquire shares of the Funds in excess of the limits in section 12(d)(1)(A) of the Act, and to permit a Fund, any principal underwriter for a Fund, and any broker or dealer registered under the Securities Exchange Act of 1934 (''Broker'') to sell shares of a Fund to a Fund of Funds in excess of the limits of section 12(d)(1)(B) of the Act. Applicants request that the relief apply to: (1) Each open-end management investment company or unit investment trust registered under the Act that currently or subsequently is part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts and is advised or sponsored by the Advisers or any entity controlling, controlled by, or under common control with the Advisers (such open-end management investment companies are ''Open-end Funds,'' such unit investment trusts are ''UIT Funds,'' and both Open-end Funds and UIT Funds are ''Funds''); (2) each Fund of Funds that enters into a Participation Agreement (as defined below) with a Fund to purchase shares of the Funds; and (3) any principal underwriter to a Fund or Broker selling shares of a Fund.[3]

3. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act and registered as an investment adviser under the Advisers Act or exempt from registration (''Fund of Funds Adviser''). A Fund of Funds Adviser may contract with an investment adviser which meets the definition of section 2(a)(20)(B) of the Act (a ''Subadviser''). Each Investing Trust will have a sponsor (''Sponsor'').

4. Applicants state that the Funds will offer the Funds of Funds simple and efficient investment vehicles to achieve their asset allocation or diversification objectives. Applicants state that the Funds also provide high quality, professional investment program alternatives to Funds of Funds that do not have sufficient assets to operate comparable funds.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit Funds of Funds to acquire shares of the Funds in excess of the limits in section 12(d)(1)(A) of the Act, and a Fund, any principal underwriter for a Fund and any Broker to sell shares of a Fund to a Fund of Funds in excess of the limits of section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B) of the Act, which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that neither the Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over the Funds.[4] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting the Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to the Subadviser, any person controlling, controlled by or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (''Subadviser Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Open-end Fund or sponsor to a UIT Fund) will cause a Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal

[2] A Fund of Funds (as defined below) may not invest in a Fund that serves as a feeder Fund unless the feeder Fund is part of the same group of investment companies as its corresponding master fund.

[3] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. A Fund of Funds may rely on the requested order only to invest in the Funds and not in any other registered investment company.

[4] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Subadviser, Sponsor, promoter, or principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, sponsor, promoter, or principal underwriter of a Fund, and any person controlling, controlled by, or under common control with any of those entities.

underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Advisor, Subadviser, Sponsor, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Subadviser, Sponsor or employee is an affiliated person. An Underwriting Affiliate does not include a person whose relationship to a Fund is covered by section 10(f) of the Act.

5. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of each Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Disinterested Trustees''), will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Open-end Fund in which the Investing Management Company may invest. In addition, a Fund of Funds Advisor, trustee or Sponsor of a Fund of Funds will waive fees otherwise payable to it by the Fund of Funds, as applicable, in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-end Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Advisor, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor, or its affiliated person by an Open-end Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants also state that with respect to registered separate accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD''), if any, will only be charged at the Fund of Funds level or at the Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

6. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by section 12(d)(1)(E) of the Act, an exemptive order that allows the Fund to purchase shares of an affiliated money market fund for short-term cash management purposes or rule 12d1–1 under the Act. Applicants also represent that to ensure that the Funds of Funds comply with the terms and conditions of the requested relief from section 12(d)(1) of the Act, a Fund of Funds must enter into a participation agreement between a Trust, on behalf of the relevant Funds, and the Funds of Funds (''Participation Agreement'') before investing in a Fund beyond the limits imposed by section 12(d)(1)(A). The Participation Agreement will require the Fund of Funds to adhere to the terms and conditions of the requested order. The Participation Agreement will include an acknowledgment from the Fund of Funds that it may rely on the requested order only to invest in the Funds and not in series of any other registered investment company. The Participation Agreement will further require each Fund of Funds that exceeds the 5% or 10% limitations in sections 12(d)(1)(A)(ii) and (iii) of the Act to disclose in its prospectus that it may invest in the Funds, and to disclose, in ''plain English,'' in its prospectus the unique characteristics of the Fund of Funds investing in the Funds, including but not limited to the expense structure and any additional expenses of investing in the Funds. Each Fund of Funds also will comply with the disclosure requirements set forth in Investment Company Act Release No. 27399 (June 20, 2006).

7. Applicants also note that a Fund may choose to reject a direct purchase by a Fund of Funds. To the extent that a Fund of Funds purchases shares of an ETF Fund in the secondary market, the ETF Fund would still retain its ability to reject purchases of its shares through its decision to enter into the Participation Agreement prior to any investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A).

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants seek relief from section 17(a) to permit a Fund that is an affiliated person of a Fund of Funds because the Fund of Funds holds 5% or more of the Fund's shares to sell its shares to and redeem its shares from a Fund of Funds.[5] Applicants believe that any proposed transactions directly between Funds and Funds of Funds will be consistent with the policies of each Fund and Fund of Funds. The Participation Agreement will require any Fund of Funds that purchases shares from a Fund to represent that the purchase of shares from the Fund by a Fund of Funds will be accomplished in compliance with the investment restrictions of the Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement.[6]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and

[5] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its shares to a Fund of Funds is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgment.

[6] To the extent that purchases and sales of shares of an ETF Fund occur in the secondary market and not through principal transactions directly between a Fund of Funds and an ETF Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of shares in Creation Units by an ETF Fund to a Fund of Funds and redemptions of those shares. The requested relief is also intended to cover the in-kind transactions that would accompany such sales and redemptions, as described in the application for the ETF Order.

reasonable and do not involve overreaching. Applicants note that any consideration paid for the purchase or redemption of shares directly from a Fund will be based on the net asset value of the Fund. Applicants state that the proposed arrangement will be consistent with the policies of each Fund of Funds and Fund and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The members of a Fund of Funds Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds Advisory Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Fund, it (except for any member of the Fund of Funds Advisory Group or Subadviser Group that is a separate account) will vote its shares of the Fund in the same proportion as the vote of all other holders of the Fund's shares. This condition does not apply to the Subadviser Group with respect to a Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Open-end Fund) or as the sponsor (in the case of a UIT Fund). A registered separate account will seek voting instructions from its contract holders and will vote its shares in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An unregistered separate account will either (i) Vote its shares of the Fund in the same proportion as the vote of all other holders of the Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of a Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Fund of Funds Adviser and any Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Open-end Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Open-end Fund (''Board''), including a majority of the Disinterested Trustees, will determine that any consideration paid by the Open-end Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Open-end Fund; (b) is within the range of consideration that the Open-end Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Open-end Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Open-end Fund or sponsor to a UIT Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Open-end Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Open-end Fund in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Open-end Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Open-end Fund. The Board of the Open-end Fund will consider, among other things, (i) Whether the purchases were consistent with the investment objectives and policies of the Open-end Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Open-end Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Open-end Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. The Open-end Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Open-end Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Open-end Fund were made.

8. Before investing in a Fund in excess of the limits in section 12(d)(1)(A) of the Act, the Fund of Funds and the Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, or sponsors and trustees, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Open-end Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Open-end Fund of the investment. At such time, the Fund of Funds will also transmit to the Open-end Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of

Funds will notify the Open-end Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement and, in the case of an Open-end Fund, the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the Disinterested Trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Open-end Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

10. A Fund of Funds Adviser, or trustee or Sponsor of a Fund of Funds, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-end Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee, or Sponsor, or an affiliated person of the Fund of Funds' Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds' Adviser, trustee or Sponsor or its affiliated person, by an Open-end Fund, in connection with the investment by the Fund of Funds in the Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by an Open-end Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

11. With respect to registered separate accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD, if any, will only be charged at the Fund of Funds level or at the Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by section 12(d)(1)(E) of the Act, an exemptive order that allows a Fund to purchase shares of an affiliated money market fund for short-term cash management purposes or rule 12d1–1 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21780 Filed 12–20–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54917; File No. SR–NYSE–2006–45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Amendments to Exchange Rule 638 Concerning Mediation

December 11, 2006.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 22, 2006, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. 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 is proposing amendments to Rule 638 concerning mediation. The amendments are, in part, housekeeping in nature as they remove references relating to an expired mediation pilot program and reposition certain provisions of the rule. In addition, the proposed amendments codify certain existing mediation procedures. The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE'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 NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

Mediation is offered by the Exchange to parties, on a voluntary basis, both before and after an arbitration claim has been filed. A neutral, impartial individual, who serves as the mediator, facilitates discussion of the issues in an attempt to reach a settlement. The mediator does not render a decision.

In 1998, the Exchange adopted, on a pilot basis, Rule 638 to provide for mandatory mediation in all intra-industry disputes and voluntary mediation in all customer disputes for claims of $500,000 or more. As an incentive for parties to use mediation, the pilot program provided for the Exchange to pay the mediator's fee, up to $500 for a single mediation session of up to four hours. In December 2000, the pilot was amended to lower the threshold for customer disputes to $250,000. The Exchange's experience with the pilot led to the conclusion that mediation is most successful when parties enter into it of their own accord. For this reason, the pilot was allowed to expire on January 31, 2003. Thereafter, the Exchange adopted the current mediation rules that provide for voluntary mediation pending arbitration, as well as prior to arbitration.

The proposal would remove references to the expired pilot program. The proposed amendments would also codify certain existing mediation procedures, including that: (1) The

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

mediator's fees and method of payment are subject to agreement of the parties and the mediator, and all such fees and costs incurred in mediation are the parties' responsibility; (2) an adjournment fee will be assessed if an arbitration hearing is adjourned for purposes of the parties pursuing mediation unless the fee is waived under Exchange Rule 617; (3) a mediator may not represent a party or act as an arbitrator in an arbitration relating to the matter arbitrated, nor be called to testify regarding the mediation in any proceeding; and (4) the mediation is confidential and no record is kept of the proceeding, and, except as may be required by law, the parties and mediator agree not to disclose the substance of the mediation without the prior written authorization of all parties to the mediation.

In addition, the proposed rule would clarify that any party may withdraw from mediation at any time prior to the execution of a settlement agreement upon written notification to all other parties, the mediator, and the Director of Arbitration. It also would clarify that parties may select a mediator on their own or request a list of potential mediators from the Exchange, and that, upon request of any party, the Director of Arbitration would send the parties a list of five potential mediators together with the mediators' biographical information described in Rule 608. At that time, any party to the mediation would be able to request additional names from the Director of Arbitration. The proposed rule also would provide that the parties shall advise the Exchange as to the name of the agreed-upon mediator. In addition, it would clarify that once the parties agree to mediate, the Exchange would facilitate the mediation, if requested, by contacting the mediator selected and by assisting in making necessary arrangements, as well as that parties to mediation may use the Exchange meeting facilities in New York, when available, without charge.

2. Statutory Basis

The proposed changes are consistent with Section 6(b)(5)[4] of the Act[5] in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have fair and flexible alternatives for the resolution of their disputes.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78a.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSE–2006–45 and should be submitted at or before January 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21818 Filed 12–20–06; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0610]

Gefus SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Gefus SBIC, L.P., 375 Park Avenue, Suite 2401, New York, NY 10152, 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 (2006)). Gefus SBIC, L.P. proposes to provide equity security financing to Patton Surgical Inc. 1000 Westbank Drive, Suite 5A200 Austin, TX 78746. The financing is contemplated for operating expenses and for general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Admiral Bobby R. Inman, an Associate of Gefus SBIC, L.P.,

owns more than ten percent of Patton Surgical, Inc. Therefore, Patton Surgical, Inc. is also considered an Associate of Gefus SBIC, L.P., as defined at 13 CFR 107.50 of the SBIC 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 3rd Street, SW., Washington, DC 20416.

Jaime Guzmán-Fournier,

Associate Administrator for Investment.

[FR Doc. E6–21801 Filed 12–20–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/71–0378]

Housatonic Equity Investors SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Housatonic Equity Investors SBIC, L.P., 44 Montgomery Street, Suite 4010, San Francisco, CA 94104, 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 (2006)). Housatonic Equity Investors SBIC, L.P. provided equity security financing to ArchivesOne, Inc., 200 Commercial Street, Watertown, CT 06795. The financing is contemplated for operating expenses and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Housatonic Equity Investors, L.P., an Associate of Housatonic Equity Investors SBIC, L.P., owns more than ten percent of ArchivesOne, Inc.. Therefore, ArchivesOne, Inc. is also considered an Associate of Housatonic Equity Investors SBIC, L.P. as defined at 13 CFR 107.50 of the SBIC 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 3rd Street, SW., Washington, DC 20416.

Jaime Guzmán-Fournier,

Associate Administrator for Investment.

[FR Doc. E6–21800 Filed 12–20–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10760]

Alaska Disaster # AK–00009

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA—1669—DR), dated 12/08/2006.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 10/08/2006 through 10/13/2006.

Effective Date: 12/08/2006.

Physical Loan Application Deadline Date: 02/06/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, Tx 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/08/2006, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Chugach Reaa (10), Copper River Reaa (11), Kenai Peninsula Borough

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10760.

(Catalog of Federal Domestic Assistance Number 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–21811 Filed 12–20–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10750 and #10751]

Missouri Disaster #MO–00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Missouri dated 12/15/2006.

Incident: Severe Storms.

Incident Period: 09/22/2006 and continuing.

EFFECTIVE DATE: 12/15/2006.

Physical Loan Application Deadline Date: 02/13/2007.

Economic Injury (Eidl) Loan Application Deadline Date: 09/17/2007.

ADDRESSES: Submit completed loan applications to : U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

New Madrid, Perry.

Contiguous Counties:

Missouri: Bollinger, Cape Girardeau, Dunklin, Madison, Mississippi, Pemiscot, Scott, St. Francois, and Ste. Genevieve Stoddard.

Illinois: Jackson, Randolph, and Union.

Kentucky: Fulton.

Tennessee: Lake.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere:	6.250
Homeowners Without Credit Available Elsewhere:	3.125

	Percent
Businesses With Credit Available Elsewhere:	7.934
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 10750 B and for economic injury is 10751 0.

The States which received an EIDL Declaration # are Missouri, Illinois, Kentucky, Tennessee.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Steven C. Preston,

Administrator.

[FR Doc. E6–21803 Filed 12–20–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10759]

New York Disaster #NY–00039

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–1670–DR), dated 12/12/2006.

Incident: Severe Storms and Flooding.

Incident Period: 11/16/2006 through 11/17/2006.

Effective Date: 12/12/2006.

Physical Loan Application Deadline Date: 02/12/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth , TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/12/2006, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Broome, Chenango, Delaware, Hamilton, Herkimer, Montgomery, Otsego, and Tioga.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10759.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–21810 Filed 12–20–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to Waive the Nonmanufacturer Rule for Demountable Cargo Containers Manufacturing (Dry Freight Containers/Connex Boxes).

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a request for a waiver of the Nonmanufacturer Rule for Demountable Cargo Containers Manufacturing (Dry Freight Containers/Connex Boxes). According to the request, no small business manufacturers supply these classes of products to the Federal government. If granted, the waiver would allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATES: Comments and source information must be submitted by January 5, 2007.

ADDRESSES: You may submit comments and source information to Sarah Ayers, Program Analyst, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sarah Ayers, Program Analyst, by telephone at (202) 205–6413; by FAX at (202) 205–6390; or by e-mail at *sarah.ayers@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA is currently processing a request to waive the Nonmanufacturer Rule for Demountable Cargo Containers, Manufacturing, (Dry Freight Containers/Connex Boxes) North American Industry Classification System (NAICS) code 336212.

The public is invited to comment or provide source information to SBA on the proposed waivers of the Nonmanufacturer Rule for this class of NAICS code within 15 days after date of publication in the **Federal Register**.

Arthur E. Collins,

Acting Associate Administrator for Government Contracting.

[FR Doc. E6–21813 Filed 12–20–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5650]

Determination on U.S. Position on Proposed European Bank for Reconstruction and Development (EBRD) Projects Including Serbia and Bosnia and Herzegovina

Pursuant to section 561 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act,

2006 (Pub. L. 109–102) (FOAA), and Department of State Delegation of Authority Number 289, I hereby determine that the four proposed EBRD projects will contribute to a stronger and more integrated economy in the Balkans and thus directly support implementation of the Dayton Accords. I therefore waive the application of Section 561 of the FOAA to the extent that provision would otherwise prevent the U.S. Executive Directors of the EBRD from voting in favor of these projects. The four projects are: A loan to HVB Banka Serbia; an equity investment in Syntaxis Mezzanine Fund I; an equity investment in South Eastern Energy Capital; and a loan to Danube Group Holding of Serbia with an equity investment in JKR Natural Resource B.V.

This Determination shall be reported to the Congress and published in the **Federal Register**.

Dated: December 5, 2006.

Daniel Fried,

Assistant Secretary of State for European and Eurasian Affairs, Department of State.

[FR Doc. E6–21874 Filed 12–20–06; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2005–22219]

Northeast Gateway Liquefied Natural Gas Deepwater Port License Application; Final Environmental Impact Statement Supplementary Material

AGENCY: Maritime Administration, DOT.

ACTION: Notice of availability; Request for Comments.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) announce the availability of material supplementing the Final Environmental Impact Statement (FEIS) for the Northeast Gateway Liquefied Natural Gas Deepwater Port License Application. The supplementary material corrects omissions in the FEIS.

DATES: To allow sufficient time for public review and comment on this supplemental material we are extending the public comment period until December 26, 2006. All other scheduled dates remain unchanged. The Federal and State Agency and Governor comment period also end December 26, 2006 and the MARAD Record of Decision is due by February 7, 2007.

FOR FURTHER INFORMATION CONTACT: If you have questions about the supplementary material, you may contact Roddy Bachman, U.S. Coast Guard, at 202–372–1451 or *Roddy.C.Bachman.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION: On October 26, 2006, the Coast Guard and MARAD notice of availability for the Northeast Gateway Liquefied Natural Gas Deepwater Port License FEIS appeared in the **Federal Register** (71 FR 62657). Subsequently, we discovered some omissions in the FEIS. The FEIS did not include some data that became available late in the process. These corrections appear in an errata sheet which, along with the FEIS itself, are now available in the docket on the Internet at *http://dms.dot.gov* under docket number USCG–2005–22219. You may also view these materials in person at 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.

The corrections are to incorporate additional Whale Center of New England data into the FEIS. The following corrections to the FEIS apply:

Page 2–36, Marine Mammal Occurrence

Delete: ''The analysis compared distribution of marine mammal sightings within the location alternatives using sighting data provided by SBNMS for the period 1979 to 2002''.

Replace with: ''Data on the distribution of marine mammals was obtained from the following two primary sources: Whale Center of New England (Weinrich and Sardi, 2005) and North Atlantic Right Whale Consortium (NARWC). The Whale Center of New England sightings data are collected by observers on whale watch boats out of Gloucester, Salem, Boston, and Provincetown, as well as one dedicated research vessel out of Gloucester. The NARWC maintains sightings data collected by government and private right whale researchers. Additional mammal distribution information was also obtained from the NMFS stock assessments (Waring *et al.*, 2004) and review of online NMFS stock assessment reports.''

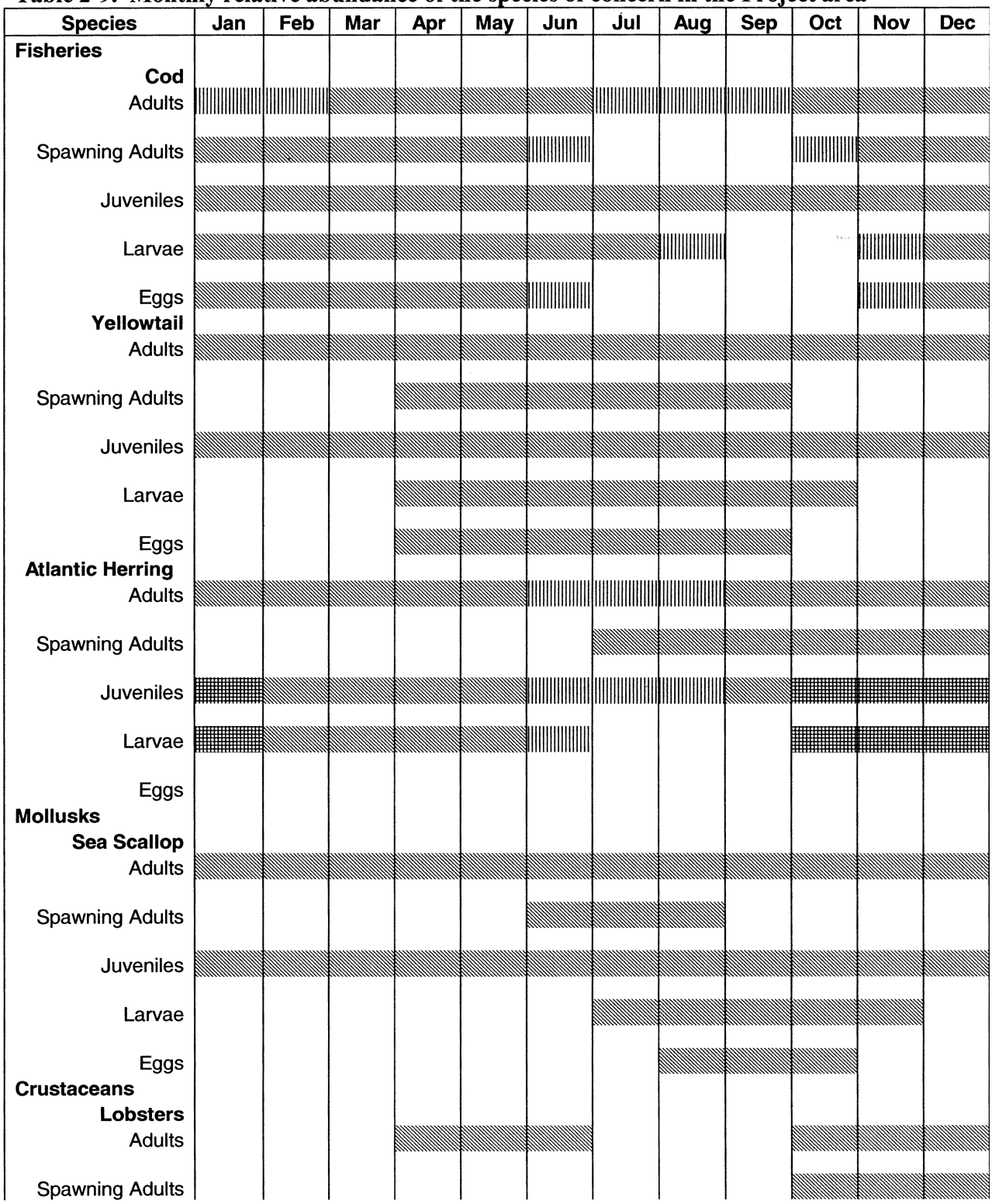
Page 2–51

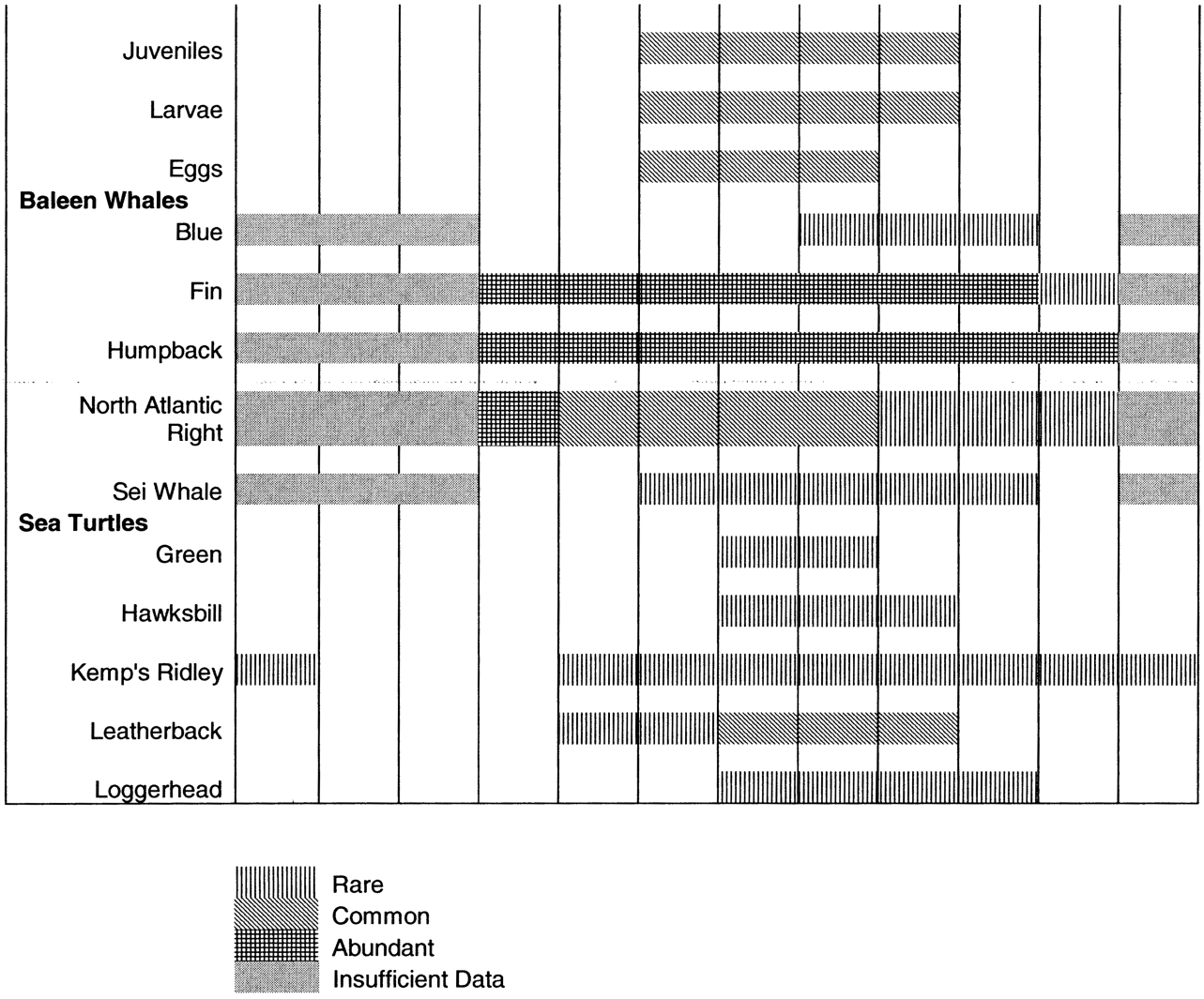
Replace ''North Atlantic Right Whale'' with ''Marine Mammals'' and *insert* the following: According to the 2005 NMFS online Stock Assessment Reports (SARs), humpback whales are also considered a strategic stock for which the average annual fishery-related mortality and serious injury exceeds the potential biological removal (PBR), while minke whales are not. More recent scientific studies (Cole *et al.* (2005)) indicate that Gulf of Maine humpback and minke whales are both above the PBR. Should NMFS incorporate these findings into the next SAR, the minke whale may be considered for reclassification as a strategic stock. Construction scheduling should avoid peak periods when these species are most abundant.

Page 2–54, Table 2–9. Replace: Table 2–9 with the following table

BILLING CODE 4910–81–P

Table 2-9. Monthly relative abundance of the species of concern in the Project area





Page 3–53

Insert the following footnote to Table 3–22: ''More recent scientific studies (Cole *et al.* (2005)) indicate that the Gulf of Maine minke whale stock is above the PBR. Should NMFS incorporate these findings into the next SAR, the minke whale may be considered for reclassification as a strategic stock.''

Page 3–54, First paragraph last sentence

Delete ''In general, use of the Gulf of Maine habitat areas by cetaceans increases in the spring and summer, and decreases in the fall and winter.''

Replace with ''Although seasonal whale distribution plots developed from whale watching cruises seem to indicate a decline in mammal numbers during the fall, this may reflect the fewer number of whale watching cruises outside the peak summer season. Therefore, use of Gulf of Maine habitat areas by cetaceans does not show as much of a decrease in the fall as previously indicated in the FEIS.''

Page 3–66, Second paragraph, following last sentence

Insert ''More recent scientific studies (Cole *et al.* (2005)) indicate that Gulf of Maine minke whale is above the PBR. Should NMFS incorporate these findings into the next SAR, the minke whale may be considered for reclassification as a strategic stock.''

Page 3–76, Replace table 3–26 with the following table

Table 3-26
Seasonal Distribution of Endangered and Threatened Species in Massachusetts Bay

Species	J	F	M	A	M	J	J	A	S	O	N	D
Blue Whale	I	I	I					R	R	R		
Balaenoptera musculus												
Fin Whale	I	I	I	A	A	A	A	A	A	A		I
Balaenoptera physalus												
Humpback Whale	I	I	I	A	A	A	A	A	A	A	A	I
Megaptera novaeangliae												
North Atlantic Right Whale	I	I	I	A	C	C	C	C	R	R	R	I
Eubalaena glacialis												
Sei Whale	I	I	I			R	R	R	R	R		I
Balaenoptera borealis												
Sperm Whale	I	I	I									I
Physeter macrocephalus												
Green Sea Turtle							R	R				I
Chelonia mydas												
Hawksbill Sea Turtle							R	R	R			I
Eretmochelys imbricate												
Kemp's Ridley Sea Turtle	R				R	R	R	R	R	R	R	I
Lepidochelys kempii												
Leatherback Sea Turtle					R	R	C	C	C			I
Dermochelys coriacea												
Loggerhead Sea Turtle							R	R	R	R		I
Caretta caretta												

Species abundance by month categorized (blank=not present, R=rare, C=common, A=abundant, I= Insufficient Data)

Sources: NMFS, 2005a, b, c, d ,e; NOAA, 1993a; Waring et al., 2002, 2004; Wilson and Ruff, 1999; NEW REFERENCE: Weinrich, 2006. Mason Weinrich October 30, 2006 letter to USCG.

BILLING CODE 4910–81–C

Page 3–81, paragraph 3

Replace the two references to figure 3–13 in: ''(Figures 3–13 through 3–17)'', with: ''(Figures 3–14 through 3–17).''

Page 3–88, paragraph 4

Delete: ''Nevertheless, only about 10% of the current day North Atlantic population of humpback whales regularly visits New England waters (USEPA, 1993). According to the species stock assessment report, the population estimate for the Gulf of Maine stock of humpback whales is 902 individuals (Waring *et al.*, 2004), and the best estimate for the entire North Atlantic population is 10,600 (Smith *et al.*, 1999).''

Replace with: ''According to the species stock assessment report, the population estimate for the Gulf of Maine stock of humpback whales is 902 individuals (Waring *et al.*, 2004). The appropriate management unit for consideration is the Gulf of Maine stock, as re-population from the larger North Atlantic population is not likely.''

Page 3–89, first full sentence

Delete ''but a dramatic increase in the use of Stellwagen Bank by adult humpback whales has occurred during the September 1–November 5, 2000–2004 period, apparently due to the increased feeding on previously unexploited prey sources (Weinrich and Sardi, 2005).''

Replace with: ''but a dramatic increase in the use of Stellwagen Basin, in the area of the proposed Project site by primarily juvenile humpback whales has occurred during the September 1–November 5, 2000–2004 period, apparently due to the increased feeding on previously unexploited planktivorous prey sources (Weinrich and Sardi, 2005).''

Page 3–94, last full paragraph, following last sentence

Insert: ''In its 2005 Stock Assessment Report (SAR) NMFS has classified the humpback whale as a strategic stock. Recent scientific studies (Cole *et al.* (2005)) continue to indicate that the Gulf of Maine humpback whale stock is above the PBR.''

Page 3–101, last paragraph

Delete reference to Weinrich and Sardi, 2005 in sentence: ''According to the sighting data, only one sei whale has been seen in the Project area, and that whale was feeding (Figure 3–28) (Kenney, 2001; Short and Schaub, 2005; Short *et al.*, 2004; Weinrich and Sardi, 2005; McLeod *et al.*, 2003 and 2000; Kenney, 2001; McLeod, 2002, 2001, and 1999).''

Page 3–127, 6th full paragraph

Delete second sentence ''Few of these operators are devoted exclusively to whale watching, and many also provide fishing, sightseeing, and transportation services.''

Page 3–153, last paragraph

Delete: ''This proposal must be formally evaluated prior to approval.''

Replace with: ''The proposed shift in the TSS was presented to the International Maritime Organization (IMO) in summer 2006 for official review and decision.''

Page 3–158, end of first paragraph

Insert: (NEG, 2005).

Page 4–40, Table 4–10

Under the ''Equivalent Yield'' column, replace ''1,165'' (lobster) with ''3'', and change the total from 2,330 to 1,168.

Page 4–58, third full paragraph

Delete ''there has been little or no direct evidence to link a spill event to any cetacean mortality discovered either during or following a spill (Geraci and Aubin, 1990).''

Replace with: ''studies conducted after the large Exxon Valdez oil spill indicated adverse impacts to local killer whale pods, with at least two immediate mortalities likely from the spill (Matkin

and Saulitie, 1997). Although killer whales feed at the top of the food chain, and most of the species in the NEG project area feed on plankton, near the bottom of the food chain, there is the potential for adverse impacts on whales at the project site from oil spills. Impacts are still considered to be minor; however, due to the low probability of a spill.''

Page 4–58, third full paragraph

Delete: Despite direct contact of these marine mammals with the oil spills, no apparent adverse effects were recorded.''

Replace with: ''Despite direct contact of these marine mammals with the oil spills, no apparent adverse effects were recorded at the time of the fly-over, nor was there evidence of behavior modification as a result of the spill. Follow-up flights or studies were not conducted, however, to determine if there were any longer-term effects.''

Page 4–63, first paragraph, 4th sentence

Insert: (NEG, 2005) at the end of the sentence.

Pages 4–65 and 4–76 Fuel Spill

Delete: ''Cetaceans that might come into contact with a small fuel spill at the Project site would not be likely to show adverse effects, as past observations have shown no apparent adverse effects or behavioral changes caused by contact with fuel spills.''

Replace with: ''Limited study (see FEIS, p. 4–58, third full paragraph), indicates that cetaceans that may come into contact with a small fuel spill at the Project site would not be likely to show adverse effects.''

Page 4–65 and 4–76 Bioaccumulation 2nd paragraph

Delete: ''The only possible route of uptake of contaminants by marine mammals is through food consumption, as contaminants are not absorbed through the skin of marine mammals, and they do not drink large quantities of seawater.''

Replace with: ''The most likely route of uptake of contaminants by marine mammals is through food consumption, as contaminants are not absorbed through the skin of marine mammals. While whales do not intentionally drink large quantities of seawater, a large quantity of water is processed in filter-feeding and could present another potential route for contaminate absorption.''

Page 4–77 Construction Schedule Alternatives

Delete: ''Allowing construction from May through November would be most protective of the critically endangered North Atlantic right whale and fin and humpback whales, but would be less protective of sei whales, blue whales, sea turtles and some fish species.''

Replace with: ''Allowing construction from May through November would be most protective of the North Atlantic right whale, but would be less protective of fin whales, humpback whales, sea turtles and some fish species.''

By order of the Maritime Administrator.

Dated: December 18, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–21885 Filed 12–20–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34961]

Indiana Boxcar Corporation—Continuance in Control Exemption—Youngstown & Southeastern Railway Company

Indiana Boxcar Corporation (applicant) has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Youngstown & Southeastern Railway Company (Y&S), upon Y&S's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on November 29, 2006.

This transaction is related to the concurrently filed verified notices of exemption:

STB Finance Docket No. 34934, *Eastern States Railroad, LLC—Acquisition Exemption—Central Columbiana & Pennsylvania Railway, Inc. and Columbiana County Port Authority*, wherein Eastern States Railroad, LLC (ESR) seeks to acquire the lease and operating rights of approximately 35.7 miles of rail line owned by the Columbiana County Port Authority (CCPA), and to receive permanent assignment of CCPA's and the Central Columbiana & Pennsylvania Railroad's operating rights to approximately 3 miles of track running east of milepost 0.0 in Youngstown, OH; and STB Finance Docket No. 34962, *Youngstown & Southeastern Railway Company—Lease and Operation Exemption—Lines of Eastern States Railroad, LLC*, wherein Y&S seeks to sublease and/or operate the 38.7 miles of line being acquired by ESR in STB Finance Docket No. 34934.

Applicant is a noncarrier that currently controls three Class III rail carriers: Vermilion Valley Railroad Company, Inc. (VVR), the Chesapeake & Indiana Railroad Company, Inc. (CIR), and Tishomingo Railroad Company, Incorporated (TRR).

Applicant states that: (1) The rail lines operated by VVR, CIR, and TRR do not connect with the rail line being acquired by lease and operated by Y&S; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail line being acquired by lease and operated by Y&S with applicant's rail lines or with those of any other railroad within applicant's corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).[1] The purpose of the transaction is to continue rail service on a light-density line being acquired by ESR through purchase, lease, and operating rights agreement.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice 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. 34961, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, John D. Heffner, PLLC, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

[1] Pursuant to 49 CFR 1180.6(a)(7)(ii), applicant is required to submit ''a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.'' Applicant states in its notice that a copy of an agreement is not yet available, but that it will submit a copy of the executed agreement as soon as it is available.

Decided: December 14, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–21760 Filed 12–20–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34934]

Eastern States Railroad, LLC—Acquisition Exemption—Central Columbiana & Pennsylvania Railway, Inc. and Columbiana County Port Authority

Eastern States Railroad, LLC (ESR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire the lease and operating rights to approximately 35.7 miles of rail line owned by the Columbiana County Port Authority (CCPA). The line extends between milepost 0.0 in Youngstown, OH, and milepost 35.7 in Darlington, PA. Currently, the Ohio & Pennsylvania Railroad Company (O&P) operates over this line pursuant to an interim operating agreement with the trustee of the line's former operator, the Central Columbiana & Pennsylvania Railway, Inc. (CCPR), which filed for bankruptcy in the U.S. Bankruptcy Court for the Eastern District of Arkansas.[1] O&P received interim operating authority from the Board in *The Ohio and Pennsylvania Railroad—Acquisition and Operation Exemption—Rail Lines of Columbiana County Port Authority in Mahoning and Columbiana Counties, OH, and Beaver County, PA*, STB Finance Docket No. 34632 (STB served Dec. 21, 2004). According to ESR, O&P's interim operating agreement will terminate, pursuant to an order of the bankruptcy court, upon the effective date of this notice. According to ESR, the bankruptcy court has authorized CCPR, through CCPR's trustee, to assign its lease and operating rights to ESR.

ESR also seeks to receive permanent assignment of CCPA's and CCPR's operating rights to approximately 3 miles of track running east of milepost 0.0. ESR claims that this acquisition will, in combination with other rights that ESR has obtained, facilitate interchange with Norfolk Southern Railway Company and CSX Transportation, Inc.

According to ESR, it has entered into an interim operating agreement with the trustee of CCPR for interim assignment of operating rights on all the lines described herein, pending the closing of its acquisition of the lease and operating rights, so that ESR may commence operations.

ESR certifies that its projected annual revenues as a result of the transaction will not exceed $5 million. The transaction was scheduled to be consummated on November 29, 2006, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to two concurrently filed verified notices of exemption: STB Finance Docket No. 34962, *Youngstown & Southeastern Railway Company—Lease and Operation Exemption—Lines of Eastern States Railroad, LLC*, wherein Youngstown & Southeastern Railway Company (Y&S) seeks to sublease and/or operate the 38.7 miles of line being acquired by ESR in this docket; and STB Finance Docket No. 34961, *Indiana Boxcar Corporation—Continuance in Control Exemption—Youngstown & Southeastern Railway Company*, wherein Indiana Boxcar Corporation seeks an exemption for continuance in control once Y&S is granted common carrier authority.

If the verified notice 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. 34934, 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 Myles L. Tobin, Fletcher & Sippel, LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 14, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–21762 Filed 12–20–06; 8:45 am]

BILLING CODE 4915–01–P

[1] U.S. Bankruptcy Court for the Eastern District of Arkansas, Case No. 04–BK–16887T.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34962]

Youngstown & Southeastern Railway Company—Lease and Operation Exemption—Lines of Eastern States Railroad, LLC

Youngstown & Southeastern Railway Company (Y&S), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to sublease from Eastern States Railroad, LLC (ESR) and operate the portion of the 35.7-mile line between milepost 35.7 in Darlington, PA, and milepost 0.0 in Youngstown, OH. In addition, Y&S will operate, as ESR's agent and in ESR's name, 3 miles of rail line running east of Youngstown, which is the subject of permanent assignment to ESR of Central Columbiana & Pennsylvania Railway, Inc.'s (CCPR) and Columbiana County Port Authority's (CCPA) operating rights that will facilitate the interchange of traffic with Norfolk Southern Railway Company and CSX Transportation, Inc.

This transaction is related to two concurrently filed verified notices of exemption: STB Finance Docket No. 34934, *Eastern States Railroad, LLC—Acquisition Exemption—Central Columbiana & Pennsylvania Railway, Inc., and Columbiana County Port Authority*, wherein ESR seeks to acquire the lease and operating rights of approximately 35.7 miles of rail line owned by CCPA, and to receive permanent assignment of CCPR's and CCPA's operating rights to approximately 3 miles of track east of milepost 0.0; and STB Finance Docket No. 34961, *Indiana Boxcar Corporation—Continuance in Control Exemption—Youngstown & Southeastern Railway Company*, wherein Indiana Boxcar Corporation seeks to continue in control of Y&S upon Y&S's becoming a Class III carrier.

Y&S certifies that its projected annual revenue as a result of this transaction will not exceed $5 million. The transaction was scheduled to be consummated on or after November 29, 2006, the effective date of the exemption (7 days after the exemption was filed).

If the notice 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 does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34962, 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 John D. Heffner, John D. Heffner, PLLC, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on its Web site at *http://www.stb.dot.gov*.

Decided: December 14, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–21761 Filed 12–20–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34954]

Commonwealth Railway, Inc.—Acquisition and Operation Exemption—Norfolk Southern Railway Company

Commonwealth Railway, Inc. (CWRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 12.5 miles of rail line owned by Norfolk Southern Railway Company (NS) between milepost F–4.0 and milepost F–16.5 near Portsmouth, VA. CWRY currently operates the subject line pursuant to a lease with an option to purchase from NS (as the successor to Norfolk and Western Railway Company).[1] CWRY states that it has agreed to grant NS and CSX Transportation, Inc. (CSXT) trackage rights over a portion of the subject line between milepost F–16.5 and approximately milepost F–9.9 to allow each connecting carrier equal access to CWRY and the rail line.[2]

CWRY certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and that its projected annual revenues will not exceed $5 million. CWRY states that the parties intend to consummate the transaction after November 28, 2006 (the effective date of the exemption).

If the verified notice 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. 34954, 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: Eric M. Hocky, Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 12, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–21614 Filed 12–20–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 285X), STB Docket No. AB–290 (Sub-No. 276X)]

High Point, Randleman, Asheboro and Southern Railroad Company—Abandonment Exemption—in Guilford County, NC; Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Guilford County, NC

Norfolk Southern Railway Company (NSR) and High Point, Randleman, Asheboro and Southern Railroad Company (HPRAS), a majority-owned NSR subsidiary, have jointly filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for NSR to discontinue service over, and for HPRAS to abandon, 1.5 miles of railroad between milepost M 0.0 and milepost M 1.5 in High Point, Guilford County, NC. The line traverses United States Postal Service Zip Code 27260, and includes the former station of High Point.

NSR and HPRAS have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on January 20, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 2, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 10, 2007, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemptions are void *ab initio*.

NSR and HPRAS have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 26, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic

[1] *See Commonwealth Railway Incorporated—Lease, Operation, and Acquisition Exemption—Rail Lines in Portsmouth, Chesapeake, and Suffolk, VA,* Finance Docket No. 31528 (ICC served Sept. 8, 1989). As part of that transaction, CWRY also acquired a 3.92-mile line of railroad between milepost F–0.8 and milepost F–4.0.

[2] According to CWRY, both NS and CSXT will seek the Board's approval for the trackage rights in separate filings.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), HPRAS shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by HPRAS's filing of a notice of consummation by December 21, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 11, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–21526 Filed 12–20–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 15, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW Washington, DC 20220.

Dates: Written comments should be received on or before January 22, 2007 to be assured of consideration.

United States Mint

OMB Number: 1525–0012.

Type of Review: Revision.

Title: Generic Clearance for Voluntary Surveys to Implement E.O. 12862. Implemented by Sales and Marketing Division.

Description: This is revised a Generic Clearance for an undefined number of customer satisfaction and opinion surveys or focus group interviews to be conducted over the next three years. The information collected from these surveys will be used to improve mint products and services.

Respondents: Individuals or households.

Estimated Number of Respondents: 81,508.

Estimated Total Reporting Burden: 10,996 hours.

Clearance Officer: Yvonne Pollard, (202) 722–7310, United States Mint, 799 9th Street, NW., 4th Floor, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–21823 Filed 12–20–06; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0002]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's entitlement to disability pension.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 20, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0002'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Income-Net Worth and Employment Statement (In support of Claim for Total Disability Benefits), VA Form 21–527.

OMB Control Number: 2900–0002.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–527 is completed by claimants who previously filed a claim for compensation and/or pension and wish to file a new claim for disability pension or reopen a previously denied claim for disability pension.

Affected Public: Individuals or households.

Estimated Annual Burden: 104,440.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 104,440.

Dated: Decmber 7, 2006.

By direction of the Secretary.

Cindy Stewart,

Program Analyst Initiative Coordination Service.

[FR Doc. E6–21771 Filed 12–20–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0577]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension without change, of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine eligibility for ancillary benefits for a spina bifida child of a Vietnam veteran.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 20, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–2900–0577'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Spina Bifida Award Attachment Important Information, VA Form 21–0307.

OMB Control Number: 2900–0577.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0307 is used to provide children of Vietnam veterans who have spina bifida with information about VA health care and vocational training and the steps they must take to apply for such benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 19 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 75.

Dated: December 7, 2006.

By direction of the Secretary.

Cindy Stewart,

Program Analyst Initiative Coordination Service.

[FR Doc. E6–21773 Filed 12–20–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0118]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine whether an eligible person who is enrolled in a program at one school is entitled to receive education benefits for enrollment at a secondary school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 20, 2007.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0118'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Transfer of Scholastic Credit (Schools), VA Form Letter 22–315.

OMB Control Number: 2900–0118.

Type of Review: Extension of a currently approved collection.

Abstract: Students receiving VA education benefits and are enrolled in two training institutions, must have the primary institution at which the student pursues his or her approved program of education verify that courses pursued at a secondary school will be accepted as full credit towards the student's course objective. VA sends VA Form Letter 22–315 to the student requesting that they have the certifying official of his or her

primary institution to list the course or courses pursued at the secondary school for which the primary institution will give full credit. Educational payment for courses pursued at a secondary school is not payable until VA receives evidence from the primary institution verifying that the student is pursuing his or her approved program while enrolled in these courses. VA Form Letter 22–315 serves as this certification of acceptance.

Affected Public: Not-for-profit institutions, and State, local or tribal government.

Estimated Annual Burden: 1,050 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Occasion.

Estimated Number of Respondents: 6,329.

Dated: December 7, 2006.

By direction of the Secretary.

Cindy Stewart,

Program Analyst Initiative Coordination Service.

[FR Doc. E6–21775 Filed 12–20–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (Dynamics of Unemployment in (20–24) Young Veterans]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Policy, Planning and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Policy, Planning and Preparedness (OPP&P), Department of Veterans Affairs, has submitted the collection of information for the Veterans' Disability Benefits Commission as abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900—New (Dynamics of Unemployment in (20–24) Young Veterans)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Initiative Coordination Service (005G1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900—New (Dynamics of Unemployment in (20–24) Young Veterans).''

SUPPLEMENTARY INFORMATION:

Title: Dynamics of Unemployment in Young (20–24) Veterans.

OMB Control Number: 2900—New (Dynamics of Unemployment in (20–24) Young Veterans).

Type of Review: Extension of a currently approved collection.

Abstract: The purpose of the study is to obtain information on the unemployment dynamics among young veterans (ages 20–24) recently discharged. The data includes recent employment history; occupation; income; job-seeking; experience with training, education, and employment assistance; and education. The study is a telephone survey with a representative sample, with half from regular service and half from activated reserve components. Survey items are largely from existing National surveys, such as the Current Population Survey or its Veteran Supplement, National Longitudinal Survey of Youth, National Survey of Veterans, and the Survey of Income and Program Participation.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 14, 2006, at page 54342.

Affected Public: Individuals or households.

Estimated Time per Respondent and Annual Burden: 667 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 2,000.

Dated: December 11, 2006.

By direction of the Secretary.

Cindy Stewart,

Program Analyst Initiative Coordination Service.

[FR Doc. E6–21776 Filed 12–20–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0616]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine non-Federal nursing home or residential care home qualification in providing care to veteran patients.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 20, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to Ann W. Bickoff, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *ann.bickoff@va.gov.* Please refer to ''OMB Control No. 2900–0616'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility;

(2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Titles:

a. Application for Furnishing Long-Term Care Services to Beneficiaries of Veterans Affairs, VA Form 10–1170.

b. Residential Care Home Program—Sponsor Application, VA Form 10–2407.

OMB Control Number: 2900–0616.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 10–1170 is completed by community agencies wishing to provide long term care to veterans receiving VA benefits.

b. VA Form 10–2407 is an application used by a residential care facility or home that wishes to provide residential home care to veterans. It serves as the agreement between VA and the residential care home that the home will submit to an initial inspection and comply with VA requirements for residential care.

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden:

a. VA Form 10–1170—83 hours.

b. VA Form 10–2407—42 hours.

Estimated Average Burden Per Respondent:

a. VA Form 10–1170—10 minutes.

b. VA Form 10–2407—5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 10–1170—500.

b. VA Form 10–2407—500.

Dated: December 11, 2006.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–21777 Filed 12–20–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
December 21, 2006

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 365, 385, 387, and 390

New Entrant Safety Assurance Process; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 365, 385, 387, and 390

[Docket No. FMCSA–2001–11061]

RIN 2126–AA59

New Entrant Safety Assurance Process

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes changes to the New Entrant Safety Assurance Process that would raise the standard of compliance for passing the new entrant safety audit. The agency has identified 11 regulations that it believes are essential elements of basic safety management controls necessary to operate in interstate commerce and proposes that failure to comply with any one of the 11 regulations would result in automatic failure of the audit. Under this proposal, carriers would also be subject to the current safety audit evaluation criteria in Appendix A of part 385. Additionally, if a roadside inspection discloses certain violations, the new entrant would be subject to expedited actions to correct these deficiencies. The agency proposes to eliminate Form MCS–150A—Safety Certification for Application for USDOT Number. The agency also intends to check compliance with the Americans with Disabilities Act and certain household goods-related requirements in the new entrant safety audit, if they apply to the new entrant's operation. However, failure to comply with these requirements would not impact the outcome of the safety audit. These changes would not impose additional operational requirements on any new entrant carrier. All new entrants would continue to receive educational information on how to comply with the safety regulations and be given an opportunity to correct any deficiencies found. FMCSA recognizes many new entrants are small businesses that are unaware of these requirements and continue to need the agency's assistance. Finally, FMCSA would make clarifying changes to some of the existing new entrant regulations and establish a separate new entrant application procedure and safety oversight program for non-North America-domiciled motor carriers. FMCSA believes this proposal would improve its ability to identify at-risk new entrant carriers and ensure deficiencies in basic safety management controls are corrected before the new entrant is granted permanent registration.

DATES: We must receive your comments by February 20, 2007.

ADDRESSES: You may submit comments, identified by DOT DMS Docket Number FMCSA–2001–11061, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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.

Instructions: All submissions received must include the agency name and docket number or Regulatory Identification Number (RIN) for this rule. All comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. For a summary of DOT's Privacy Act Statement or information on how to obtain a complete copy of DOT's Privacy Act Statement please see the ''Privacy Act'' heading under Rulemaking Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Arturo H. Ramirez, (202) 366–8088, Chief, Enforcement and Compliance Division, Federal Motor Carrier Safety Administration (MC–ECE), 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the DMS web site. If you want us to notify you of receiving your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

Legal Basis for the Rule

Title 49 U.S.C. 31144 requires the Secretary of Transportation (Secretary) to determine whether an owner or operator is fit to operate safely. Section 210 of the Motor Carrier Safety Improvement Act of 1999 [Public Law 106–159, 113 Stat. 1764, December 9, 1999] (MCSIA) added § 31144(g) [1] directing the Secretary to establish regulations to require each owner and operator granted new operating authority to undergo a safety review within 18 months of starting operations. In issuing these regulations, the Secretary was required to: (1) Establish the elements of the safety review, including basic safety management controls; (2) consider their effects on small businesses; and (3) consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses. The Secretary was also required to phase in the new entrant safety review requirements in a manner that takes into account the availability of certified motor carrier safety auditors. Congress mandated increased oversight of new entrants because studies indicated these operators had a much higher rate of non-compliance with basic safety management requirements and were subject to less oversight than established operators.

In addition to expanding the Secretary's authority under § 31144, Section 210 of MCSIA was a specific statutory directive consistent with the more general pre-existing legal authority provided by the Motor Carrier Safety

[1] MCSIA originally codified section 31144(g) as § 31144(c) and directed that it be added at the end of 49 U.S.C. 31144 following preexisting subsections (c), (d), and (e). Section 4114(c)(1) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109–59, 119 Stat. 1144, August 10, 2005) (SAFETEA-LU) recodified this provision as § 31144(g).

Act of 1984 (the 1984 Act) [49 U.S.C. App. 2505 (1988)], which requires the Secretary to prescribe regulations on commercial motor vehicle safety. The regulations required by the 1984 Act must prescribe minimum safety standards for commercial motor vehicles (CMVs). At a minimum, the regulations shall ensure: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)).

This NPRM proposes changes to the New Entrant Safety Assurance Process to improve the agency's ability to identify at-risk new entrant motor carriers through screening and ensure deficiencies are corrected before granting them permanent registration. As such, it implements the § 31136(a)(1) mandate that FMCSA regulations ensure CMVs are maintained and operated safely. It does not propose any new operational responsibilities on drivers pursuant to §§ 31136(a)(2)–(4).

Regulatory History

In response to the MCSIA statutory mandate, on May 13, 2002, FMCSA published an interim final rule (IFR) titled *New Entrant Safety Assurance Process* (67 FR 31978), which became effective January 1, 2003. Although operating authority has generally been construed in the past to mean registration of for-hire carriers subject to the jurisdiction transferred from the former Interstate Commerce Commission following enactment of the ICC Termination Act of 1995 [Public Law 104–88, 109 Stat. 888, December 29, 1995] (ICCTA), FMCSA interpreted Section 210 of MCSIA as extending this concept to all carriers subject to Federal safety jurisdiction (see 67 FR 31979, May 13, 2002). For this reason, FMCSA applied the New Entrant Safety Assurance Process to all domestic and Canada-domiciled new entrants, regardless of whether they needed to register with FMCSA under 49 U.S.C. 13901. Mexico-domiciled new entrants are covered under a separate application process and safety monitoring system (see 67 FR 12652, 67 FR 12701, and 67 FR 12757 published March 19, 2002).

Under the current New Entrant Safety Assurance Process, FMCSA provides applicants with an application package including, upon request, educational and technical assistance materials. The applicant must complete the application, including Form MCS–150A—Safety Certification for Application for USDOT Number, which requires the carrier to certify procedures are in place for basic safety management controls. Following completion of the application forms, FMCSA registers the new entrant and assigns a United States Department of Transportation (USDOT) Number. For-hire motor carriers, unless providing transportation exempt from ICCTA registration requirements, also are required to obtain FMCSA operating authority under 49 U.S.C. 13902, prior to commencing operations. The new entrant safety monitoring period begins when FMCSA issues the new entrant provisional registration via a USDOT Number and continues for 18 months. To maintain its provisional registration, a new entrant must comply with all FMCSA regulations and applicable hazardous materials regulations.

Within the first 18 months of a new entrant's operation, FMCSA will conduct a safety audit (SA) of the carrier's operations to educate the carrier on compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs) and to determine if the carrier is exercising basic safety management controls as defined in 49 CFR 385.3. An SA is not a compliance review. It does not result in a safety rating. These terms are defined in § 385.3.

During the SA, FMCSA gathers information by reviewing the carrier's compliance with ''acute'' and ''critical'' provisions of the FMCSRs and applicable HMRs. Acute regulations are those where the consequences of non-compliance are so severe as to require immediate corrective actions by a motor carrier, regardless of the overall basic safety management controls of the motor carrier (e.g., allowing a driver with a suspended license to operate a vehicle). Critical regulations are defined as those where noncompliance relates to management or operational controls and are indicative of breakdowns in a carrier's management controls (e.g., allowing a driver to operate a vehicle before his/her medical exam). Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The SA scoring evaluates each of the following factors and determines the adequacy of the carrier's safety management controls based on this evaluation. The six factors are:

Factor 1—General: Parts 387 and 390.
Factor 2—Driver: Parts 382, 383, and 391.
Factor 3—Operational: Parts 392 and 395.
Factor 4—Vehicle: Parts 393 and 396 and inspection data for the last 12 months.
Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397.
Factor 6—Accident: Recordable Accident Rate per Million Miles.

For each instance of noncompliance with an acute regulation, 1.5 points are assessed against the carrier. For each instance of noncompliance with a critical regulation, 1 point is assessed. For factors 1–5, if the combined violations of acute and critical regulations for each factor are equal to three or more points, the carrier is determined not to have basic safety management controls for that individual factor. If the recordable accident rate (factor 6) is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls (i.e., the carrier fails the factor). If the carrier's accident rate is anywhere between zero and 1.5 (1.7 for urban carriers), the carrier is considered to have adequate safety management controls in factor 6. A new entrant fails the SA if it fails three or more separate factors. Currently, FMCSA is studying a new approach to assessing the severity of violations as part of its announced CSA 2010 initiative (69 FR 51748). This initiative may ultimately replace the ''acute and critical'' methodology described here.

If the SA discloses the new entrant's basic safety management controls are adequate, the carrier retains the new entrant registration and continues to be monitored until the end of the 18-month period. FMCSA will grant permanent registration only if the new entrant successfully completes the monitoring period. If the basic safety management controls are inadequate, the new entrant is given an opportunity to correct the deficiencies. To provide that opportunity, FMCSA notifies the new entrant that unless the deficiencies are remedied, the registration will be revoked in 45 days (for carriers using passenger vehicles with a capacity to transport 16 or more passengers or vehicles transporting hazardous materials as defined under 49 CFR § 383.5) or 60 days (for all other new entrants). FMCSA may extend the compliance period if it determines the new entrant is making a good faith effort to remedy the problems. If, within the 45 or 60 days, the new entrant fails to respond to the notice or fails to correct the deficiencies, FMCSA issues an out-

of-service order prohibiting further operations in interstate commerce and revokes the new entrant registration.

Discussion of the Proposed Rule

FMCSA decided to publish an NPRM rather than a final rule because today's action proposes substantive changes to the May 13, 2002 IFR. These proposals would benefit from further notice and comment before promulgation as a final rule. Following is a discussion of these proposed changes.

Strengthening the Safety Audit

In FY 2000, FMCSA published a report titled ''Analysis of New Entrant Motor Carrier Safety Performance and Compliance Using SafeStat,'' which compared the safety performance of new entrant carriers to that of experienced carriers. A copy of the report is in the docket for this rule. The report indicated new entrant carriers had significantly higher crash involvement than experienced carriers. New entrant carriers had significantly worse driver safety compliance and performance compared to experienced carriers. To a lesser degree, new entrant carrier vehicle safety compliance and performance were also worse than for experienced carriers. For these reasons, FMCSA intends to ensure all new entrant carriers have basic safety programs and controls in place before granting permanent registration.

In response to comments to the 2002 IFR (see the section below titled ''Discussion of Comments''), as well as feedback from FMCSA field staff and State partners administering the New Entrant Safety Assurance Process, the Administrator convened an internal working group in the summer of 2003 to review and improve the process. The working group identified 11 regulatory violations which reflect a clear lack of basic safety management controls yet are not properly weighted by the existing SA. Under the current system, a new entrant could commit one of these 11 violations and still pass the SA. The group recommended that FMCSA strengthen the SA pass/fail criteria to give more appropriate weight to these 11 basic safety management requirements and clarify several vague regulatory requirements.

Based on this recommendation, FMCSA proposes that committing any one of the following 11 regulatory violations would result in an automatic failure of the SA:

1. § 382.115(a)/§ 382.115(b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively).

2. § 382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.

3. § 382.215—Using a driver known to have tested positive for a controlled substance.

4. § 383.37(a)—Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a State or who is disqualified to operate a commercial motor vehicle.

5. § 383.51(a)—Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.

6. § 387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.

7. § 391.15(a)—Using a disqualified driver.

8. § 391.11(b)(4)—Using a physically unqualified driver.

9. § 395.8(a)—Failing to require a driver to make a record of duty status.

10. § 396.9(c)(2)—Requiring or permitting the operation of a commercial motor vehicle declared ''out-of-service'' before repairs are made.

11. § 396.17(a)—Using a commercial motor vehicle not periodically inspected.

The agency believes carriers committing these violations do not have the basic safety management controls in place to safely operate in interstate commerce. The working group identified, and FMCSA accepted, these 11 infractions because they are so basic to ensuring safety that no carrier should be allowed to operate if any of these violations are found and not corrected. For example, implementation of an alcohol and controlled substances testing program is a fundamental requirement for any interstate carrier. A carrier that has implemented a program to ensure its drivers do not operate after testing positive for drugs or alcohol will reduce the risk of that carrier/driver being involved in a fatal accident. Allowing drivers who refuse to submit to drug or alcohol testing to drive indicates the carrier does not have an effective drug and alcohol testing program. Similarly, only qualified drivers should be permitted to drive. A carrier does not exercise sufficient safety management controls if it uses drivers who are disqualified from operating a CMV, physically unqualified, or who have had their commercial driver's license suspended, revoked, or canceled.

Additionally, the primary mission of the agency is to reduce crashes, injuries and fatalities involving large trucks and buses. For this mission to succeed, carriers must operate safe vehicles. To accomplish this, vehicles must be periodically inspected and kept in safe operating condition. Therefore, a new entrant would fail the safety audit if it does not inspect its vehicles periodically or operates any vehicle declared out-of-service before making the required repairs.

Further, driver fatigue has been identified as a contributing factor in many CMV crashes. To achieve the highest level of safety, carriers must have a system to safeguard the public against fatigued drivers by ensuring their drivers adhere to the agency's hours-of-service limitations. Hours-of-service violations comprise the largest percentage of driver out-of-service violations at the roadside. One effective safety management control for preventing fatigued drivers from operating a CMV is to have in place a system requiring drivers to submit records of duty status or other records, as appropriate. This recordkeeping requirement is fundamental to an effective driver monitoring system.

Finally, the agency believes it is essential for the traveling public to receive adequate compensation for personal injuries or property damage caused by CMVs operating on the highways. Therefore, carriers lacking required minimum financial responsibility would not be permitted to operate.

FMCSA emphasizes that the purpose of the proposed revision is to improve the safety management of new entrants, not to remove them from operations. The agency believes the regulations identified above are evidence of whether a new entrant has a systemic program to ensure it has the basic safety management controls to operate in interstate commerce.

As discussed above, when a new entrant fails an audit, even for one of the automatic failures described above, it will be afforded due process and given time to correct its failures and improve its safety management controls. This proposal emphasizes FMCSA's commitment to highway safety and would allow the agency to ensure new entrants are not permitted to operate without first correcting serious deficiencies in a timely manner.

FMCSA believes it is incumbent upon all new entrant carriers to be informed about, and familiar with, the FMCSRs prior to receiving a safety audit. To this end, FMCSA provides outreach and educational materials to carriers to help them prepare for the audit. Carriers discovered to have committed one of the

11 violations identified above, after having been informed of the need to comply prior to receiving permanent registration, and found to have not corrected the deficiency, will not be permitted to continue to operate. Establishing these 11 violations as grounds for failing the safety audit would promote public safety by encouraging new entrants to correct serious deficiencies in their safety management controls and reducing the number of potentially unsafe carriers operating on the nation's highways.

It should be noted that most of these 11 regulations correspond to requirements necessary for Mexico-domiciled long-haul carriers to obtain authority to operate in the United States, as established by Congress under Section 350(a)(1)(B) of the Fiscal Year 2002 DOT Appropriations Act [Public Law 107–87, Title III, sec. 350, 115 Stat. 864, Dec. 18, 2001]. The requirements applicable to Mexico-domiciled long-haul carriers are:

- Verification of a controlled substances and alcohol testing program consistent with 49 CFR part 40;
- Verification of a carrier's system of compliance with hours-of-service rules, including hours-of-service records;
- Verification of proof of financial responsibility;
- An evaluation of that motor carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections; and
- Verification of drivers' qualifications, including a required commercial driver's license.

Expedited Action

Under existing § 385.307(a), having ''an accident rate or driver or vehicle violation rate that is higher than the industry average for similar motor carrier operations' triggers an expedited SA or compliance review of the new entrant. (The reference to a ''driver or vehicle violation rate'' is an error and should read ''driver or vehicle out-of-service rate.'') The agency proposes to replace the abbreviated expedited action provisions under § 385.307(a) with the same ''Expedited Action'' provisions applicable to Mexico-domiciled carriers under § 385.105. As the agency stated in proposing the expedited action provisions for Mexico-domiciled carriers, we believe these violations pose the greatest threat to public safety and raise serious questions about a carrier's willingness and ability to conduct safe operations. See 66 FR 22416 (May 3, 2001). In addition to identifying potentially unsafe new entrant carriers, expanding the expedited action provisions would also make the treatment of Mexico-domiciled new entrants and all other new entrants more uniform.

This change would improve the New Entrant Safety Assurance Process by tightening scrutiny of new entrants before and after the safety audit. New entrants discovered with these violations could be identified during a roadside inspection or by any other means even if the agency had not yet conducted a safety audit.

Discovery of certain violations during a roadside inspection or by any other means would subject the new entrant to expedited action. If the carrier had not already submitted to an audit, the carrier would be flagged for review as soon as practicable. If the carrier already had submitted to an audit before discovery of an ''expedited action violation,'' FMCSA would send the carrier a letter requesting evidence of corrective action within 30 days of the notice or the carrier's registration would be revoked. Additionally, if FMCSA determined the violation warranted a more thorough review of the carrier's operation, the agency would schedule a compliance review. The following actions would trigger expedited action against the motor carrier:

- Using a driver who does not have a valid commercial driver's license.
- Operating vehicles that have been placed out-of-service for violations of the Federal Motor Carrier Safety Regulations or compatible State laws and regulations without taking necessary corrective action.
- Being involved in, through action or omission, a hazardous materials incident involving—
  - A highway route controlled quantity of certain radioactive materials (Class 7).
  - Any quantity of certain explosives (Class 1, Division 1.1, 1.2, or 1.3).
  - Any quantity of certain poison inhalation hazard materials (Zone A or B).
- Being involved in, through action or omission, two or more hazardous materials incidents involving hazardous materials other than those listed above.
- Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required drug or alcohol tests.
- Operating a motor vehicle that is not insured as required.
- Having a driver or vehicle out-of-service rate of 50 percent or more based on at least three inspections within a consecutive 90-day period.

The last item above would replace the ''vehicle or driver violation rate that is higher than the industry average for similar motor carrier operations'' requirement under § 385.307. From an operational standpoint, the ''50 percent or more threshold'' would provide for more effective and efficient monitoring of new entrant performance because it is a non-subjective and easily measured rate.

Applicability of Proposed Requirements to Current New Entrants

The changes in today's notice of proposed rulemaking, if promulgated as a final rule, would apply to motor carriers still subject to the current new entrant safety monitoring process on the final rule's effective date. Assuming all changes are adopted, these new entrants would be subject to expedited enforcement action for committing any of the seven violations or actions identified under the section ''Expedited Action.'' If a current new entrant has not had a safety audit prior to the final rule effective date, it would be audited in accordance with the safety audit procedures adopted in the final rule, including the applicable 11 automatic failure factors identified under the section ''Strengthening the Safety Audit.'' However, the automatic failure factors would not be retroactively applied to safety audits completed prior to the final rule's effective date. The safety audit outcomes determined prior to the final rule's effective date would remain unchanged by the final rule.

Form MCS–150A—Safety Certification for Application for USDOT Number

The purpose of the MCS–150A is for a new entrant to certify it has a system in place to ensure compliance with the FMCSRs and applicable HMRs. However, based on the SAs conducted to date, FMCSA has found many new entrants certified on the MCS–150A they are knowledgeable about the FMCSRs and applicable HMRs and have in place the safety management controls necessary to conduct interstate operations, but are not, in fact, in compliance with the FMCSRs and applicable HMRs. Therefore, while the intent of the MCS–150A is valid, in practice it fails. Consequently, FMCSA is proposing to eliminate the form. Conforming amendments are proposed to eliminate mention of the MCS–150A throughout the regulations.

Timing of Administrative Reviews

The administrative review provisions in current § 385.327 are ambiguous with respect to the time during which a carrier is allowed to file a request for administrative review and when it must file a request for administrative review,

if it wants the review to be completed before its registration is revoked. FMCSA is proposing to revise the section to clarify that, if a new entrant disagrees with the findings of an SA, the new entrant must file a request for an administrative review within 90 days of the date of the notice of audit failure or within 90 days of the notice of its corrective action being insufficient. However, if a new entrant wants a decision before the revocation takes effect, the new entrant must file a request for review within 15 days of the date of the notice of audit failure. Requests filed after 15 days will be considered, but it is possible the revocation would take effect before the administrative review process is completed, even if the new entrant eventually prevails and its registration is restored.

''Chameleon'' Carriers

The agency is concerned about carriers attempting to evade enforcement actions and/or out-of-service orders issued against them by re-registering as new entrants and operating as different entities under new USDOT Numbers. We call these entities ''chameleon'' carriers.

Such a carrier might attempt to conceal its former identity by leaving blank the response to items 16 and 17 on the ''Motor Carrier Identification Number—Application for USDOT Number'' (Form MCS–150). Items 16 and 17 of the MCS–150 request the carrier's USDOT Number or MC or MX Number. In other cases, the carrier may attempt to hide the fact that its USDOT Number is revoked by falsifying the response to item 28 on the MCS–150, which asks whether the carrier's USDOT Number registration is currently revoked by FMCSA, and if so, requires the carrier to list this number. Item 30 on the MCS–150 requires the carrier to certify the information provided on the MCS–150 is true, correct and complete. Unfortunately, some carriers deliberately fail to disclose information regarding their history in order to evade civil penalties assessed against the company or to circumvent out-of-service orders and other operational restrictions by obtaining new USDOT Numbers. Often these chameleon carriers go undetected until the agency conducts an SA or compliance review.

The agency is committed to ensuring only safe carriers are permitted to continue operating on our nation's highway. FMCSA has the authority to correct, modify, or revoke new entrant registration issued inadvertently, or obtained by fraud, misrepresentation or other wrongful means. Proposed § 385.306 clarifies what action may be taken against any carrier not providing truthful and complete information on its MCS–150.

If a carrier obtains a new USDOT Number after being ordered to cease operations based on a failed safety audit, prior Unsatisfactory rating, failure to pay a civil penalty or any other reason, and the information is discovered after the carrier received another USDOT Number, the agency will revoke the carrier's new registration and may also take additional enforcement action against the carrier. If a carrier obtains a new USDOT Number, but was not subject to an outstanding order to cease operations under a previous number, the agency may determine the new USDOT Number should not be revoked and, instead, link the history of the two companies by identifying in our database the new USDOT Number as the primary active number. The old USDOT Number would be listed in the database as one under which the carrier has also done business, and its safety history, including enforcement actions against the carrier, would be imputed to the new entity.

A carrier that ceased interstate operations and wishes to reapply should submit an updated MCS–150 and list its old USDOT Number when applying. The agency would reactivate the USDOT Number upon approval of the application.

Reapplication Process

Current § 385.329(a) states a new entrant whose new entrant registration has been revoked and whose operations have been placed out-of-service must wait 30 days after the revocation date to reapply. Current § 385.329(b) states the motor carrier will be required to initiate the application process ''from the beginning,'' demonstrate it has corrected the deficiencies resulting in revocation, and otherwise ensure it has adequate basic safety management controls. Some have interpreted ''from the beginning'' to mean the carrier must resubmit all documents submitted when the new entrant initially applied for new entrant registration and, if the application is accepted, undergo another SA and receive a new USDOT Number. The agency proposes to address the reapplication issue by establishing two separate procedures based upon what caused the revocation.

Under proposed § 385.329(b), a new entrant whose registration is revoked for failing the safety audit would reapply by submitting an updated Form MCS–150 and providing evidence of corrective action (which FMCSA would review for adequacy). If FMCSA concludes the re-applicant has taken adequate corrective action, it would grant the application and the re-applicant would not be subject to a second SA. The carrier would remain a new entrant, retain the same USDOT Number and continue to be monitored for 18 months from the date the new application is approved. For-hire motor carriers must also reapply for operating authority under 49 U.S.C. § 13902, if their operating authority was revoked.

If FMCSA revokes a new entrant's registration because it refused to submit to an audit, the new entrant would be required to submit an updated MCS–150, retain the same USDOT Number, and submit to an SA as soon as practicable once the new application is approved. FMCSA intends to flag these carriers so they will receive an SA as soon as practicable once they reenter the program. In all instances, a carrier reapplying for new entrant authority would be prohibited from operating in interstate commerce until its new application is approved. As in the case above, a new 18-month monitoring period would start upon approval of the new application.

To retain historical information on a revoked new entrant's past performance, FMCSA would require the new entrant to retain the same USDOT Number when reapplying for registration. This is consistent with what FMCSA has done in the past and is currently doing whenever a carrier is placed out-of-service and subsequently remedies whatever deficiencies resulted in the out-of-service order.

Household Goods

Currently, the SA does not evaluate compliance with FMCSA's household goods (HHG) regulations (49 CFR part 375). In order to strengthen its oversight of the HHG industry, FMCSA is proposing to include questions regarding HHG requirements in the audit. Because the HHG requirements are not safety related, however, FMCSA would not count the answers toward the pass/fail determination. Instead, any violations found would be enforced through other means (e.g., a compliance review).

Americans With Disabilities Act

The SA also does not evaluate compliance by passenger carriers with the Americans with Disabilities Act of 1990 [Public Law 101–336, 104 Stat. 327, July 26, 1990] (ADA). DOT regulations at 49 CFR part 37 prohibit discrimination against individuals with disabilities in the provision of transportation services, and require

certain vehicles to be readily accessible to and usable by such individuals. In order to strengthen its oversight over ADA issues, FMCSA is proposing to include questions regarding ADA compliance in audits of new entrant passenger carriers. As with violations of the HHG requirements, FMCSA would not count the answers toward the pass/fail determination. Instead, any violations found would be enforced by forwarding apparent violations to the U.S. Department of Justice or, if the carrier is a recipient of DOT financial assistance, through DOT administrative enforcement action.

Other Changes

Today's proposal would amend § 385.319, which concerns the new entrant's responsibilities for remedying deficient safety management practices discovered during the safety audit. It adds an additional category of passenger carriers to the description of which carriers must remedy deficiencies within 45 days of notification by FMCSA—new entrants that haul passengers in a vehicle used or designed to transport between 9 and 15 passengers for compensation.[2] The corrective action periods in § 385.319(c) were modeled after the 45- and 60-day effective dates of Unsatisfactory safety ratings in 49 CFR 385.11. Section 385.11 subjects all motor carriers transporting passengers by CMV to the 45-day requirement, including CMVs designed to transport between 9 and 15 passengers for compensation. The May 2002 IFR inadvertently failed to apply the 45-day requirement to small vehicle passenger carriers, subjecting them instead to the 60-day period applicable to property carriers not hauling hazardous materials requiring placarding. We propose to amend § 385.319(c), as well as §§ 385.323, 385.325, and 385.327 to make them consistent with § 385.11. Section 385.319 has also been rewritten to cross reference the definition of CMVs relating to hazardous materials carriers in 49 CFR 390.5 for purposes of consistency.

Current § 385.337(a) states: ''The initial refusal to permit an SA to be performed may subject the new entrant to the penalty provisions in 49 U.S.C. § 521(b)(2)(A).'' The term ''initial'' before the word ''refusal'' unnecessarily limits FMCSA's ability to impose penalties against recalcitrant carriers. Therefore, FMCSA is proposing to remove the word ''initial'' before the word ''refusal''; this change would permit FMCSA to consider any refusal as a basis for imposing penalties.

The New Entrant Safety Assurance Process and Non-North America-Domiciled Motor Carriers

Congress ratified the Central American Free Trade Agreement in the summer of 2005. In preparation for implementation of this treaty, FMCSA examined the agency's programs to ensure that any CMVs entering the United States from Central American countries were operating safely. Central American motor carriers, and indeed any motor carrier from a country other than the United States, Canada, or Mexico (non-North America-domiciled motor carriers), are not covered by FMCSA's existing New Entrant oversight programs. There are 64 carriers from Central American countries that have registered with the agency to operate CMVs in the United States.

The registered Central American carriers are domiciled in Guatemala, El Salvador, Belize, Honduras, Panama, and Nicaragua. The average vehicle fleet size for these carriers is one or two tractor-trailers. Sixty-three of the 64 carriers classified their operations as private motor carriers of property. A single carrier listed its operation type as private motor carrier of passengers (business). Most of the Central American carriers contracted with the same processing agent located in Brownsville, Texas, to file the USDOT Number application with FMCSA. Each of the carriers, including the passenger carrier, listed general freight or motor vehicles as its cargo type.

FMCSA has considered several options for a safety monitoring process for non-North America-domiciled motor carriers, including (1) subjecting them to the safety monitoring process for Mexico-domiciled carriers; (2) subjecting them to the New Entrant Safety Assurance Process for U.S. and Canada-domiciled carriers; or (3) developing an alternate oversight program compatible with existing regulatory authority.

The safety monitoring system for Mexico-domiciled carriers is based upon standards set out in the NAFTA Arbitral Panel Report[3] dated February 6, 2001, and the provisions of Section 350 of the FY 2002 Department of Transportation Appropriations Act. The NAFTA Arbitral Panel (the Panel) noted that: (1) The United States is not required to treat applications from Mexico-domiciled trucking firms in exactly the same manner as applications from U.S. or Canadian firms, as long as they are reviewed on a case by case basis; and (2) given the different enforcement mechanisms in place in the United States and Mexico, it may be justifiable for the United States to address legitimate safety concerns through different methods of ensuring compliance with the U.S. regulatory regime. Similarly, the Panel found it may not be unreasonable for the United States to implement different procedures with respect to service providers from another NAFTA country if necessary to ensure compliance with its own local standards by these service providers.

Mexico's motor carrier safety regulatory system lacks several of the components that are central to the U.S. system. As the Panel found, the U.S. is responsible for the safe operation of motor carriers within U.S. territory, regardless of the carriers' country of origin, and FMCSA believes we must ensure each carrier is safe to protect U.S. highway users. The safety monitoring process for Mexico-domiciled carriers provides FMCSA with the necessary level of assurance, in a manner consistent with the Panel's findings, and the relevant provisions of NAFTA. It ensures that Mexican motor carriers seeking U.S. operating authority are capable of complying with the U.S. safety regulatory regime.

The New Entrant Safety Assurance Process for U.S. and Canada-domiciled carriers is based upon an in-depth understanding of the safety systems in each country and a long history of cross-border truck and bus operations. Because FMCSA lacks understanding and experience with the safety systems of Central American and other non-North American countries, the agency deems it appropriate to adopt an alternate method of overseeing the compliance and safety of non-North America-domiciled-motor carriers. The alternate oversight method for non-North America-domiciled motor carriers is similar to FMCSA's oversight program for Mexico-domiciled motor carriers. It also is consistent with sec. 210(a) of MCSIA because it would require a safety

[2] Under existing FMCSA regulations, most of the FMCSRs do not apply to the transportation of passengers in such vehicles within a 75 air-mile radius of the driver's work reporting location, or when the carrier is not directly compensated. See 49 CFR § 390.3(f)(6). However, section 4136 of SAFETEA–LU eliminated the 75 air-mile distance limitation. Therefore, all carriers transporting passengers in CMVs designed to carry between 9 and 15 passengers will be subject to the new entrant requirements, provided such carriers are directly compensated. In a separate rulemaking, § 390.3(f)(6) will be amended to achieve consistency with this statutory change.

[3] *In the Matter of Cross-Border Trucking Services*, Secretariat File No. USA–MEX–98–2008–01, Final Panel, (February 6, 2001).

review of a new entrant non-North America-domiciled motor carrier within the first 18 months of operations. FMCSA would implement the minimum requirements provision of sec. 210(b) for these carriers through Form OP–1(NNA). Because sec. 210(a) of MCSIA requires the Secretary to issue regulations mandating safety reviews of all new entrant carriers, today's action proposes such regulations for non-North America-domiciled motor carriers. Due to FMCSA's lack of knowledge regarding the safety regimes of their home countries (as opposed to Canada and Mexico), FMCSA will use experience gained through the alternate oversight safety monitoring system to determine whether further regulatory changes may be appropriate in the future. The agency requests information on the safety systems of Central American and other non-North American countries.

Monitoring the Safety of Existing Non-North America-Domiciled Motor Carriers

FMCSA will educate, review and monitor the 64 registered non-North America-domiciled motor carriers and any additional non-North American carriers issued a USDOT Number prior to the effective date of any final rule promulgated for today's notice of proposed rulemaking. Compliance reviews will be conducted within three months on all existing non-North America-domiciled motor carriers to assess their compliance with U.S. regulations. With respect to additional non-North America-domiciled carriers that register with FMCSA before the effective date of any final rule promulgated for today's notice of proposed rulemaking, FMCSA will (1) manually review each application for USDOT Number (Form MCS–150) filed by non-North America-domiciled motor carriers to ensure they are complete and accurate; and (2) conduct a compliance review of these carriers within 6–12 months of issuing a USDOT Number registration and/or operating authority. FMCSA will monitor all non-North America-domiciled motor carriers for violations of the 11 regulations that the agency considers as minimum standards for safe operations (the same violations proposed as automatic failure factors in this NPRM) and conduct an expedited compliance review of any non-North America-domiciled motor carrier when a violation of these regulations is discovered. While the consequences of undergoing a compliance review and failing a new entrant safety audit may be somewhat different (civil penalties, a safety rating, and perhaps an operations out-of-service order resulting from a compliance review compared to proposed revocation of new entrant operating authority resulting from a new entrant safety audit), FMCSA believes conducting a compliance review is an equivalent level of oversight due to its comprehensive nature, the resultant safety rating for the carrier, and the possibility of civil penalties. In addition, non-North America-domiciled motor carriers would be subject to the same cross-border inspections as Mexico-domiciled carriers. Vehicles operated by non-North America-domiciled motor carriers will be subject to the same inspection standards as other CMVs entering or operating within the United States and will be inspected at the U.S.-Mexico international border unless displaying a valid safety decal.

Through the agency's process of gathering information on non-North America-domiciled motor carriers, another group of carriers from Central America has been identified. This group of carriers allegedly drives or flies drivers into interior States to purchase used tractor/trailers, school buses, farm equipment, and other vehicles. These vehicles are transported to Central America through the United States and Mexico without proper registration, insurance or licensing. This migration of exports from the United States is funneled primarily through one location—the Los Indios Port of Entry to Mexico.

To address this situation, FMCSA will initially educate southbound non-North America-domiciled motor carriers by providing warnings and informing them of the requirements for complying with the Federal Motor Carrier Safety Regulations. Following the educational period, FMCSA will perform periodic compliance strike force activities targeting non-registered southbound traffic at the Los Indios Port of Entry to Mexico. Non-compliant carriers will receive enforcement action ranging from roadside inspection citations to placing drivers and vehicles out of service, if warranted. FMCSA requests comments on this alternate oversight system for non-North America-domiciled motor carriers.

Proposed Registration and Safety Monitoring Process for Non-North America-Domiciled Motor Carriers Applying for a USDOT Number

Today's action proposes regulations governing the registration and safety monitoring of new entrant non-North America-domiciled motor carriers. The proposals are discussed as follows:

A. Proposed Application Process for Non-North America-Domiciled Motor Carriers
B. Proposed New Form—OP–1(NNA) for Non-North America-Domiciled Motor Carriers Requesting New Entrant Registration
C. Proposed Safety Monitoring System for Non-North America-Domiciled Motor Carriers.

A. Proposed Application Process for Non-North America-Domiciled Motor Carriers

FMCSA proposes to add a new subpart H to part 385 to address the specific requirements of the application process for all non-North America-domiciled motor carriers applying for a USDOT Number. First, proposed § 385.601 explains that subpart H would apply to any non-North America-domiciled motor carrier that wants to operate within the United States to provide transportation of property or passengers in interstate commerce.

Proposed § 385.603 requires these applicants to file—

- Proposed Form OP–1(NNA)—Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers,
- Form MCS–150—Motor Carrier Identification Report, and
- A notification of the means used to designate process agents.

The application would need to be filled out in English and be complete to be considered. Information on obtaining applications is also provided.

Proposed Form OP–1(NNA) would serve the dual purpose as being an application for new entrant registration (for all non-North America-domiciled carriers) and operating authority (for for-hire carriers subject to the requirements of 49 CFR part 365). Together with the MCS–150, the OP–1(NNA) would provide a more complete picture of the carrier's operational characteristics as well as its safety compliance and other key information than could be obtained through either form alone.

FMCSA would not impose a registration fee for new entrant registration unless the applicant also requires operating authority under part 365, for which an application fee is charged. Under FMCSA's current regulations, a non-North America-domiciled for-hire carrier of non-exempt commodities must submit Form OP–1 and pay a $300 application fee. Conforming amendments are proposed to §§ 365.101 and 365.105 to clarify that a non-North America-domiciled motor carrier would request operating authority by using Form OP–1(NNA)

and consequently be subject to the application fee.

Form MCS–150 would be used to obtain a USDOT Number. Conforming amendments have been made to proposed § 390.19 to require a non-North America-domiciled motor carrier to file the MCS–150 before beginning operations within the United States and to submit an updated form every 24 months after issuance of a USDOT Number.

Form BOC–3. The non-North America-domiciled motor carrier additionally would be required to notify the agency regarding designation of process agents by either: (1) Submission in the application package of Form BOC–3—Designation of Agents-Motor Carriers, Brokers and Freight Forwarders, or (2) a letter stating that the applicant will use a process agent that will submit the Form BOC–3 electronically.

Proposed § 385.605 would require a non-North America-domiciled carrier to use only drivers who possess a valid commercial driver's license and to subject those drivers to drug and alcohol testing as required under 49 CFR part 382. Acceptable commercial driver's licenses would include: (1) A CDL, (2) Canadian commercial driver's license or (3) a Licencia de Federal de Conductor issued by Mexico. FMCSA believes the CDL and corresponding drug and alcohol testing requirements are justified because drivers' licenses issued by the various non-North American countries may not meet FMCSA standards or State licensing standards regarding commercial motor vehicles not requiring a CDL.

In proposed § 385.607, FMCSA explains how the agency would process an application for new entrant registration filed by a non-North America-domiciled motor carrier. To the extent practicable, the agency would validate the accuracy of information and certifications with data in its databases, and the databases of the governments of the country where the carrier's principal place of business is located. FMCSA would not grant new entrant registration unless the carrier passes a pre-authorization safety audit (discussed later in this section). The criteria governing the pre-authorization safety audit are fully explained in a new Appendix to part 385, subpart H, which is modeled after the pre-authorization safety audit for certain Mexico-domiciled carriers.

After completing the pre-authorization safety audit, FMCSA would issue a USDOT Number if the applicant passes the audit.[4] However, the applicant will not be authorized to, and must not, begin operating within the United States unless it has filed evidence of financial responsibility pursuant to 49 CFR part 387 and designated a process agent.

The proposed Appendix to 49 CFR part 385, subpart H, sets forth criteria governing the pre-authorization safety audit. During the pre-authorization safety audit, FMCSA would validate the accuracy of information provided in the application and determine whether the carrier has basic safety management controls necessary to ensure safe operations. FMCSA would gather information by reviewing a motor carrier's compliance with ''acute'' and ''critical'' regulations in the FMCSRs and HMRs. As stated under the discussion of the New Entrant Safety Assurance Process for U.S. and Canada-domiciled carriers, FMCSA is studying a new approach to assessing the severity of violations as part of its announced CSA 2010 initiative. This initiative may ultimately replace the ''acute and critical'' methodology described in the Appendix to part 385, subpart H.

Conforming amendments are proposed for §§ 387.7 and 387.31 to require all non-North America-domiciled motor carriers—private and for-hire—to maintain and file evidence of financial responsibility with the agency as a condition of registration. FMCSA believes conditioning registration upon receipt of evidence of financial responsibility is appropriate for all non-North America-domiciled motor carriers because the financial responsibility standards within their countries of domicile may not meet U.S. Federal and State requirements. Section 4120 of The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1762, August 10, 2005] created new Sections 31138(c)(4) and 31139(c) in title 49 of the U.S. Code, authorizing FMCSA to require filing of evidence of financial responsibility by private property and passenger motor carriers under its jurisdiction. However, only those private motor carriers domiciled in non-North American countries would be subject to financial responsibility filing requirements under this proposal. FMCSA plans to address the issue of extending financial responsibility requirements to U.S. and Canada-domiciled private motor carriers in a separate rulemaking.[5]

The new entrant registration would not become permanent unless the carrier successfully completes the proposed 18-month safety monitoring system proposed under new subpart I to part 385. Successful completion of the safety monitoring system includes having each CMV operated in the United States pass a North American Standard commercial motor vehicle inspection every 90 days (as indicated by issuance of a valid safety decal for each of these vehicles) and obtaining a Satisfactory safety rating as a result of the required compliance review.

Under proposed § 385.609, the applicant must notify FMCSA within 45 days of any changes or corrections to certain key information in the Form OP–1(NNA) or the Form BOC–3—the form used to designate a process agent. Failure to do so would be grounds for revocation or suspension of its new entrant registration.

B. Proposed New Form—OP–1(NNA) for Non-North America-Domiciled Motor Carriers Requesting New Entrant Registration

Proposed Form OP–1(NNA) and its instructions are based extensively on the OP–1(MX) form with certain modifications applicable to non-North America-domiciled applicants. Proposed Section I of the form solicits information about the applicant's name, address, official representative, and form of business. Proposed Section IA would require the applicant to disclose any existing operations in the United States, including whether it had previously applied for a USDOT Number. Proposed Section II solicits information about any relationships or affiliations with other entities registered with FMCSA or its predecessor agencies. This information would help FMCSA verify the applicant's domicile in a non-North American country and determine whether the applicant holds similar registration in its country of domicile. Information regarding registration with the applicant's country of domicile would enable FMCSA to confirm motor carrier safety issues with its licensing authority.

Under proposed Section III of the form, the applicant would identify the type(s) of registration requested. FMCSA would require a separate filing fee for each type of registration requested. Section 4303(f) of SAFETEA-LU

[4] Applications by for-hire carriers subject to part 365 would also be subject to a 10-day protest period. In such cases, a USDOT Number would not be issued until after the protest period has elapsed and any protests filed have been denied.

[5] Mexico-domiciled private carriers are subject to the same financial responsibility filing requirements as U.S. for-hire carriers pursuant to 49 U.S.C. 13902(g).

imposed a January 1, 2007, deadline for the agency to modify carrier registrations for non-exempt for-hire motor carriers under 49 U.S.C. chapter 139 to eliminate distinctions between common and contract carriers. Accordingly, FMCSA has removed the common and contract carrier designations from the description of types of registration under proposed Section III and modified the proposed instructions for Section III to explain which for-hire registrations require a registration fee.

Proposed Section IV notifies the applicant of financial responsibility requirements. Consistent with long-haul Mexico-domiciled new entrants, all non-North America-domiciled applicants (private and for-hire) would be required to file evidence of financial responsibility with the agency as a condition of registration. FMCSA also proposes making the cargo insurance requirement for non-North America-domiciled motor carriers consistent with what was proposed in the Unified Registration System NPRM (70 FR 28990 published May 19, 2005). The May 19, 2005, NPRM proposes that only household goods carriers must maintain and file evidence of cargo insurance with the agency. FMCSA would modify proposed Form OP–1(NNA) if the Unified Registration System final rule results in different cargo insurance requirements.

Under proposed Section V, the applicant would certify and substantiate that it has a system in place to ensure compliance with applicable requirements covering driver qualifications, hours of service, drug and alcohol testing, vehicle condition, accident monitoring, and hazardous material transportation. Substantiation would be in the form of narrative responses describing how the applicant will monitor hours of service, how it will maintain an accident register and how it will monitor accidents. FMCSA would also require that the applicant include the names of individuals in charge of its safety program and drug and alcohol testing and identify specific locations where the applicant maintains current FMCSRs. Information obtained under Section V would enable FMCSA to evaluate, upon initial application, the safety compliance program of the applicant. FMCSA would reject an application that could not offer a specific, unambiguous plan to ensure compliance.

Proposed Section VI of the form would include new registration requirements for motor carriers of household goods created under Section 4204 of SAFETEA–LU. Section 4204 amended 49 U.S.C. 13902(a) to require such an applicant to: (1) Provide evidence of participation in an arbitration program and a copy of its notice to shippers about the availability of binding arbitration; (2) identify its tariff and provide a copy of the notice of the availability of the tariff for inspection; (3) certify it has read, and is willing to comply with all U.S. Federal laws regarding consumer protection, estimating, consumers' rights and responsibilities, and options for limiting liability for loss and damage; and (4) disclose certain financial, operational and familial relationship with any other entity involved in the transportation of household goods within 3 years of the proposed date of registration.

Proposed Section VII would require the applicant to specify the scope of registration, indicating intended principal border crossing points.

Under proposed Section VIII, the applicant would be required to make specific certifications regarding compliance with laws of the United States. The applicant would need to affirm its willingness and ability to provide the proposed service and to comply with all pertinent statutory and regulatory requirements. Certifications under proposed Section VIII would remind the applicant of statutory and regulatory responsibilities which, if neglected or violated, might subject the applicant to disciplinary or corrective action by FMCSA. The applicant would need to confirm its understanding that its process agent is deemed its official representative within the United States for receipt of filings and notices relating to the administrative and judicial process in connection with enforcement of Federal statutes and regulations. Finally, the applicant would need to certify that it is not currently disqualified from operating a commercial motor vehicle in the United States.

Proposed Section IX, the final section of the form, includes the applicant's oath attesting to the accuracy and truthfulness of application responses and certification of compliance with certain U.S. Federal and State laws regarding distribution or possession of controlled substances.

C. Proposed Safety Monitoring System for Non-North America-Domiciled Motor Carriers

Today's action proposes a new subpart I to part 385 covering the proposed safety monitoring system for non-North America-domiciled new entrants.

Proposed § 385.701 defines the following terms used in new subpart I to part 385:

(1) Compliance review has the same meaning as in 49 CFR § 385.3.

(2) New entrant registration is the provisional registration under 49 CFR part 385, subpart H that FMCSA grants to a non-North America-domiciled motor carrier to provide interstate transportation within the United States. It will be revoked if the registrant is not assigned a Satisfactory safety rating following a compliance review conducted during the safety monitoring period established in subpart I.

(3) Non-North America-domiciled motor carrier means a motor carrier of property or passengers whose principal place of business is located in a country other than the United States, Canada or Mexico.

Proposed § 385.703 describes elements of the safety monitoring system for non-North America-domiciled new entrant motor carriers. The safety monitoring system would include roadside monitoring and a compliance review within 18 months of receiving a USDOT Number. Additionally, the non-North America-domiciled carrier would be required—throughout the 18-month safety monitoring period and for three years after its new entrant registration becomes permanent—to display on each CMV in its fleet that is operated within the United States, a valid safety inspection decal. The safety inspection decal would only be valid for three months.

Under proposed § 385.705, a non-North America-domiciled motor carrier found in violation of the seven listed serious violations or infractions would be subject to expedited enforcement action. Such actions would include an expedited compliance review or, in the alternative, a demand that the carrier demonstrate in writing that it has taken immediate corrective action. The proposed infractions parallel those proposed for U.S. and Canada-domiciled motor carriers and those already applicable to Mexico-domiciled carriers. The section clarifies what constitutes a valid commercial driver's license. The type of action taken by FMCSA in response to any violations would depend upon the specific circumstances of the violations.

Proposed § 385.705(b) warns that failure to respond to a request for a written response demonstrating corrective action within 30 days would result in suspension of new entrant registration until the required showing of corrective action is made.

Proposed § 385.705(c) emphasizes that a carrier that successfully responds to a demand for corrective action under this section still would need to undergo a compliance review during the 18-month safety monitoring period if it had not already done so.

Under proposed § 385.707, FMCSA explains potential outcomes of the compliance review—a Satisfactory, Conditional, or Unsatisfactory rating—and FMCSA follow-up actions in response to each rating. The proposed section would require the compliance review to be conducted consistent with existing FMCSA safety fitness evaluation procedures under 49 CFR part 385, Appendix B. These are the same criteria in use for U.S., Canada and Mexico-domiciled carriers.

FMCSA sets forth under proposed § 385.709 the specific time frames for suspension and revocation of new entrant registration. We believe the proposed procedures strike an appropriate balance between the need to protect the public from potentially unsafe carriers and preservation of the carrier's due process rights.

Proposed § 385.711 sets forth procedures for requesting administrative review of the agency's safety rating or its decision to suspend or revoke new entrant registration. The request must explain the error it believes FMCSA committed and a list of all factual and procedural issues in dispute. In addition, the carrier must include any information or documents that support its argument. Following the administrative review, which would be conducted by the FMCSA Associate Administrator for Enforcement and Program Delivery, the agency would notify the carrier of its decision. This decision would constitute the agency's final action. Administrative review would be completed in no more than 10 days after the request is received.

Under proposed § 385.713, a non-North America-domiciled carrier whose registration has been revoked would be prohibited from re-applying for new entrant registration for at least 30 days after the date of revocation. When reapplying, the non-North America-domiciled motor carrier again would be required to pass a pre-authorization safety audit. The carrier would need to demonstrate to the FMCSA's satisfaction that it has corrected the deficiencies that resulted in revocation of its registration and that it otherwise has effectively functioning basic safety management systems in place. If the application is approved, the carrier's USDOT Number—linked to its previous safety record—would be reactivated; a new USDOT Number would not be issued. In this way, the agency could maintain a complete safety record of the non-North America-domiciled motor carrier.

Proposed § 385.715 provides that the safety monitoring period for non-North America-domiciled motor carriers would last for at least 18 months from the date it was issued a USDOT Number.[6] If, at the conclusion of the 18-month safety monitoring period, the carrier has received a Satisfactory safety rating and is not currently under a notice from FMCSA to remedy deficiencies in its basic safety management practices, the carrier's registration would become permanent.

If the carrier is under a notice to remedy deficiencies in its basic safety management practices, the safety monitoring period would be extended—and its new entrant designation would continue—until FMCSA determines the carrier is complying with the Federal safety regulations or revokes its registration under § 385.709.

If FMCSA is unable to conduct a compliance review within the 18-month period, proposed § 385.715(c) would extend the safety monitoring period until such time as the agency completes and evaluates a review.

Proposed § 385.717 emphasizes that the non-North America-domiciled motor carrier also would be subject to the same general safety fitness procedures in 49 CFR part 385, subpart A, and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Proposed § 390.19 explains filing procedures for the MCS–150 in greater detail and would subject non-North America-domiciled motor carriers to the biennial update requirement. Additionally, § 390.19(h)(2) proposes a technical correction documenting the existing requirement for a Mexico-domiciled long-haul motor carrier to successfully complete a pre-authorization safety audit prior to being issued a USDOT Number.

Discussion of Comments

FMCSA received 29 responses to the IFR from 19 commenters. The commenters were five trade associations, four safety consultants, two public interest groups, three private citizens, a State police department, a safety enforcement organization, an occupational health private practice, a union, and a professional association. Five commenters made multiple submissions.

[6] If a carrier's USDOT Number was revoked and reinstated under the provisions of proposed § 385.713, the 18-month period would run from the date of reinstatement.

General Comments. In general, the comments were supportive of the new entrant requirements in the IFR. The American Trucking Associations (ATA), American Society of Safety Engineers (ASSE), Commercial Vehicle Safety Alliance (CVSA), Consolidated Safety Systems (CSS), Daecher Consulting Group, Inc. (Daecher), the Independent Truckers and Drivers Association (ITDA), the National Private Truck Council (NPTC), the Indiana State Police, Schroeder & Associates, the International Brotherhood of Teamsters (IBT) and Tran Services generally supported the IFR and offered comments to improve the rulemaking. The Canadian Trucking Alliance (CTA) supported the IFR to the extent it applies equally to Canada- and U.S.-domiciled carriers. CVSA stated the SA—if properly implemented and accompanied by CDL reforms, technology and increased traffic enforcement—will have a dramatic and measurable impact on safety. CVSA submitted a petition to delay the implementation of the New Entrant Safety Assurance Process until States receive adequate funding and after certain procedural issues relating to the process are resolved.

Several commenters opposed the IFR for various reasons. Advocates for Highway and Automobile Safety (AHAS) and Public Citizen opposed the agency's decision to publish an IFR instead of a notice of proposed rulemaking. Both urged the agency to permit full public involvement in the New Entrant Safety Assurance Process rulemaking. AHAS indicated the quality of FMCSA regulatory drafting and publication would be improved by providing sufficient documentation of agency reasoning and decisions in its final regulations. Public Citizen stated the New Entrant Safety Assurance Process is rooted in self-reporting and devoid of meaningful oversight. According to Public Citizen, only an extremely negligent new entrant would be denied operating authority under this process. Public Citizen urged the agency to:

- Permit full public involvement in the New Entrant rulemaking.
- Eliminate from the process all requirements for uncorroborated self-reporting.
- Make a proficiency examination, and third-party, in-person verification of regulatory compliance and knowledge, prerequisites for granting operating authority.
- Develop a plan that assures the SA will be conducted within an 18-month time period.

• Establish stricter penalties for noncompliant motor carriers.

The Transportation Lawyers Association (TLA) commented the IFR fails to meet the statutory requirement of ensuring a carrier is knowledgeable about its safety responsibilities prior to commencing operations. ''FMCSA proposes nothing in this proceeding that will reduce the 'safety learning curve' before a new carrier begins operating.'' TLA contended that safety certifications and educational and technical assistance materials have been used by the agency for many years and have already proven inadequate.

FMCSA Response: In a letter dated April 11, 2003, the agency denied the CVSA petition to delay implementation of the New Entrant Safety Assurance Process until January 2004 and addressed CVSA concerns, including those related to adequate State funding for implementing the new entrant process, adequate training for State and Federal personnel charged with conducting safety audits, and recognition of Canadian and current State new entrant programs. A copy of the letter is in the docket to this rule.

In developing this proposal, FMCSA fully considered all comments to the May 2002 IFR and has adopted some of the recommendations. In response to complaints about self-certifications, this NPRM would eliminate the Form MCS–150A because safety audits have confirmed carrier certifications on the MCS–150A and findings at the carrier's place of business are not always consistent (See the ''Form MCS–150A'' subheading). Later in this section under applicable subject headings, the agency addresses specific concerns from AHAS, TLA and Public Citizen regarding the use of proficiency examinations (see the ''Proficiency Examinations'' subheading) and plans to improve the educational and technical assistance (ETA) materials by including information on how to comply with the regulations (see the ''ETA Materials'' subheading). The rule provides additional details about the scoring methodology and how the agency intends to strengthen the New Entrant Safety Assurance Process under the previous section titled ''Discussion of the Proposed Rule'' under the ''Strengthening the Safety Audit'' subheading.

Timing of the SA and 18-month monitoring period. Several commenters took issue with the timing of the SA and the 18-month monitoring period. ASSE stated that the 18-month period is too long, Daecher contended that a 6-month period would be adequate, and Schroeder & Associates believed the best time to conduct an audit is within 6 to 9 months of beginning operations. Only CSS agreed that an 18-month period may be necessary to effectively evaluate a carrier from a regulatory perspective because it affords the carrier an opportunity to execute certain requirements. The Indiana State Police recommended having a certified FMCSA representative conduct the SA within 30 days of issuance of the USDOT Number and CVSA advocated a face-to-face meeting with the new entrant at the time of the application.

FMCSA Response: As noted above, 49 U.S.C. 31144(g)(1) requires FMCSA to establish an 18-month period within which new entrant safety reviews must be conducted. Furthermore, as a practical matter, FMCSA believes carriers will not have sufficient records to allow the agency to review and evaluate the adequacy of a carrier's basic safety management controls until the carrier has been operating for approximately 3 months.

Scope of the Audit. Some commenters took issue with the SA itself and recommended broadening the scope of the audit to address more than just compliance issues. ATA recommended including such topics as employee hiring, bonus and incentive programs, employee training, quality control and safety meetings. CVSA recommended including a CVSA Level 1 or Level 5 inspection on as many of the carrier's vehicles as possible.

FMCSA Response: FMCSA proposes broadening the scope of the audit to include additional areas over which it has jurisdiction, such as operating authority, and household goods and ADA regulatory compliance. However, as noted previously, only safety-related questions would count toward the pass/fail determination. The agency also proposes to strengthen the audit by making specific violations, such as operating without a required CDL, result in automatic failure of the audit. Currently, the SA involves a Level 1 or 5 inspection of a sample of the carrier's vehicles. If there are insufficient vehicles on site at the time of the audit, the auditor completes the audit and documents why he/she was unable to conduct the inspections.

Safety Audit and Corrective Actions. Public Citizen opposed having a new entrant self-certify regarding corrective action for deficiencies revealed during the SA and asserted FMCSA should require in-person verification of corrective action. The Teamsters urged the agency to immediately suspend any new entrant found to be lacking basic safety management controls during the SA until it has demonstrated corrective action to the satisfaction of FMCSA. The Indiana State Police urged FMCSA to place both the vehicle and driver out-of-service until corrective action is taken if a carrier is found to be operating without USDOT new entrant registration.

FMCSA Response: The current regulations under § 385.319 provide that FMCSA must notify a carrier of any inadequacies found during an SA and advise the carrier what actions it must take to remedy the inadequacies to avoid having its registration revoked. The carrier must submit written evidence of corrections taken, and FMCSA reserves the right to determine whether they are adequate. FMCSA is required to provide the carrier with official notice of the deficiencies and the opportunity to correct them. The carrier must respond with more than a self-certifying statement. For example, acceptable demonstration of corrective action for a carrier found to not have a drug and alcohol testing program would be evidence documenting membership in a consortium. Under § 385.325, if a carrier does not demonstrate corrective action acceptable to FMCSA, the agency would revoke its new entrant registration and issue an out-of-service order. If the carrier is found to be operating a CMV in violation of an out-of-service order, under § 385.331, it might be fined up to $11,000 per violation in accordance with 49 U.S.C. 521(b)(2)(A) and 49 CFR part 386, Appendix B (a)(3).

Form MCS–150A. Several commenters encouraged FMCSA to eliminate the MCS–150A. ATA contended that many of the certification statements on the form are already collected on the registration application and suggested we retain and incorporate certification statements 18 and 19 into the MCS–150. ITDA urged FMCSA to require each new applicant to provide a written plan demonstrating the applicant's knowledge of motor carrier safety regulations and its ability to safely operate a trucking business. Public Citizen regarded the certifications on the MCS–150A as uncorroborated declarations by the applicant.

FMCSA Response: FMCSA agrees the MCS–150A is not producing the intended results. FMCSA's review of the New Entrant Safety Assurance Process has verified many new entrants are falsely certifying to having safety management controls when they are not actually in place. The agency proposes to eliminate Form MCS–150A.

Proficiency Examination. Several commenters opposed FMCSA's decision to not require a proficiency examination for new entrants. AHAS argued the IFR

does not adequately consider the use of a proficiency examination to measure new entrant safety. CSS supported the use of a proficiency examination as a component of the New Entrant Safety Assurance Process and offered to discuss its current program with the Department of Defense (DOD) and associated procedures with FMCSA. CVSA stated that in addition to using enhanced, comprehensive educational and technical assistance materials, FMCSA should administer a proficiency examination to measure a new entrant's knowledge of Federal motor carrier safety standards. According to CVSA, a new entrant's self-certification alone is insufficient proof of adequate systems to assure compliance with the FMCSRs.

Daecher asserted that giving ETA materials to a carrier does not ensure the carrier will read and understand the information. It encouraged FMCSA to use a proficiency examination to ensure the carrier has knowledge of the regulations and related safety information. Public Citizen urged the agency to make a proficiency examination a prerequisite for receiving operating authority. According to Public Citizen, the examination would be a far more comprehensive evaluation of regulatory knowledge than certifications made on the MCS–150A.

FMCSA Response: The agency believes the planned enhancements to the ETA materials, as discussed in greater detail below, would provide most carriers with sufficient understanding of applicable regulations and assistance on how to comply with the applicable FMCSRs and HMRs and that a proficiency examination is not necessary. However, the agency recognizes knowledge alone does not ensure a carrier is in satisfactory compliance with the regulations. Only a review of the carrier's records and systems could demonstrate such compliance.

ETA Materials. Several commenters addressed the subject of educational and technical materials for new entrants. AHAS and ATA complained FMCSA has not provided an opportunity for public review and comment on those educational and technical assistance materials new entrant carriers will receive. They suggested the agency place the ETA materials in the rulemaking docket or direct readers to where on the agency web site they can be obtained. CTA recommended revising the ETA materials to generally and clearly acknowledge distinctions between U.S. and Canadian rules. According to CTA, this would warn new entrants that rules can, and do, vary depending on the jurisdiction in which one operates. ITDA urged FMCSA to establish a process that encourages a new entrant to seek information and guidance and makes that information and guidance easily accessible. A private citizen recommended classroom instruction for new entrants.

FMCSA Response: FMCSA agrees the ETA materials need to be updated to better inform new entrants about regulatory requirements and how to comply fully with the requirements. The ETA materials are an integral component of the entire New Entrant Safety Assurance Process. One of the reasons stated in the March 2002 IFR for not initiating a proficiency exam was FMCSA's belief that the educational and technical assistance provided to new entrants would ensure they understood the applicable safety regulations. However, it is apparent many new entrants are not fully compliant and one of the reasons is because the ETA materials are not as comprehensive as they need to be. FMCSA plans to review all ETA materials provided to new entrants and improve the quality, content, and format of the material.

The agency believes enhanced ETA materials, including a new entrant safety assurance compact disc, would substantially increase a new entrant's awareness of carrier responsibilities before beginning operations and would, to a great extent, make them proficient in those requirements. FMCSA further believes the anticipated benefits of the enhanced ETA materials more than justify associated agency costs. FMCSA has determined the contents of these materials are not subject to notice and comment because they do not establish standards or procedures, but will place a copy of the updated ETA materials in the docket to this rule for inspection upon completion.

Safety Monitoring During the 18-month Period. ATA requested specific details about how the agency intends to monitor new entrants during the 18-month period. Section 385.307(a) states: ''[t]he new entrant's roadside safety performance will be closely monitored to ensure the new entrant has basic safety management controls that are operating effectively.'' ATA believed this is insufficient information concerning how the agency will monitor new entrants during the 18-month period. CSS and CVSA supported development of a unique registration and USDOT Number to identify new entrants that have not yet passed the SA.

FMCSA Response: FMCSA would continue to monitor a new entrant's on-road performance using agency information systems and roadside inspections. Although the agency does not identify a new entrant that has not yet passed an SA by assigning a unique USDOT Number, FMCSA is able to target such new entrants for an SA or roadside inspection using information systems such as SafeStat, the Inspection Selection System (ISS) and the Motor Carrier Management Information System (MCMIS).

Safety Audit. Other commenters stated FMCSA should disclose the SA Evaluation Criteria, Forms, and Monitoring Procedures. Both ATA and AHAS requested the SA evaluation criteria be placed in the rulemaking docket for review and comment, and complained that FMCSA has not disclosed the criteria by which a new entrant will be evaluated.

FMCSA Response: Appendix A to 49 CFR part 385 explains the SA evaluation criteria, including the source of the data and how FMCSA determines whether a new entrant has basic safety management controls.

Reciprocity. CTA urged FMCSA to exempt from the SA audit requirement Canada-domiciled new entrant carriers that have undergone a provincial facility audit during the 18-month monitoring period.

FMCSA Response: Although FMCSA is engaged in ongoing discussion with its Canadian partners concerning the New Entrant Safety Assurance Process, today's rulemaking is not proposing an exemption for a Canada-domiciled new entrant carrier that has passed a provincial facility audit for several reasons. First, 49 U.S.C. 31144(g)(1) specifies the regulation must require each new entrant to undergo the safety review (audit) within the first 18 months of beginning operations. The statutory language provides no authority to exempt new entrants, including Canada-domiciled carriers that have successfully undergone a provincial facility audit, from the SA. Furthermore, the Canadian provincial facility audit fails to address all of the elements of the new entrant SA. For example, Canada does not require a carrier to have a controlled substance and alcohol testing program for its drivers. FMCSA could verify a Canada-domiciled carrier is aware of, and in compliance with, the agency's controlled substances and alcohol testing requirements only by conducting a new entrant SA under part 385. Moreover, § 31148(b) requires the SA to be conducted by: (1) A motor carrier safety auditor certified under FMCSA regulations or (2) a Federal or State employee who on the date of the enactment of § 31148(b) was qualified to perform such an audit or review.

Canadian provincial officials may not meet these qualifications.

Alternate Locations for Audits. The IFR also requested comments on the advisability of conducting some SAs at alternate locations. ATA agreed the use of locations other than the carrier's place of business for the SA may be beneficial, but recommended that alternate location scheduling remain optional and used at the discretion of the motor carrier scheduled for the audit. CVSA commented that the primary value of the SA is the personalized evaluation and education provided by the safety professional and did not believe an adequate audit could be conducted in a group setting. CVSA supported conducting the SA on-site at the new entrant's place of business. CSS also opposed the use of alternate locations for the SA. Although acknowledging there are obvious economies associated with this approach, CSS contended that the effectiveness and desired results would be significantly reduced, particularly if the primary focus of the SA is to assess the new entrant's safety management controls. Public Citizen acknowledged that conducting multiple audits simultaneously might expedite the number of audits conducted and ease agency backlog. However, Public Citizen contends a new entrant may be reluctant to fully participate in the process for fear of exposing potential vulnerabilities to its competitors. Another commenter stated that effective group audits are not possible because carrier operational types are so varied. Tran Services applauded the use of alternate locations to simultaneously provide educational and technical assistance to multiple new entrant carriers, but opposed conducting SAs in such a setting. The new entrant would need to bring along too many records, and FMCSA may be unable to provide an individual carrier the individual attention necessary to determine if the carrier is in compliance.

FMCSA Response: FMCSA has carefully considered the feasibility of conducting group audits. The agency believes group audits may present an excellent opportunity to simultaneously provide many new entrants with educational and technical assistance in a classroom setting while auditing the systems and records of individual new entrants in a private, one-on-one setting. However, experience has shown group audits are only beneficial in select situations, depending on many factors including, but not limited to, the number of new entrants within the given geographical area. For this reason, FMCSA conducts group audits only in those areas where practicable.

Currently, an SA provides education and technical assistance to a motor carrier that has recently begun operations. In addition, the SA provides FMCSA with the opportunity to ensure the carrier's compliance with applicable Federal safety regulations. Normally, an SA would take from 2 to 4 hours to complete. Unlike the in-depth compliance review for motor carriers that are not in the new entrant program, the SA focuses on education. By conducting these audits at the carrier's place of business rather than in a classroom setting, auditors gain a broader perspective of the company's structure and level of compliance with Federal safety regulations.

Use of Private Contractors to Conduct Safety Audits. The IFR requested comments on whether private contractors certified by FMCSA should conduct SAs. AHAS, ASSE, ATA, CVSA, CSS, Daecher, The Indiana State Police, Public Citizen, Schroeder & Associates, and Tran Services supported the use of qualified, private contractors to conduct SAs. AHAS asserted that use of private contractors would ''provide an opportunity to boost the annual numbers and percentages of motor carriers that are inspected and audited for safety adequacy.'' AHAS acknowledged that substantial safeguards must be built in order to avoid the possibility of fraud and other abuses.

According to ASSE, a certified safety professional (CSP) with appropriate transportation experience would be well qualified to perform the audits without further designation. ASSE recommended the final rule allow the use of private auditors who must be accredited by either the Council on Engineering and Scientific Specialties Board or the National Commission on Certifying Agency (NCCA), two nationally recognized independent accrediting bodies overseeing professional safety designations for safety, health and environmental professionals who are qualified to perform audits such as the new entrant SA.

ATA recommended that private contractors receive the same training as Federal and State investigators and use identical audit and data collection techniques. ATA asserted that industry support of the use of private contractors is contingent upon strict oversight of their work. ATA urged FMCSA to address the use of private contractors for SAs in a notice outlining proposed contractor training, auditing procedures and software, and how the Government will measure program effectiveness.

CSS believed that its own experiences in conducting inspections for DOD support its position that ''there are many well trained and qualified transportation safety professionals in the private sector.''

Indiana State Police supported the use of FMCSA-certified private contractors to conduct abbreviated SAs before the carrier begins operations. Indiana asserted these contractors could provide the basic educational and technical guidance in a classroom setting when the USDOT Number would be granted. Indiana stated the private contractor could bill the new entrant for these services, resulting in a cost savings to FMCSA.

Schroeder & Associates supported the use of private contractors and suggested adopting the expertise levels described in FMCSA's March 19, 2002, IFR titled *Certification of Safety Auditors, Safety Investigators, and Safety Inspectors* (67 FR 12775) as the standard for such contractors. Schroeder suggested that FMCSA certify individuals, not companies, for conducting the SAs. They also suggested that the agency could model the certification for private contractors after the former Interstate Commerce Commission Practitioner certification process, including minimum education and employment standards and a comprehensive 8-hour essay examination. Schroeder further recommended that the FMCSA SA course be accessible to non-government personnel with a waiver for those who successfully test out of the course. Lastly, they recommended FMCSA require private contractors to conduct a minimum of 12 inspections annually to maintain certification.

Tran Services asserted Federal, State and private contractors should be identically certified to ensure uniformity. Tran Services, and other private companies, already provide safety services, including ''mock DOT audits'' to help companies achieve and maintain compliance. ITDA opposed the use of private contractor inspectors, and stated that only Federal and State inspectors should conduct the SA at this time. ITDA believes that only after the New Entrant Safety Assurance Process is fully implemented and there is sufficient experience with the process should FMCSA consider the use of private contractor inspectors.

The IBT interpreted sec. 211 of MCSIA as prohibiting the use of a private contractor to grant operating authority to a carrier and that the SA falls within that prohibition. IBT stated the SA is an integral part of the

procedure for obtaining permanent operating authority, and is a precondition for such authority. IBT contended that SAs are so closely linked with the grant of permanent operating authority that allowing private contractors to conduct SAs would be a *de facto* impermissible delegation of authority.

Due to the anticipated strain on Federal and State enforcement resources, CVSA recommended the agency use private contractors to conduct SAs. CVSA argued, given their limited resources, Federal and State officials should not weaken efforts to conduct compliance reviews, roadside inspections, and traffic enforcement to implement the New Entrant Safety Assurance Process. CVSA made the following specific recommendations regarding the use of private contractors:

- Use only properly trained and certified individuals;
- Exclude the results of private contractor audits when determining a carrier's safety rating or for enforcement purposes; and
- Prohibit private contractors from conducting roadside inspections.

CVSA also recommended FMCSA conduct a multi-State, private contractor pilot program modeled after Canada's third-party auditor pilot program.

Daecher believed FMCSA should exclusively use qualified private auditors to conduct the SAs because it is a more easily managed and cost effective option. According to Daecher, current FMCSA resources are insufficient to handle the anticipated number of new entrants; opting not to use private contractors would be detrimental to the New Entrant Safety Assurance Process and prohibit review of each new entrant within the 18-month monitoring period. Daecher recommended establishing a certification program for private contractors to conduct both safety audits and compliance reviews.

FMCSA Response: Annually, approximately 48,000 motor carriers register with FMCSA to become new entrants. Federal and State compliance officers are able to conduct SAs on many of these carriers, but not all of them. To increase the number of new entrants inspected and monitored for safety compliance under the New Entrant Safety Assurance Process, FMCSA has been using private contractors to conduct safety audits since January 2004.

FMCSA has built into its contracts with private contractors effective safeguards against fraud and other abuses. The contractors are required to follow the same policies and procedures followed by Federal and State safety auditors. In addition, FMCSA closely monitors the activities of private contractors by obtaining monthly activity reports and reviewing their internal administrative procedures.

FMCSA is requiring all individuals performing a privately contracted safety audit to be certified following the same guidelines applicable to Federal and State safety auditors. They must meet the same minimum qualifications as Federal and State safety auditors, including certain education and experience requirements, as well as testing through the FMCSA International Training Division located in Arlington, VA. Private contractors must also pass the same proficiency exams given to Federal and State safety auditors and renew their certification annually. The maintenance of certification requirement currently includes performing a minimum of 24 SAs each year.

Completed SAs performed by private contractors receive the same scrutiny as those performed by Federal and State auditors. Although private contractors perform SAs, the results of any audit are not final until reviewed by FMCSA, thus ensuring Federal oversight of the program.

Since the SA does not result in a safety rating for the motor carrier being audited, private contractor SAs are not used to determine a carrier's safety rating. A safety rating is only issued upon completion of a compliance review. Compliance reviews are only conducted by Federal or State personnel and cannot be performed by a private contractor.

FMCSA agrees that private industry offers many trained and qualified individuals who can be utilized to ensure public safety. The agency acknowledges the strain brought to bear upon Federal and State resources due to the large number of incoming new entrant motor carriers annually registering with FMCSA and hopes to mitigate the situation by continuing to use private contractors.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has preliminarily determined this proposed rule is a significant regulatory action within the meaning of Executive Order 12866 and the U.S. Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979). While the costs of this NPRM would not exceed the $100 million annual threshold as defined in Executive Order 12866, FMCSA believes the subject of new entrant motor carrier requirements generates considerable public interest and therefore is significant. FMCSA has analyzed the costs and benefits, as discussed below, and has preliminarily determined this proposed rule would not be economically significant. This NPRM has been reviewed by the Office of Management and Budget (OMB).

A number of studies, some of which were sponsored by FMCSA or its predecessor agency, have evaluated the safety experience of new entrants. While the studies differ in emphasis and some particulars, they all demonstrate new entrants have higher crash rates than more established carriers and are less likely to comply with Federal regulations.

As explained previously, this rulemaking makes a number of revisions to how the agency monitors and evaluates new entrant motor carriers operating in the United States, and how these carriers apply for authority. The rulemaking also establishes procedures for the oversight of non-North American motor carriers. Only a very small number of non-North American carriers are currently operating in the United States, and we do not expect this number to grow appreciably in the future.

OMB guidance states that the agency's analyses should ''focus on benefits and costs that accrue to citizens and residents of the United States.'' [7] The analysis of costs is based on the total number of new entrants registering with FMCSA. This rule would impose costs on a small number of Canada-domiciled and non-North America-domiciled motor carriers operating in the United States. The difference between including and excluding non-North America-domiciled carriers is imperceptible after rounding. To obtain cost estimates for the U.S.-domiciled motor carriers, one should reduce the estimates presented by 3.5 percent. Most of the foreign carriers involved are domiciled in Canada.

The costs associated with the FMCSRs, HMRs, or the New Entrant Safety Assurance Process IFR should not be counted as a cost of this NPRM because these costs were already counted when the various measures were first promulgated. Thus, there are no societal costs associated with the proposed changes. We are not proposing any substantive changes to the

[7] OMB, Circular A–4, September 2003, page 15. Available online at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf.*

operational regulatory requirements; motor carriers, including new entrants, are already required to comply with these regulations. Therefore, this proposal would not place any new substantive burdens upon new entrants or any other entity. Rather, as explained above, the proposed changes would make the enforcement of existing requirements more rigorous. Any motor carrier already complying with the FMCSRs and HMRs would not face any change in practices. This proposal would include modest administrative costs for carriers to become aware of the new consequences for failing to comply with existing requirements.

Between 1995 and 2002, an average of 47,535 [8] new entrants began operations annually. We assumed this number would remain constant. As noted above, this NPRM would not impose any new operational requirements on new entrants. The only truly new cost involved would be the cost to motor carriers of becoming aware of new requirements when this NPRM is promulgated as a final rule. We assumed it would take an extra hour for the appropriate motor carrier official of each new entrant to study the new requirements and discern how to best comply with them. Using Bureau of Labor Statistics [9] (BLS) estimates for hourly wages for Transportation Managers of $33.50 and 31.5 percent employment benefits, we obtain an hourly compensation of $44.05. Assuming learning the new audit consequences takes an hour per firm, we estimate a cost of $2.1 million annually.

As noted above, this NPRM proposes eliminating the Form MCS–150A because of its ineffectiveness in ensuring an understanding of required basic safety management controls. We assume the elimination of this form would save new entrants 10 minutes each. Using a clerical wage of $14 per hour, this provision would save new entrants $111,000 annually. The net administrative cost of this proposed rule to new entrants is thus $2.0 million per year.

Alternative Analysis

We do not believe this proposed rule would impose significant costs or benefits other than those intended and counted in the IFR. As explained previously, this proposed rule would not introduce any new requirements. All carriers, including new entrants, already are required to comply with the FMCSRs and applicable HMRs, including all the standards that would be checked during the safety audit. Therefore, the costs and benefits of the audit should not be ascribed to this NPRM; these costs and benefits were included when these regulations were initially promulgated, so including them now would be double counting.

However, we did attempt to measure these costs and benefits. While they are not properly part of this proposed rule, the information may prove useful for decision makers. This section therefore provides an alternate description of the impact of this proposal.

We calculated the number of crashes that must be avoided to make this proposed rule cost beneficial, meaning the benefits would exceed the costs. We first converted crashes into dollar values to allow for comparison with the cost figures, based on work by Zaloshnja *et al.* They estimated the cost of an average police-reported crash involving trucks with a gross vehicle weight rating of more than 10,000 pounds was $59,153 in 2000 dollars.[10] FMCSA adjusted this figure to 2004 dollars based on the Gross Domestic Product Deflator, which yields a value of $65,183.

New entrant carriers are involved in more crashes than more experienced carriers. According to a 2000 Volpe study, new entrants (defined as motor carriers registered for less than 2 years) were more frequently assessed to have Safety Evaluation Area scores in the worst quartile.[11] In fact, new entrants were about twice as likely to have an Accident SEA score of 75 or above. Therefore, Volpe concludes, SafeStat results show new entrants to have significantly lower levels of safety compliance and performance. The overall motor carrier crash rate from MCMIS is 0.75 crashes per million vehicle miles of travel (MVMT), while the new entrant crash rate is 25 percent higher, 0.94 per MVMT.

The net cost of this proposed rule is $2.0 million per year. For this proposed rule to be cost beneficial, it would have to deter 31 crashes ($2.0 million/$65,183), or one fatal crash.[12]

Alternative Costs Associated With Proposed Changes to Safety Audit Scoring System

As of October 2004, 33,787 new entrant SAs had been completed. Only 253 of new entrants audited under the program failed the SA under the existing scoring criteria, which is only 0.75 percent of those receiving an SA.

Had the list of proposed automatic failure criteria been incorporated into our regulations at the time these audits were conducted, 19,559 of the audited carriers would have failed, almost 58 percent of those audited. Therefore, the proposed scoring change would have resulted in an additional 19,306 new entrant carriers failing the audit (19,559 − 253 = 19,306). On an annual basis, this translates to 27,162 carriers failing the audit under the new criteria if there is no change in carrier behavior.[13]

However, it is unlikely the number of carriers that would fail the audit or whose new entrant authority would be revoked would be this large. The cost of not correcting violations of the 11 automatic failure provisions is currently low. New entrants cited for one of these violations are not placed out of service. In fact, it is possible for new entrants to continue operating for some time before remedying their violations. This proposal would dramatically raise the cost of failing to comply with these provisions, with violators possibly losing their authority and being placed out of business. Raising the cost of not correcting a violation, therefore, would encourage new entrants to comply with the regulatory requirements, either before they are audited or after they fail the audit.

We believe new entrants would be sensitive to the increased cost of violations and would respond accordingly. We assume half of the new entrants that would otherwise be put out of service instead would adjust their practices and behavior to comply with the regulations. We assume of the 27,162 new entrants failing one or more of the automatic failure criteria, 13,581 would be placed out of service, and 13,581 would make whatever changes are necessary to continue operations. These costs are now discussed in turn.

Alternative Cost of Replacing New Entrants [14]

As discussed in footnote 14, we assume that non-compliant carriers will

[8] These estimates were derived from data contained in the Motor Carrier Management Information System (MCMIS).

[9] See the Bureau of Labor Statistics Web site *http://www.bls.gov/oes/2003/may/oes_11Ma.htm* dated May 2003.

[10] Based on Revised Costs of Large Truck- and Bus-Involved Crashes, by Eduard Zaloshnja, Ted Miller, and Rebecca Spicer (National Technical Information Service, Springfield, VA), 2002.

[11] Volpe Center, Analysis of New Entrant Motor Carriers Safety Performance and Compliance Using SafeStat, March 2000, pp. 3–2, 3–7, and 5–4.

[12] For economic evaluations in the Department of Transportation, the value of a statistical life is to be $3.0 million. However, since there cannot be fractional fatal crashes, we round up to one.

[13] (19,559 − 253) * (47,535/33,787) = 27,162.

[14] Not all non-compliant carriers will be replaced by other new entrants. It is possible that carriers already in operation will absorb freight or passengers previously transported by firms placed out of service. Although it is possible existing

be replaced by other new entrants. These replacement new entrants could purchase equipment from out-of-service carriers, so the cost of equipment and facilities is a transfer between entities. The absolute costs of starting these new firms would include fees for application, licensing, registration, surveying potential markets, advertisements, training, and transactions costs for transferring assets. Our all-inclusive estimate for these costs is $4,000 per carrier replaced in this fashion. Therefore, replacing the 13,581 carriers that would be placed out of service would yield a total cost of $54.3 million annually.

Alternative Cost for New Entrants That Adjust

As discussed above, the costs and benefits of complying with the FMCSRs and HMRs (if applicable) are not attributable to this proposal since we are not proposing to change existing operational requirements. However, this evaluation also includes an estimate of costs and benefits assuming these were new requirements. These estimates are presented to assist decision makers in considering the impacts of this proposal. While these estimates do not represent the real costs of this proposal, they illustrate possible impacts of this proposal.

New entrants that change their practices and remain in service would also face some costs. The cost of coming into compliance would vary, depending on a number of factors, including the size of the new entrant and the specific regulation (or regulations) violated. We conservatively assume the average cost for carriers failing one of the 11 automatic failure criteria but desiring to continue operations would be $1,000. Therefore, the total cost for these 13,581 new entrants would be approximately $13.6 million.

The maximum cost of this proposed rule is estimated at approximately $67.9 million per year ($54.3 million + $13.6 million). The ten-year undiscounted cost would be almost $679 million, while the discounted cost would be $477 million.

Alternative Benefits

The theoretical benefits accrue from removing the least safe carriers from the road and replacing them with safer carriers. This change would result in a difference in expected crashes. Using the Compliance Review Impact Assessment Model, we assumed each failing new entrant removed and replaced would have had a crash rate of 1.13 crashes per million vehicle miles traveled (MVMT), which is 50 percent higher than the crash rate for established motor carriers. According to MCMIS, new entrants average 400,000 VMT per year. We assume freight that had been carried by closed carriers would be carried by replacement new entrants. According to MCMIS, new entrants have an overall crash rate of 0.94 crashes per MVMT. Therefore, closing unsafe carriers results in a 17 percent reduction in the per million mile crash rate ((1.13–0.94)/1.13).

We estimate new entrants eventually placed out of service or required to modify their operations are currently involved in approximately 11,200 baseline crashes annually. This is the sum of two calculations. For carriers that would be placed out of service, the calculation is the sum of 13,581 new entrants times 400,000 miles per new entrant times 1.13 crashes per MVMT. The calculation is similar for new entrants that continue operations, except their crash rate is 0.94 crashes per MVMT.

Closing 13,581 carriers would result in almost 1,020 fewer crashes in the first year, 967 in the second year (since 5 percent of the closed carriers would have gone out of business in any case), and fewer each succeeding year. However, an additional 13,581 carriers would be closed in each succeeding year, so the total crashes deterred by closing carriers increases over the analysis period as the reduction caused by the 5 percent business failure rate would be more than offset by the additional carriers closed each year. Over 10 years, more than 48,000 crashes would be deterred by placing unsafe carriers out of service.

The SAs also would reduce crashes among those new entrants allowed to continue operations after coming into compliance. Over 10 years, almost 5,700 crashes would be deterred from carriers that take action to remedy violations. For both classes of carriers, the SAs would result in 54,000 fewer crashes over 10 years.

As noted above, the average cost of a motor-carrier-involved crash is $65,183. By deterring 54,000 crashes, this proposed rule thus would yield a 10-year savings of $3.5 billion undiscounted. At a 7 percent discount rate, this would translate into a benefit of $2.3 billion. Most of these benefits would come from the crash reduction of closed carriers. This benefit would greatly exceed the costs described previously. The discounted ten-year net benefit of this NPRM would be $1.8 billion, and the benefit cost ratio would be 4.8 to 1.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. § 3501, *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined there are three currently approved information collections that would be affected by this NPRM: (1) OMB Control No. 2126–0013 titled ''Motor Carrier Identification Report'' (FMCSA Forms MCS–150, MCS–150A, and MCS–150B), approved at 74,896 burden hours through July 31, 2007; (2) OMB Control No. 2126–0015 titled ''Designation of Agents, Motor Carriers, Brokers and Freight Forwarders (FMCSA Form BOC–3) approved at 5,000 burden hours through April 30, 2008; and (3) OMB Control No 2126–0016 titled ''Licensing Applications for Motor Carrier Operating Authority'' (FMCSA Forms OP–1, OP–1 (FF), OP–1 (MX) and OP–1 (P), approved at 55,738 burden hours through August 31, 2008. Table 1 depicts the current and proposed burden hours associated with the information collections.

carriers may be able to operate more efficiently by increasing existing load factors, they may also have to divert vehicles and drivers from other loads or buy/hire new ones to provide the service. To provide a conservative estimate, we assume the cost of these resources will be mostly the same whether the loads are carried by existing carriers expanding or transferring capacity or by new entrants coming into the market to meet this demand. The only differences would be registration and licensing costs. We assume that there is no possibility that the replacing firm is the non-compliant firm repackaged as a new firm. Without this illegal practice, the replacing firm would either be a completely new motor carrier or an existing motor carrier expanding its operation. Since there is not a big difference, we choose to report the larger of the two cost possibilities.

TABLE 1.—CURRENT AND PROPOSED INFORMATION COLLECTION BURDENS

OMB approval No.	Burden hours currently approved	Burden hours proposed	Change
2126–0013	74,896	66,977	–7,919
2126–0015	5,000	5,002	2
2126–0016	55,738	55,786	48
Net Change	.....	.....	−7,869

The following is an explanation of how each of the information collections shown above would be affected by this proposal.

OMB Control No. 2126–0013. This NPRM would eliminate the requirement for new entrants to complete the Form MCS–150A (Safety Certification for Applications for USDOT Number) because it does not provide the certification intended. Proposed amendments to 49 CFR part 385, subpart E—Hazardous Materials Safety Permits would remove references to the MCS–150A and would not impact the MCS–150B in any way. The estimated annual paperwork burden for this information collection would be 66,977 hours [74,896 currently approved annual burden hours − 7,923 (47,535 new entrants × 10 minutes/60 minutes to complete the MCS–150A form) + 4 (12 non-America-domiciled motor carriers × 20 minutes/60 minutes to complete the Form MCS–150) = 66,977].

OMB Control No. 2126–0015. The non-North America-domiciled motor carriers would also be required to notify the agency regarding designation of process agents by either: (1) submission in the application package of Form BOC–3 (Designation of Agents, Motor Carriers, Brokers and Freight Forwarders), or (2) a letter stating that the applicant will use a process agent that will submit the Form BOC–3 electronically. The estimated annual paperwork burden for this information collections would be 5,002 hours [5,000 currently approved annual burden hours + 2 hours (12 new entrant non-North America-domiciled motor carriers × 10 minutes/60 minutes to complete Form BOC–3) = 5,002 hours].

OMB Control No. 2126–0016. The proposed rule would create a new Form OP–1(NNA) titled ''Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers.'' A non-North America-domiciled motor carrier is one whose principal place of business is located in a country other than the United States, Canada or Mexico. These entities would use the OP–1(NNA) when requesting either a USDOT new entrant registration as a private or exempt for-hire carrier or operating authority as a non-exempt for-hire carrier. The estimated annual paperwork burden for this information collection would be 55,786 hours [55,738 currently approved annual burden hours + 48 hours (12 new entrant non-North America-domiciled motor carriers × 4 hours to complete Form OP–1(NNA)) = 55,786 hours].

The proposals in this NPRM, affecting three currently-approved information collections, would result in a net decrease of 7,869 burden hours in the agency's information collection budget.

FMCSA requests comments on: (1) whether the collection of information is necessary or useful for the agency to meet its goal of reducing truck crashes, (2) the accuracy of the estimated information collection burden; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the information collection burden on respondents, including the use of automated collection techniques or other forms of information technology.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies the proposed rule will not have a significant economic impact on a substantial number of small entities. FMCSA believes these proposals do not meet the threshold values for requiring a full-blown regulatory flexibility analysis. Nonetheless, because of the public interest in these proposals, we have prepared a regulatory analysis and placed a copy in the docket to this NPRM. The initial regulatory flexibility analysis (IRFA) for the proposed rule is set forth below.

(1) *A description of the reasons why action by the agency is being considered.* FMCSA implemented the New Entrant Safety Assurance Process in January 2003. Under the program, a carrier receives new entrant registration and must undergo an 18-month monitoring period, including an SA. During the audit, FMCSA verifies the carrier has in place basic safety management controls and identifies any areas needing correction. A new entrant is granted permanent registration only after successfully completing the SA and the 18-month monitoring period.

The agency received numerous comments to the May 2002 IFR announcing the New Entrant Safety Assurance Process, including recommendations for improvement and alternatives to the program. By late summer 2003, the agency and its State partners had collected sufficient data and had sufficient experience administering the program to assess its effectiveness. The Administrator formed a working group comprised of field and Headquarters staff to conduct a program review. This group identified several key improvements to clarify, strengthen and correct the new entrant regulations. Today's action proposes measures to make the New Entrant Safety Assurance Process better. It also proposes a separate new entrant application procedure and safety oversight program for non-North America-domiciled motor carriers.

(2) *A succinct statement of the objectives of, and legal basis for, the proposed rule.* Section 210 of MCSIA required the Secretary of Transportation to establish regulations specifying minimum requirements for motor carriers seeking to operate in interstate commerce for the first time to ensure such carriers are knowledgeable about applicable Federal motor carrier safety standards. MCSIA also directed the Secretary to require, by regulation, that each motor carrier granted new operating authority undergo an SA within the first 18 months of operations. MCSIA also required the Secretary to establish the elements of the safety review, including basic safety management controls, to consider the effect the regulations would have on small businesses and to consider establishing alternate locations where the review may be conducted for the convenience of the small businesses.

An IFR, with request for comments, was published May 13, 2002, and became effective January 1, 2003. The IFR established new minimum requirements for all applicant motor carriers domiciled in the United States and Canada seeking to operate in interstate commerce. Under the IFR, all new entrants, regardless of whether they need to register with FMCSA under 49 U.S.C. 13901, are required to complete a Form MCS–150A—Safety Certification for Applications for USDOT Number. Additionally, during the initial 18-month period of operations, FMCSA would evaluate the new entrant's safety management practices through an SA and monitor its on-road performance prior to granting the new entrant permanent registration. The objective of this NPRM is to enhance the safety of new entrants and thereby reduce the number of crashes which involve these carriers.

(3) *A description of and, where feasible, an estimate of the number of small entities to which the proposed rule would apply.* The trucking industry, and to a lesser extent the bus industry, is populated by several very large firms and many small firms. We believe most motor carriers start small. The proposed rule would cover all U.S. and Canada-domiciled carriers and a very small number of motor carriers domiciled outside of North America.

FMCSA estimated in the regulatory evaluation accompanying this proposal that an average of 47,535 motor carriers entered the industry each year from 1995–2002 seeking interstate authority. Roughly 23,400 of these new entrants are estimated to be non-exempt for-hire carriers that must register under 49 U.S.C. 13901, 20,300 are estimated to be exempt for-hire and private carriers not subject to § 13901, and the roughly 3,800 remaining new registrants are of other types (including 1,922 brokers/freight forwarders, 1,200 Mexico-domiciled commercial zone carriers, and 664 other carriers). These estimates were derived from data contained in the Motor Carrier Management Information System (MCMIS).

The Regulatory Flexibility Act requires Federal agencies to analyze the impact of proposed and final rules on small entities. Small Business Administration (SBA) regulations (13 CFR part 121) define a ''small entity'' in the motor carrier industry by average annual receipts, which are currently set at $23.5 million per firm. FMCSA estimated based upon the 1997 Economic Census (U.S. Census Bureau), North American Industrial Classification System (NAICS) Code 484 ''Truck Transportation'' segments, the number of small trucking entities potentially affected by our proposed rules. There are 100,048 for-hire trucking firms within NAICS Code 484. Of these, 75,491, or roughly 75 percent, had annual receipts of less than $21.5 million. While SBA has changed its size definitions, updated data is not yet available. Therefore, this analysis uses the old definition. The actual percent of small businesses is probably somewhat greater than our estimate, but the difference is not likely to be significant. Because FMCSA does not have annual sales data on private carriers, the agency assumed the revenue and operations characteristics of the private new entrant firms would be similar to those of new entrant for-hire carriers. Using these assumptions, the agency estimates almost 35,651 of the total 47,535 new entrants (or 75 percent) are considered small entities. This assumption is generally consistent with an alternative, industry-based approach used to estimate the number of small trucking firms, where size is defined by the number of power units (i.e., tractors or single-unit trucks) owned or leased by motor carriers. Also, MCMIS data indicate 80 percent of new entrant motor carriers within the industry owned or leased six or fewer power units.

(4) *A description of the proposed reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which would be subject to the requirements and the type of professional skills necessary for preparation of the report or record.* Except for a small number of non-North America-domiciled motor carriers, this proposed rule would impose no additional reporting, recordkeeping, or other compliance requirement beyond those currently required of all motor carriers. This proposed rule would change the consequences for violating certain existing safety rules. Indeed, this proposed rule eliminates one form, the MC–150A, integrating a few of the data elements from the MC–150A into Form MC–150. Therefore, there will be one less form for motor carriers to complete.

(5) *An identification, to the extent practicable, of all Federal rules, which may duplicate, overlap, or conflict with the proposed rule.* FMCSA is not aware of any areas where this proposed rule would duplicate, overlap, or conflict with any other Federal rules. However, under a separate rulemaking (a notice of proposed rulemaking titled *Unified Registration System* published in the May 19, 2005, **Federal Register** at 70 FR 28989), the agency is proposing to unify three of its information systems for motor carriers into a single, on-line replacement system. The ''replacement system'' NPRM proposes a more streamlined registration process. The USDOT Number registration process for new entrants would be included in the replacement system NPRM.

The replacement system rulemaking is a very complex undertaking and would address the USDOT Number, financial responsibility and commercial aspects of registration; it only touches on ministerial aspects of the New Entrant Safety Assurance Process. Today's proposed rule covers the complete New Entrant Safety Assurance Process, not just registration. It is for these reasons the agency is pursuing these efforts in separate rulemakings. The agency would address any impacts to administrative elements of the New Entrant Safety Assurance Process when the proposed rule announcing the replacement system is promulgated as a final rule.

Accordingly, FMCSA preliminarily determines the proposed action discussed in this document would not have a significant economic impact on a substantial number of small entities.

Privacy Impact Analysis

FMCSA conducted a privacy impact assessment of this proposed rule as required by Section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Pub. L. 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. § 552a]. The assessment considers any impacts of the proposed rule on the privacy of information in an identifiable form and related matters. The entire privacy impact assessment is available in the docket for this proposal.

Unfunded Mandates Reform Act

This proposed rule would not impose a Federal mandate resulting in the net expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year. 2 U.S.C. 1531, *et seq.*

National Environmental Policy Act

FMCSA has analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined under the agency's National Environmental Policy Act Implementing Procedures, FMCSA Order 5610.1C (published at 69 FR 9680, March 1, 2004, with an effective date of March 30, 2004) this proposed action is categorically excluded under Appendix 2, paragraph 6.f of the Order from further environmental documentation. That categorical exclusion relates to

establishing regulations implementing the following activities, whether performed by FMCSA or by States pursuant to the Motor Carrier Safety Assistance Program (MCSAP), which provides financial assistance to States to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles: (1) Driver/vehicle inspections; (2) traffic enforcement; (3) safety audits; (4) compliance reviews; (5) public education and awareness; and (6) data collection; and provides reimbursement for the expenses listed under paragraphs 6.d(i) through 6.d(v). This action proposes amendments to the New Entrant Safety Assurance Process for carriers newly registering to operate in interstate commerce. The agency believes the proposed action would include no extraordinary circumstances having any effect on the quality of the environment.

FMCSA has also analyzed this proposal under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. We performed a conformity analysis of the CAA according to the procedures outlined in appendix 14 of FMCSA Order 5610.1C. This proposed rule would not result in any emissions increase, nor would it have any potential to result in emissions above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable the proposed rule change would not increase total CMV mileage, change the routing of CMVs, change how CMVs operate, or change the CMV fleet-mix of motor carriers. This proposed action would revise the program for assuring the safety of new entrant motor carriers.

Executive Order 12988 (Civil Justice Reform)

This proposed action 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.

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 does not concern a risk to environmental health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would 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.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been preliminarily determined this proposed action would not have a substantial direct effect or sufficient federalism implications on States, limiting the policymaking discretion of the States. Nothing in this document would directly preempt any State law or regulation. It would not impose additional costs or burdens on the States. This proposed action would not have a significant effect on the States' ability to execute traditional State governmental functions. To the extent that States incur costs for conducting these SAs, they would be reimbursed 100 percent with Federal funds under MCSAP.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

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

This proposed action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Motor Carrier Safety Administration proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B as set forth below:

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

1. The authority citation for part 365 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.73.

2. Amend § 365.101 by adding a new paragraph (i) to read as follows:

§ 365.101 Applications governed by these rules.

* * * * *

(i) Applications for non-North America-domiciled motor carriers to operate in foreign commerce as for-hire motor carriers of property and passengers within the United States.

3. Amend § 365.105 by revising paragraph (a) to read as follows:

§ 365.105 Starting the application process: Form OP–1.

(a) All applicants must file the appropriate form in the OP–1 series, effective [effective date of final rule]. Form OP–1 for motor property carriers and brokers of general freight and household goods; Form OP–1(P) for motor passenger carriers; Form OP–1(FF) for freight forwarders of

household goods; Form OP–1(MX) for Mexico-domiciled motor property carriers, including household goods and motor passenger carriers; and Form OP–1(NNA) for non-North America-domiciled motor property and motor passenger carriers. A separate filing fee in the amount set forth at 49 CFR 360.3(f)(1) is required for each type of authority sought in each transportation mode.

* * * * *

PART 385—SAFETY FITNESS PROCEDURES

4. The authority citation continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, and 31502; sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

§ 385.305 [Amended]

5. Amend § 385.305 to remove paragraph (b)(3) and to redesignate paragraph (b)(4) as (b)(3).

6. Add § 385.306 to subpart D to read as follows:

§ 385.306 What are the consequences of furnishing misleading information or making a false statement in connection with the registration process?

A carrier that furnishes false or misleading information, or conceals material information in connection with the registration process, is subject to the following actions:

(a) Revocation of registration.

(b) Assessment of the civil and/or criminal penalties prescribed in 49 U.S.C. 521 and 49 U.S.C. chapter 149.

7. Amend § 385.307 to revise paragraph (a) to read as follows:

§ 385.307 What happens after a motor carrier begins operations as a new entrant?

* * * * *

(a) The new entrant's roadside safety performance will be closely monitored to ensure the new entrant has basic safety management controls that are operating effectively.

* * * * *

8. Add § 385.308 to subpart D to read as follows:

§ 385.308 What will cause an expedited action?

(a) A new entrant that commits any of the following actions, identified through roadside inspections or by any other means, may be subjected to an expedited safety audit or a compliance review or may be required to submit a written response demonstrating corrective action:

(1) Using drivers to operate a commercial motor vehicle as defined under § 383.5 without a valid commercial driver's license. An invalid commercial driver's license includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating vehicles that have been placed out of service for violations of the Federal Motor Carrier Safety Regulations or compatible State laws and regulations without taking necessary corrective action.

(3) Involvement in a hazardous materials incident, due to carrier act or omission, involving any of the following:

(i) A highway route controlled quantity of a Class 7 (radioactive) material as defined in § 173.403 of this title.

(ii) Any quantity of a Class 1, Division 1.1, 1.2, or 1.3 explosive as defined in § 173.50 of this title.

(iii) Any quantity of a poison inhalation hazard Zone A or B material as defined in §§ 173.115, 173.132, or 173.133 of this title.

(4) Involvement in two or more hazardous materials incidents, due to carrier act or omission, involving any hazardous material not identified in paragraph (a)(3) of this section and defined in chapter I of this title.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating a motor vehicle that is not insured as required by part 387 of this chapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) If a new entrant that commits any of the actions listed in paragraph (a) of this section:

(1) Has not had a safety audit or compliance review, FMCSA will schedule the new entrant for a safety audit as soon as practicable.

(2) Has had a safety audit or compliance review, FMCSA will send the new entrant a notice advising it to submit evidence of corrective action within 30 days of the service date of the notice.

(c) FMCSA may schedule a compliance review of a new entrant that commits any of the actions listed in paragraph (a) of this section at any time if it determines the violation warrants a thorough review of the new entrant's operation.

(d) Failure to respond within 30 days of the notice to an agency demand for a written response demonstrating corrective action will result in the revocation of the new entrant's registration.

9. Revise § 385.319 to read as follows:

§ 385.319 What happens after completion of the safety audit?

(a) Upon completion of the safety audit, the auditor will review the findings with the new entrant.

(b) *Pass.* If FMCSA determines the safety audit discloses the new entrant has adequate basic safety management controls, the agency will provide the new entrant written notice as soon as practicable, but not later than 45 days after completion of the safety audit, that it has adequate basic safety management controls. The new entrant's safety performance will continue to be closely monitored for the remainder of the 18-month period of new entrant registration.

(c) *Fail.* If FMCSA determines the safety audit discloses the new entrant's basic safety management controls are inadequate, the agency will provide the new entrant written notice, as soon as practicable, but not later than 45 days after the completion of the safety audit, that its USDOT new entrant registration will be revoked and its operations placed out-of-service unless it takes the actions specified in the notice to remedy its safety management practices.

(1) *60-day corrective action requirement.* All new entrants, except those specified in paragraph (c)(2) of this section, must take the specified actions to remedy inadequate safety management practices within 60 days of the date of the notice.

(2) *45-day corrective action requirement.* The new entrants listed below must take the specified actions to remedy inadequate safety management practices within 45 days of the date of the notice:

(i) A new entrant that transports passengers in a CMV designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation.

(ii) A new entrant that transports passengers in a CMV designed or used to transport more than 15 passengers (including the driver).

(iii) A new entrant that transports hazardous materials in a CMV as defined in paragraph (4) of the definition of a ''Commercial Motor Vehicle'' in § 390.5 of this subchapter.

10. Revise § 385.321 to read as follows:

§ 385.321 What failures of safety management practices disclosed by the safety audit will result in a notice to a new entrant that its DOT new entrant registration will be revoked?

(a) *General.* The failures of safety management practices consist of a lack of basic safety management controls as described in Appendix A of this part or failure to comply with one or more of the regulations set forth in paragraph (b) of this section and will result in a notice to a new entrant that its DOT new entrant registration will be revoked.

(b) *Automatic failure of the audit.* A new entrant will automatically fail the safety audit if found in violation of any one of the following 11 regulations:

(1) § 382.115(a) or (b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively).

(2) § 382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.

(3) § 382.215—Using a driver known to have tested positive for a controlled substance.

(4) § 383.37(a)—Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a State or who is disqualified to operate a commercial motor vehicle.

(5) § 383.51(a)—Knowingly allowing, requiring, permitting, or authorizing a driver who is disqualified to drive a commercial motor vehicle.

(6) § 387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.

(7) § 391.15(a)—Using a disqualified driver.

(8) § 391.11(b)(4)—Using a physically unqualified driver.

(9) § 395.8(a)—Failing to require a driver to make a record of duty status.

(10) § 396.9(c)(2)—Requiring or permitting the operation of a motor vehicle declared ''out-of-service'' before repairs are made.

(11) § 396.17(a)—Using a commercial motor vehicle not periodically inspected.

11. Revise § 385.323 to read as follows:

§ 385.323 May FMCSA extend the period under § 385.319(c) for a new entrant to take corrective action to remedy its safety management practices?

(a) FMCSA may extend the 60-day period in § 385.319(c)(1) for up to an additional 60 days provided FMCSA determines the new entrant is making a good faith effort to remedy its safety management practices.

(b) FMCSA may extend the 45-day period in § 385.319(c)(2) for up to 10 days if the new entrant has submitted evidence that corrective actions have been taken pursuant to § 385.319(c) and the agency needs additional time to determine the adequacy of the corrective action.

12. Amend § 385.325 to revise paragraph (b) to read as follows:

§ 385.325 What happens after a new entrant has been notified under § 385.319(c) to take corrective action to remedy its safety management practices?

(a) * * *

(b) If a new entrant, after being notified that it is required to take corrective action to improve its safety management practices, fails to submit a written response demonstrating corrective action acceptable to FMCSA within the time specified in § 385.319, including any extension of that period authorized under § 385.323, FMCSA will revoke its new entrant registration and issue an out-of-service order effective on:

(1) Day 61 from the notice date for new entrants subject to § 385.319(c)(1).

(2) Day 46 from the notice date for new entrants subject to § 385.319(c)(2).

(3) If an extension has been granted under § 385.323, the day following the expiration of the extension date.

* * * * *

13. Revise § 385.327 to read as follows:

§ 385.327 May a new entrant request an administrative review of a determination of a failed safety audit?

(a) If a new entrant receives a notice under § 385.319(c) that its new entrant registration will be revoked, it may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in determining that its basic safety management controls are inadequate. The request must:

(1) Be made to the Field Administrator of the appropriate FMCSA Service Center.

(2) Explain the error the new entrant believes FMCSA committed in its determination.

(3) Include a list of all factual and procedural issues in dispute and any information or documents that support the new entrant's argument.

(b) FMCSA may request that the new entrant submit additional data and attend a conference to discuss the issue(s) in dispute. If the new entrant does not attend the conference or does not submit the requested data, FMCSA may dismiss the new entrant's request for review.

(c) A new entrant must submit a request for an administrative review within one of the following time periods:

(1) If it does not submit evidence of corrective action under § 385.319(c), within 90 days after the date it is notified that its basic safety management controls are inadequate.

(2) If it submits evidence of corrective action under § 385.319(c), within 90 days after the date it is notified that its corrective action is insufficient and its basic safety management controls remain inadequate.

(d) If a new entrant wants to assure that FMCSA will be able to issue a final written decision before the prohibitions outlined in § 385.325(c) take effect, the new entrant must submit its request no later than 15 days from the date of the notice that its basic safety management controls are inadequate. Failure to submit the request within this 15-day period may result in revocation of new entrant authority and issuance of an out-of-service order before completion of administrative review.

(e) FMCSA will complete its review and notify the new entrant in writing of its decision within:

(1) 45 days after receiving a request for review from a new entrant that is subject to § 385.319(c)(1).

(2) 30 days after receiving a request for review from a new entrant that is subject to § 385.319(c)(2).

(f) The Field Administrator's decision constitutes the final agency action.

(g) Notwithstanding this subpart, a new entrant is subject to the suspension and revocation provisions of 49 U.S.C. 13905 for violations of DOT regulations governing motor carrier operations.

14. Revise § 385.329 to read as follows:

§ 385.329 May a new entrant that has had its DOT new entrant registration revoked and its operations placed out of service reapply?

(a) A new entrant whose DOT new entrant registration has been revoked, and whose operations have been placed out of service by FMCSA, may reapply for new entrant authority no sooner than 30 days after the date of revocation.

(b) If the DOT new entrant registration was revoked because of a failed safety audit, the new entrant must do all of the following:

(1) Submit an updated MCS–150.

(2) Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will otherwise ensure that it will have basic safety management controls in effect.

(3) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(c) If the DOT new entrant registration was revoked because FMCSA found that the new entrant had failed to submit to a safety audit, it must do all of the following:

(1) Submit an updated MCS–150.

(2) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(3) Submit to a safety audit upon request.

(d) If the new entrant is a for-hire carrier subject to the registration provisions under 49 U.S.C. 13901 and also has had its operating authority revoked, it must re-apply for operating authority as set forth in part 365 of this title.

15. Revise § 385.331 to read as follows:

§ 385.331 What happens if a new entrant operates a CMV after having been issued an order placing its interstate operations out of service?

A new entrant that operates a CMV in violation of an out-of-service order is subject to the penalty provisions in U.S.C. 521(b)(2)(A) for each offense as adjusted for inflation by 49 CFR part 386, Appendix B.

16. Amend § 385.337 to revise paragraph (a) to read as follows:

§ 385.337 What happens if a new entrant refuses to permit a safety audit to be performed on its operations?

(a) If a new entrant refuses to permit a safety audit to be performed on its operations, FMCSA will provide the carrier with written notice that its registration will be revoked and its operations placed out of service unless the new entrant agrees in writing, within 10 days from the service date of the notice, to permit the safety audit to be performed. The refusal to permit a safety audit to be performed may subject the new entrant to the penalty provisions of 49 U.S.C. 521(b)(2)(A), as adjusted for inflation by 49 CFR part 386 Appendix B.

* * * * *

17. Amend § 385.405 to revise paragraph (a) to read as follows:

§ 385.405 How does a motor carrier apply for a safety permit?

(a) *Application form(s).* (1) To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCS–150B, Combined Motor Carrier Identification Report and HM Permit Application.

(2) The Form MCS–150B will also satisfy the requirements for obtaining and renewing a USDOT Number; there is no need to complete Form MCS–150, Motor Carrier Identification Report.

* * * * *

18. Amend § 385.421 by revising paragraph (a)(2) to read as follows:

§ 385.421 Under what circumstances will a safety permit be subject to revocation or suspension by FMCSA?

(a) * * *

(2) A motor carrier provides any false or misleading information on its application (Form MCS–150B) or as part of updated information it is providing on Form MCS–150B (see § 385.405(d)).

* * * * *

19. Amend part 385 by adding a new subpart H consisting of new §§ 385.601 through 385.609 and an Appendix to subpart H to read as follows:

Subpart H—Special Rules for New Entrant Non-North America-Domiciled Carriers

Sec.

385.601 Scope of rules.
385.603 Application.
385.605 New entrant registration driver's license and drug and alcohol testing requirements.
385.607 FMCSA action on the application.
385.609 Requirement to notify FMCSA of change in applicant information.
Appendix to Subpart H of Part 385—Explanation of Pre-Authorization Safety Audit Evaluation Criteria for Non-North America-Domiciled Motor Carriers

Subpart H—Special Rules for New Entrant Non-North America-Domiciled Carriers

§ 385.601 Scope of rules.

The rules in this subpart govern the application by a non-North America-domiciled motor carrier to provide transportation of property and passengers in interstate commerce in the United States.

§ 385.603 Application.

(a) Each applicant applying under this subpart must submit an application that consists of:

(1) Form OP–1(NNA)—Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers;

(2) Form MCS–150—Motor Carrier Identification Report; and

(3) A notification of the means used to designate process agents, either by submission in the application package of Form BOC–3—Designation of Agents-Motor Carriers, Brokers and Freight Forwarders or a letter stating that the applicant will use a process agent service that will submit the Form BOC–3 electronically.

(b) The Federal Motor Carrier Safety Administration (FMCSA) will only process an application if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form OP–1(NNA), Form MCS–150 and Form BOC–3; and

(3) The application must be signed by the applicant.

(c) An applicant must submit the application to the address provided in Form OP–1(NNA).

(d) An applicant may obtain the application forms from any FMCSA Division Office or download them from the FMCSA Web site at: *http://www.fmcsa.dot.gov/forms/forms.htm.*

§ 385.605 New entrant registration driver's license and drug and alcohol testing requirements.

(a) A non-North America-domiciled motor carrier must use only drivers who possess a valid commercial driver's license—a CDL, Canadian Commercial Driver's License, or Mexican Licencia de Federal de Conductor—to operate its vehicles in the United States.

(b) A non-North America-domiciled motor carrier must subject each of the drivers described in paragraph (a) of this section to drug and alcohol testing as prescribed under part 382 of this subchapter.

§ 385.607 FMCSA action on the application.

(a) FMCSA will review and act on each application submitted under this subpart in accordance with the procedures set out in this part.

(b) FMCSA will validate the accuracy of information and certifications provided in the application by checking, to the extent available, data maintained in databases of the governments of the country where the carrier's principal place of business is located and the United States.

(c) *Pre-authorization safety audit.* Every non-North America-domiciled motor carrier that applies under this part must satisfactorily complete an FMCSA-administered safety audit before FMCSA will grant new entrant registration to operate in the United States. The safety audit is a review by FMCSA of the carrier's written procedures and records to validate the accuracy of information and certifications provided in the application and determine whether the carrier has established or exercises the basic safety management controls necessary to ensure safe operations. FMCSA will evaluate the results of the safety audit using the criteria in the Appendix to this subpart.

(d) Applications of non-North America-domiciled motor carriers

requesting for-hire operating authority under part 365 of this chapter may be protested under § 365.109(b). Such carriers will be granted new entrant registration after successful completion of the pre-authorization safety audit and the expiration of the protest period, provided the application is not protested. If a protest to the application is filed with FMCSA, new entrant registration will be granted only if FMCSA denies or rejects the protest.

(e) If FMCSA grants new entrant registration to the applicant, it will assign a distinctive USDOT Number that identifies the motor carrier as authorized to operate in the United States. In order to initiate operations in the United States, a non-North America-domiciled motor carrier with new entrant registration must:

(1) Have its surety or insurance provider file proof of financial responsibility in the form of certificates of insurance, surety bonds, and endorsements, as required by § 387.7(e)(2), § 387.31(e)(2) and § 387.301 of this subchapter, as applicable; and

(2) File a hard copy of, or have its process agent(s) electronically submit, Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, as required by part 366 of this subchapter.

(f) A non-North America-domiciled motor carrier must comply with all provisions of the safety monitoring system in part 385, subpart I of this subchapter, including successfully passing North American Standard commercial motor vehicle inspections at least every 90 days and having safety decals affixed to each commercial motor vehicle operated in the United States as required by § 385.703(c) of this subchapter.

(g) FMCSA may remove a non-North America-domiciled carrier's new entrant designation no earlier than 18 months after the date its USDOT Number is issued and only after successful completion to the satisfaction of FMCSA of the safety monitoring system for non-North America-domiciled carriers set out in part 385, subpart I of this subchapter. Successful completion includes obtaining a Satisfactory safety rating as the result of a compliance review.

§ 385.609 Requirement to notify FMCSA of change in applicant information.

(a)(1) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders that occur during the application process or after having been granted new entrant registration.

(2) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information in Sections I, IA or II of Form OP–1(NNA)—Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers that occurs during the application process or after having been granted new entrant registration.

(3) A motor carrier must notify FMCSA in writing within 45 days of the change or correction to information under subparagraphs (a)(1) or (a)(2) of this section.

(b) If a motor carrier fails to comply with paragraph (a) of this section, FMCSA may suspend or revoke its new entrant registration until it meets those requirements.

Appendix to Subpart H of Part 385—Explanation of Pre-Authorization Safety Audit Evaluation Criteria for Non-North America-Domiciled Motor Carriers

I. General

(a) FMCSA will perform a safety audit of each non-North America-domiciled motor carrier before granting the carrier new entrant registration to operate within the United States.

(b) FMCSA will conduct the safety audit at a location specified by the FMCSA. All records and documents must be made available for examination within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period.

(c) The safety audit will include:

(1) Verification of available performance data and safety management programs;

(2) Verification of a controlled substances and alcohol testing program consistent with part 40 of this title;

(3) Verification of the carrier's system of compliance with hours-of-service rules in part 395 of this subchapter, including recordkeeping and retention;

(4) Verification of proof of financial responsibility;

(5) Review of available data concerning the carrier's safety history, and other information necessary to determine the carrier's preparedness to comply with the Federal Motor Carrier Safety Regulations, parts 382 through 399 of this subchapter, and the Federal Hazardous Material Regulations, parts 171 through 180 of this title;

(6) Inspection of available commercial motor vehicles to be used under new entrant registration, if any of these vehicles have not received a decal required by § 385.703(c) of this subchapter;

(7) Evaluation of the carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;

(8) Verification of drivers' qualifications, including confirmation of the validity of the CDL, Canadian Commercial Driver's License, or Mexican Licencia de Federal de Conductor, as applicable, of each driver the carrier intends to assign to operate under its new entrant registration; and

(9) An interview of carrier officials to review safety management controls and evaluate any written safety oversight policies and practices.

(d) To successfully complete the safety audit, a non-North America-domiciled motor carrier must demonstrate to FMCSA that it has the required elements in paragraphs (c)(2), (3), (4), (7), and (8) above and other basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. FMCSA developed ''safety audit evaluation criteria,'' which uses data from the safety audit and roadside inspections to determine that each applicant for new entrant registration has basic safety management controls in place.

(e) The safety audit evaluation process developed by FMCSA is used to:

(1) Evaluate basic safety management controls and determine if each non-North America-domiciled carrier and each driver is able to operate safely in the United States; and

(2) Identify motor carriers and drivers who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before FMCSA issues new entrant registration to operate within the United States.

II. Source of the Data for the Safety Audit Evaluation Criteria

(a) The FMCSA's evaluation criteria are built upon the operational tool known as the safety audit. FMCSA developed this tool to assist auditors and investigators in assessing the adequacy of a non-North America-domiciled carrier's basic safety management controls.

(b) The safety audit is a review of a non-North America-domiciled motor carrier's operation and is used to:

(1) Determine if a carrier has the basic safety management controls required by 49 U.S.C. 31144; and

(2) In the event that a carrier is found not to be in compliance with applicable FMCSRs and HMRs, the safety audit can be used to educate the carrier on how to comply with U.S. safety rules.

(c) Documents such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and other records are reviewed for compliance with the FMCSRs and HMRs. Violations are cited on the safety audit. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

III. Overall Determination of the Carrier's Basic Safety Management Controls

(a) The carrier will not receive new entrant registration if FMCSA cannot:

(1) Verify a controlled substances and alcohol testing program consistent with part 40 of this title;

(2) Verify a system of compliance with the hours-of-service rules of this subchapter, including recordkeeping and retention;

(3) Verify proof of financial responsibility;

(4) Verify records of periodic vehicle inspections; and

(5) Verify the qualifications of each driver the carrier intends to assign to operate commercial motor vehicles in the United States, as required by parts 383 and 391 of this subchapter, including confirming the validity of each driver's CDL, Canadian Commercial Driver's License, or Mexican Licencia de Federal de Conductor, as appropriate.

(b) If FMCSA confirms each item under III(a)(1) through (5) above, the carrier will receive new entrant registration, unless FMCSA finds the carrier has inadequate basic safety management controls in at least three separate factors described in part IV below. If FMCSA makes such a determination, the carrier's application for new entrant registration will be denied.

IV. Evaluation of Regulatory Compliance

(a) During the safety audit, FMCSA gathers information by reviewing a motor carrier's compliance with ''acute'' and ''critical'' regulations of the FMCSRs and HMRs.

(b) Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.

(c) Critical regulations are those where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls.

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII, List of Acute and Critical Regulations to part 385 of this subchapter.

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors, evaluated on the adequacy of the carrier's safety management controls, are:

(1) Factor 1—General: Parts 387 and 390;

(2) Factor 2—Driver: Parts 382, 383 and 391;

(3) Factor 3—Operational: Parts 392 and 395;

(4) Factor 4—Vehicle: Parts 393, 396 and inspection data for the last 12 months;

(5) Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

(6) Factor 6—Accident: Recordable Accident Rate per Million Miles.

(g) For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

(i) Vehicle Factor. (1) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

(i) If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 to determine the carrier's level of safety management control for that factor.

(ii) If the motor carrier's vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier's level of safety management controls will only be based on discovered noncompliance with the acute and critical regulations of part 396.

(2) Over two million inspections occur on the roadside each year in the United States. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Each safety audit will continue to have the requirements of part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

(j) Accident Factor. (1) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(2) Experience has shown that urban carriers, those motor carriers operating entirely within a radius of less than 100 air miles (normally urban areas), have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(3) The recordable accident rate will be used in determining the carrier's basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the United States national average accident rate in Fiscal Years 1994, 1995, and 1996.

(4) FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: ''If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.''

(k) Factor Ratings

(1) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Each carrier's level of basic safety management controls with each factor is determined as follows:

(i) Factor 1—General: Parts 390 and 387;

(ii) Factor 2—Driver: Parts 382, 383, and 391;

(iii) Factor 3—Operational: Parts 392 and 395;

(iv) Factor 4—Vehicle: Parts 393, 396 and the Out of Service Rate;

(v) Factor 5—Hazardous Materials: Part 171, 177, 180 and 397; and

(vi) Factor 6—Accident: Recordable Accident Rate per Million Miles;

(2) For paragraphs IV (k)(1)(i) through (v) (Factors 1 through 5), if the combined violations of acute and or critical regulations for each factor is equal to three or more points, the carrier is determined not to have basic safety management controls for that individual factor.

(3) For paragraphs IV (k)(1)(vi), if the recordable accident rate is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls.

(l) Notwithstanding FMCSA verification of the items listed in part III (a)(1) through (5) above, if the safety audit determines the carrier has inadequate basic safety management controls in at least three separate factors described in part III, the carrier's application for new entrant registration will be denied. For example, FMCSA evaluates a carrier finding:

(1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;

(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

Under this example, the carrier will not receive new entrant registration because it scored three or more points for Factors 2, 4, and 5 and FMCSA determined the carrier had

inadequate basic safety management controls in at least three separate factors.

20. Amend part 385 by adding a new Subpart I consisting of new §§ 385.701 through 385.717 to read as follows:

Subpart I—Safety Monitoring System for Non-North America-Domiciled Carriers

Sec.

385.701 Definitions.
385.703 Safety monitoring system.
385.705 Expedited action.
385.707 The compliance review.
385.709 Suspension and revocation of non-North America-domiciled carrier registration.
385.711 Administrative review.
385.713 Reapplying for new entrant registration.
385.715 Duration of safety monitoring system.
385.717 Applicability of safety fitness and enforcement procedures.

Subpart I—Safety Monitoring System for Non-North American Carriers

§ 385.701 Definitions.

Compliance review means a compliance review as defined in § 385.3 of this part.

New entrant registration means the provisional registration under part 385, subpart H of this subchapter that FMCSA grants to a non-North America-domiciled motor carrier to provide interstate transportation within the United States. It will be revoked if the registrant is not assigned a Satisfactory safety rating following a compliance review conducted during the safety monitoring period established in this subpart.

Non-North America-domiciled motor carrier means a motor carrier of property or passengers whose principal place of business is located in a country other than the United States, Canada or Mexico.

§ 385.703 Safety monitoring system.

(a) *General.* Each non-North America-domiciled carrier new entrant will be subject to an oversight program to monitor its compliance with applicable Federal Motor Carrier Safety Regulations (FMCSRs), Federal Motor Vehicle Safety Standards (FMVSSs), and Hazardous Materials Regulations (HMRs).

(b) *Roadside monitoring.* Each non-North America-domiciled carrier new entrant will be subject to intensified monitoring through frequent roadside inspections.

(c) *Safety decal.* Each non-North America-domiciled carrier must have on every commercial motor vehicle it operates in the United States a current decal attesting to a satisfactory North American Standard Commercial Vehicle inspection by a certified FMCSA or State inspector pursuant to 49 CFR § 350.201(k). This requirement applies during the new entrant operating period and for three years after the carrier's registration becomes permanent following removal of its new entrant designation.

(d) *Compliance review.* FMCSA will conduct a compliance review on a non-North America-domiciled carrier within 18 months after FMCSA issues the carrier a USDOT Number.

§ 385.705 Expedited action.

(a) A non-North America-domiciled motor carrier committing any of the following actions identified through roadside inspections, or by any other means, may be subjected to an expedited compliance review, or may be required to submit a written response demonstrating corrective action:

(1) Using drivers not possessing, or operating without, a valid CDL, Canadian Commercial Driver's License, or Mexican Licencia Federal de Conductor. An invalid commercial driver's license includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating vehicles that have been placed out of service for violations of the Federal Motor Carrier safety regulations without taking the necessary corrective action.

(3) Involvement in, due to carrier act or omission, a hazardous materials incident within the United States involving:

(i) A highway route controlled quantity of a Class 7 (radioactive) material as defined in § 173.403 of this title;

(ii) Any quantity of a Class 1, Division 1.1, 1.2, or 1.3 explosive as defined in § 173.50 of this title; or

(iii) Any quantity of a poison inhalation hazard Zone A or B material as defined in §§ 173.115, 173.132, or 173.133 of this title.

(4) Involvement in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section and defined in chapter I of this title.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by part 387 of this chapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to an agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's new entrant registration until the required showing of corrective action is submitted to the FMCSA.

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a compliance review during the new entrant registration period.

§ 385.707 The compliance review.

(a) The criteria used in a compliance review to determine whether a non-North America-domiciled new entrant exercises the necessary basic safety management controls are specified in Appendix B to this part.

(b) *Satisfactory Rating.* If FMCSA assigns a non-North America-domiciled carrier a Satisfactory rating following a compliance review conducted under this subpart, FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the compliance review. The carrier's registration will remain in provisional status and its on-highway performance will continue to be closely monitored for the remainder of the 18-month new entrant registration period.

(c) *Conditional Rating.* If FMCSA assigns a non-North America-domiciled carrier a Conditional rating following a compliance review conducted under this subpart, it will initiate a revocation proceeding in accordance with § 385.709 of this subpart. The carrier's new entrant registration will not be suspended prior to the conclusion of the revocation proceeding.

(d) *Unsatisfactory Rating.* If FMCSA assigns a non-North America-domiciled carrier an Unsatisfactory rating following a compliance review conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with § 385.709 of this subpart.

§ 385.709 Suspension and revocation of non-North America-domiciled carrier registration.

(a) If a carrier is assigned an ''Unsatisfactory'' safety rating following a compliance review conducted under this subpart, FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the

compliance review contains material error.

(b) For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety rating.

(c) If the carrier demonstrates that the compliance review contained material error, its new entrant registration will not be suspended. If the carrier fails to show a material error in the compliance review, FMCSA will issue an Order:

(1) Suspending the carrier's new entrant registration and requiring it to immediately cease all further operations in the United States; and

(2) Notifying the carrier that its new entrant registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order.

(d) If a carrier is assigned a ''Conditional'' rating following a compliance review conducted under this subpart, the provisions of paragraphs (a) through (c) of this section will apply, except that its new entrant registration will not be suspended under paragraph (c)(1) of this section.

(e) If a carrier subject to this subpart fails to provide the necessary documents for a compliance review upon reasonable request, or fails to submit evidence of the necessary corrective action as required by § 385.705 of this subpart, FMCSA will provide the carrier with written notice, as soon as practicable, that its new entrant registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. This suspension will remain in effect until the necessary documents or information are produced and:

(1) The carrier is rated Satisfactory after a compliance review; or

(2) FMCSA determines, following review of the carrier's response to a demand for corrective action under § 385.705, that the carrier has taken the necessary corrective action.

(f) If a carrier commits any of the actions specified in § 385.705(a) of this subpart after the removal of a suspension issued under this section, the suspension will be automatically reinstated. FMCSA will issue an Order requiring the carrier to cease further operations in the United States and demonstrate, within 15 days from the service date of the Order, that it did not commit the alleged action(s). If the carrier fails to demonstrate that it did not commit the action(s), FMCSA will issue an Order revoking its new entrant registration.

(g) If FMCSA receives credible evidence that a carrier has operated in violation of a suspension order issued under this section, it will issue an Order requiring the carrier to show cause, within 10 days of the service date of the Order, why its new entrant registration should not be revoked. If the carrier fails to make the necessary showing, FMCSA will revoke its registration.

(h) If a non-North America-domiciled motor carrier operates a commercial motor vehicle in violation of a suspension or out-of-service order, it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), as adjusted by inflation, not to exceed amounts for each offense under part 386, Appendix B of this subchapter.

(i) Notwithstanding any provision of this subpart, a carrier subject to this subpart is also subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier operations.

§ 385.711 Administrative review.

(a) A non-North America-domiciled motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning a safety rating or suspending or revoking the carrier's new entrant registration under this subpart.

(b) The carrier must submit its request in writing, in English, to the Associate Administrator for Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington DC 20590.

(c) The carrier's request must explain the error it believes FMCSA committed in assigning the safety rating or suspending or revoking the carrier's new entrant registration and include any information or documents that support its argument.

(d) FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. The Associate Administrator's decision will constitute the final agency action.

§ 385.713 Reapplying for new entrant registration.

(a) A non-North America-domiciled motor carrier whose provisional new entrant registration has been revoked may reapply for new entrant registration no sooner than 30 days after the date of revocation.

(b) The non-North America-domiciled motor carrier will be required to initiate the application process from the beginning. The carrier will be required to demonstrate how it has corrected the deficiencies that resulted in revocation of its registration and how it will ensure that it will have adequate basic safety management controls. It will also have to undergo a pre-authorization safety audit.

§ 385.715 Duration of safety monitoring system.

(a) Each non-North America-domiciled carrier subject to this subpart will remain in the safety monitoring system for at least 18 months from the date FMCSA issues its new entrant registration, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety rating was Satisfactory and no additional enforcement or safety improvement actions are pending under this subpart, the non-North America-domiciled carrier's new entrant registration will become permanent.

(c) If, at the end of this 18-month period, FMCSA has not been able to conduct a compliance review, the carrier will remain in the safety monitoring system until a compliance review is conducted. If the results of the compliance review are satisfactory, the carrier's new entrant registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's new entrant registration is suspended under § 385.709(a) of this subpart, the carrier will remain in the safety monitoring system until FMCSA either:

(1) Determines that the carrier has taken corrective action; or

(2) Completes measures to revoke the carrier's new entrant registration under § 385.709(c) of this subpart.

§ 385.717 Applicability of safety fitness and enforcement procedures.

At all times during which a non-North America-domiciled motor carrier is subject to the safety monitoring system in this subpart, it is also subject to the general safety fitness procedures established in subpart A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

21. Amend Appendix A to part 385, section III to add new paragraph (i) to read as follows:

Appendix A to Part 385—Explanation of Safety Audit Evaluation Criteria

* * * * *

III. Determining if the Carrier Has Basic Safety Management Controls

* * * * *

(i) FMCSA also gathers information on compliance with applicable household goods and Americans with Disabilities Act of 1990 requirements, but failure to comply with these requirements does not affect the

determination of the adequacy of basic safety management controls.

* * * * *

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

22. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.73.

23. Amend § 387.7 by revising paragraph (e) to read as follows:

§ 387.7 Financial responsibility required.

* * * * *

(e)(1) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(2) In addition to maintaining proof of financial responsibility as required by subparagraph (d) of this section, non-North America-domiciled private and for-hire motor carriers shall file evidence of financial responsibility with FMCSA in accordance with the requirements of subpart C of this part.

* * * * *

24. Amend § 387.31 by revising paragraph (e) to read as follows:

§ 387.31 Financial responsibility required.

* * * * *

(e)(1) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(2) In addition to maintaining proof of financial responsibility as required by subparagraph (d) of this section, non-North America-domiciled private and for-hire motor carriers shall file evidence of financial responsibility with FMCSA in accordance with the requirements of subpart C of this part.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

25. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

26. Revise § 390.19 to read as follows:

§ 390.19 Motor carrier identification report.

(a) *Applicability.* Each motor carrier must file the Form MCS–150 or Form MCS–150B with FMCSA as follows:

(1) A U.S., Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce must file a Motor Carrier Identification Report, Form MCS–150.

(2) A motor carrier conducting operations in intrastate commerce and requiring a Safety Permit under 49 CFR part 385, subpart E of this chapter must file the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B.

(b) *Filing schedule.* Each motor carrier must file the appropriate form under paragraph (a) of this section at the following times:

(1) Before it begins operations; and

(2) Every 24 months, according to the following schedule:

USDOT Number ending in	Must file by last day of
1	January.
2	February.
3	March.
4	April.
5	May.
6	June.
7	July.
8	August.
9	September.
0	October.

(3) If the next-to-last digit of its USDOT Number is odd, the motor carrier shall file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the motor carrier shall file its update in every even-numbered calendar year.

(c) *Availability of forms.* The forms described under paragraph (a) of this section and complete instructions are available from the FMCSA Web site at *http://www.fmcsa.dot.gov* for (Keyword ''MCS–150,'' or ''MCS–150B'') from all FMCSA Service Centers and Division offices nationwide; or by calling 1–800–832–5660.

(d) *Where to file.* The required form under paragraph (a) of this section must be filed with FMCSA Office of Information Management. The form may be filed electronically according to the instructions at the agency's web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Information Technology, MC–RIO, 400 Seventh Street, SW, Washington, DC 20590.

(e) *Special instructions for for-hire motor carriers.* A for-hire motor carrier should submit the Form MCS–150, or Form MCS–150B, along with its application for operating authority (Form OP–1, OP–1(MX), OP–1(NNA) or OP–2), to the appropriate address referenced on that form, or may submit it electronically or by mail separately to the address mentioned in paragraph (d) of this section.

(f) Only the legal name or a single trade name of the motor carrier may be used on the forms under paragraph (a) of this section (Form MCS–150 or MCS–150B).

(g) A motor carrier that fails to file the form required under paragraph (a) of this section, or furnishes misleading information or makes false statements upon the form, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(h)(1) Upon receipt and processing of the form described in paragraph (a) of this section, FMCSA will issue the motor carrier an identification number (USDOT Number).

(2) The following applicants must additionally pass a pre-authorization safety audit as described below before being issued a USDOT Number:

(i) A Mexico-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border must pass the pre-authorization safety audit under § 365.507 of this subchapter. The agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

(ii) A non-North America-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce within the United States must pass the pre-authorization safety audit under § 385.607(c) of this subchapter. If the carrier also requests operating authority under part 365 of this chapter, the agency will not issue a USDOT Number until expiration of the protest period or—if a protest is received—after FMCSA denies or rejects the protest.

(3) The motor carrier must display the number on each self-propelled CMV, as defined in § 390.5, along with the additional information required by § 390.21.

(i) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [(Pub. L. 105–178, 112 Stat. 107]) is exempt from the requirements of this section,

provided it files all the required information with the appropriate State office.

Issued on: December 11, 2006.

John H. Hill,

Administrator.

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 4910–EX–P

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Form Approved
OMB No. 2126-0016
Expires:_____

Instructions for Completing Form OP-1(NNA)--Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers

Please read these instructions before completing the application form. Retain the instructions and a copy of the complete application for the applicant's records. These instructions will assist an applicant in preparing an accurate and complete application. Applications that do not contain the required information will be rejected and may result in a loss of the application fee, if applicable. **The application must be completed in English** and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify the applicant on each supplemental page and refer to the section and item number in the application for each response.

PURPOSE OF THIS APPLICATION FORM:

The Form OP-1(NNA) is required to be filed by Non-North America-domiciled for-hire motor carriers of passengers or property and motor private carriers who wish to register to transport property or passengers in the United States.

WHAT TO FILE:

All applicants must submit the following:

1. An original and one copy of a completed revised FORM OP-1(NNA) Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers.

2. A signed and dated Form BOC-3, Designation of Agents for Service of Process, which reflects the applicant's full and correct name, as shown on the Form OP-1(NNA), and applicant's address, including the street address, the city, State, country and zip code, must be attached to the application, unless the applicant attaches a letter stating it will use a process agent service that will submit the Form BOC-3 electronically. The BOC-3 form must show street address(es), and not post office box numbers, for the person(s) designated as the agent(s) for service of process and administrative notices in connection with the enforcement of any applicable Federal statutes or regulations. A person must be designated in each State in which the applicant will operate. Please refer to the section "Legal Process Agents" for instructions for filing the Form BOC-3 when using a Process Agent Service. **The applicant may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

3. A completed and signed Form MCS-150 Motor Carrier Identification Report.

4. If required under Section III, a filing fee of $300 payable in U.S. dollars on a U.S. bank to the Federal Motor Carrier Safety Administration, by means of a check, money order, or an approved credit card. Cash is not accepted.

GENERAL INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM:

- All questions on the application form must be answered completely and accurately. If a question or supplemental attachment does not apply to the applicant, it should be answered "not applicable."

- The application must be typewritten or printed in ink. Applications written in pencil will be rejected.

- The application must be completed in English.

- The completed certification statements and oath must be signed by the applicant only. For example:

    - If the company is a sole proprietorship, the owner must sign.

    - If the company is a partnership, one of the partners must sign.

    - If the company is a corporation, an official of the company must sign (President, Vice President, Secretary, Treasurer, etc.).

  The same person must sign the oath and certifications. An applicant's attorney or any other representative is not permitted to sign.

- Use the attachment pages included, as appropriate, to provide any descriptions, explanations, statements or other information that is required to be furnished with the application. If additional space is needed to respond to any question, please use separate sheets of paper. Identify the applicant on each supplemental page and refer to the section and item number in the application for each response.

- Include only the city code and telephone number for telephone phone numbers. **Do not** include the international access codes, such as (011-52).

ADDITIONAL ASSISTANCE

FORM OP-1(NNA) OR MCS-150

Call 1-800-832-5660 for additional information on obtaining FMCSA registration numbers (USDOT or MC) or to monitor the status of an application.

SAFETY RATINGS

For information concerning a carrier's assigned safety rating, call: 1-800-832-5660.

U.S. DOT HAZARDOUS MATERIALS REGULATIONS

To obtain information on whether the commodities an applicant intends to transport are considered as hazardous materials:

Refer to the provisions governing the transportation of hazardous materials found under Parts 100 through 180 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR § 172.101 or visit the U.S. DOT, Pipeline and Hazardous Materials Safety Administration web site: http://hazmat.dot.gov. The web site also provides information about DOT hazardous materials transportation registration requirements.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION I - APPLICANT INFORMATION

APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME.
The applicant's name should be its full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If the applicant uses a trade name that differs from its official business name, indicate this under "Doing Business As Name." Example: If the applicant is John Jones, doing business as Quick Way Trucking, enter "John Jones" under LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time the applicant writes it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

BUSINESS ADDRESS/MAILING ADDRESS. The business address is the physical location of the business. Example: 24 Calle 10-08 Zona 11 Granai 2 Quetzaltenago, Guatemala.

If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P. O. Box 3721. **NOTE:** To receive FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify in writing the Federal Motor Carrier Safety Administration, Room 8218, 400 7th Street, SW., Washington, DC 20590, if the business or mailing address changes. If applicant also maintains an office in the United States, that information should also be provided.

REPRESENTATIVE. If someone other than the applicant is preparing this form, or otherwise assisting the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the person contacted if there are questions concerning this application.

U.S. DOT NUMBER. Applicants are required to obtain a U.S. DOT Number from the U.S. Department of Transportation (U.S. DOT) before initiating service. Motor carriers that already have been issued a U.S. DOT Number should provide it. Applicants that have not previously obtained a U.S. DOT Number will be issued a U.S. DOT number along with their DOT registration.

NOTE: A completed and signed Form MCS-150 Motor Carrier Identification Report **must** be submitted along with this application.

FORM OF BUSINESS. A business is a corporation, a sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the Owner is the registration applicant. If the business is a partnership, provide the full name of each partner.

SECTION IA – ADDITIONAL APPLICANT INFORMATION

All applicants must answer each question in this section. The applicant must provide the requested information concerning its current operations in the United States and any motor carrier registration issued by any Non-North American government.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION II - AFFILIATIONS INFORMATION

All applicants must disclose pertinent information concerning any relationships or affiliations which the applicant has had with other entities registered with FMCSA or its predecessor agencies. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States.

SECTION III – TYPE (S) OF REGISTRATION REQUESTED

Check the appropriate box(es) for the type(s) of registration the applicant is requesting. A separate filing fee is required for certain types of registration requested. Filing fees are waived for for-hire motor carriers exempt under 49 United States Code, Chapter 135, Subchapter I. Please see Section III for more information.

SECTION IV - INSURANCE INFORMATION

Check the appropriate box(es) that describes the type(s) of business the applicant will be conducting.

If the applicant is applying for motor passenger carrier registration, check the box that describes the seating capacity of its vehicles. If all the vehicles the applicant operates have a seating capacity of 15 passengers or fewer, the applicant must maintain $1,500,000 minimum liability coverage. If any one of the vehicles the applicant operates has a seating capacity of 16 passengers or more, the applicant must maintain $5,000,000 minimum liability coverage.

If the applicant is applying for motor property carrier registration and it operates vehicles with a gross vehicle weight rating of 10,000 pounds or more and hauls only non-hazardous materials, the applicant must maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FMCSA's insurance regulations in item (c) of the table at 49 CFR 387.303 (b)(2) require $1 million minimum liability coverage; those in item (b) of the table at 49 CFR 387.303 (b)(2) require $5 million minimum liability coverage.
If the applicant operates only vehicles with a gross vehicle weight rating of less than 10,000 pounds but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives, any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials), or

highway route controlled quantity of radioactive materials, the applicant must maintain $5 million minimum liability coverage.

Applicant does not have to submit evidence of insurance with the application. However, applicant will be required to present acceptable evidence of necessary insurance coverage to the FMCSA as part of a pre-authorization safety audit. Appropriate insurance forms must be filed within **90 days** after the applicant submits it application: These include Form BMC-91 or BMC-91X for bodily injury and property damage for all applicants and Form BMC-34 for cargo insurance (household goods carriers only).

The FMCSA does not furnish copies of insurance forms. The applicant must contact its insurance company to arrange for the filing of all required insurance forms.

If an application is granted by the FMCSA, DOT registration is still not effective and operations under that registration may not begin unless an insurance filing has been made with and accepted by the FMCSA as required under 49 CFR 387.7, 387.31 and 387.301.

SECTION V - SAFETY CERTIFICATIONS

Applicants for motor carrier registration must complete the safety certifications. The applicant should check the "YES" response only if the applicant can attest to the truth of the statements. The carrier official's signature at the end of this section applies to the Safety Certifications. The "Applicant's Oath" at the end of the application form applies to all certifications. False certifications are subject to the penalties described in that oath.

Applicants should complete all applicable Attachment pages and, if necessary to complete the responses, attach additional pages identifying the applicant on each supplemental page and referring to the section and item number in the application for each response.

SECTION VI - HOUSEHOLD GOODS REQUIREMENTS

Applicants applying for registration as a household goods motor carrier as defined in 49 U.S.C. 13102(12) must provide certain information regarding their arbitration program and tariff. They must also certify they are familiar with FMCSA's consumer protection requirements applicable to household

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

goods transportation. Applicants must disclose all relationships involving common stock, common ownership, common management, or common familial relationships between the applicant and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the date of the filing of this application. The signature should be that of the same company official who completes the Applicant's Oath.

SECTION VII - SCOPE OF OPERATING REGISTRATION SOUGHT

Applicant must indicate, by checking one or more boxes, the description(s) of the registration(s) for which application is being made.

SECTION VIII - COMPLIANCE CERTIFICATIONS

All applicants are required to certify accurately to their willingness and ability to comply with statutory and regulatory requirements and to their understanding that their agent for service of process is their official representative in the U.S. to receive filings and notices in connection with enforcement of any Federal statutes and regulations.

Applicants are required to certify their willingness to produce records for the purpose of determining compliance with the applicable safety regulations of the FMCSA.

Applicants are required to certify that they are not now prohibited from filing an application because a previously granted FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

SECTION IX - APPLICANT'S OATH

The applicant or an authorized representative may prepare applications. In either case, the applicant must sign the oath and all safety certifications. (For information on who may sign, see "General Instructions for Completing the Application Form" in the instructions for this application.)

LEGAL PROCESS AGENTS

All motor carrier applicants must designate a process agent in each State where operations are conducted. For example, if the applicant will operate only in California and Arizona, it must designate an agent in each of those States; if the applicant will operate in only one State, an agent must be designated for that State only. Process agents who will accept filings and notices on behalf of the applicant are designated on FMCSA Form BOC-3. Form BOC-3 must be filed

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

with the application, unless the applicant uses a Process Agent Service. If the applicant opts to use a Process Agent Service, it must submit a letter with the application informing the FMCSA of this decision and have the Process Agent Service electronically file the BOC-3 with FMCSA within 90 days after the applicant submits its application. **Applicants may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

STATE NOTIFICATION

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every State in and through which the carrier will operate to obtain information regarding various State rules applicable to interstate registrations. It is the applicant's responsibility to comply with registration, fuel tax, and other State regulations and procedures. Please refer to the additional information provided in the application packet for further information.

MAILING INSTRUCTIONS:

To file for registration an applicant must submit an ***original and one copy*** of this application with the appropriate filing fee to FMCSA. **Note:** Retain a copy of the completed application form and any attachments for the applicant's records.

Mailing address for applications:

FOR REGULAR MAIL (CHECK OR MONEY ORDER PAYMENT)
Federal Motor Carrier Safety Administration
P. O. Box 100147
Atlanta, GA 30384-0147

FOR EXPRESS MAIL (CHECK OR MONEY ORDER PAYMENT)
Bank of America, Lockbox 100147
6000 Feldwood Road
3rd Floor East
College Park, GA 30349

FOR CREDIT CARD PAYMENT
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Form Approved
OMB No. 2126-0016
Expires:_____

FORM OP-1(NNA)
Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers

For FMCSA Use Only

Docket No. MC_____

DOT No. _____

Filed _____

Fee No. _____

CC Approval Number _____

Application Tracking Number _____

PAPERWORK BURDEN

The collection of this information is authorized under the provisions of 49 U.S.C. 31144 and 13902. Public reporting for this collection of information is estimated to be 4 hours per response, including the time for reviewing instructions and completing and reviewing the collection of information. All responses to this collection of information are mandatory, and will be provided confidentiality to the extent allowed by law. Not withstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The valid OMB Control Number for this information collection is 2126-0016. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-MMI, U.S. Department of Transportation, Washington, D.C. 20590

SECTION I - APPLICANT INFORMATION

LEGAL BUSINESS NAME: _____

DOING BUSINESS AS NAME: (Trade Name, if any) _____

_____

BUSINESS ADDRESS: (Actual Street Address):

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

MAILING ADDRESS: (If different from above)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

U.S. ADDRESS: (Does the applicant currently have an office in the United States? If yes, give address and telephone number.)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

APPLICANT'S REPRESENTATIVE: (Person who can respond to inquiries)

_____
(Name and title, position, or relationship to applicant)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

US DOT NUMBER (If available) _____

Form OP-1(NNA)

FORM OF BUSINESS (Check one)

☐ CORPORATION (Give foreign, U.S. or other State of Incorporation) _____

_____

☐ SOLE PROPRIETORSHIP (Give full name of individual)

_____

(First Name) (Middle Name) (Surname)

☐ PARTNERSHIP (Give full name of each partner)_____

_____

SECTION IA – ADDITIONAL APPLICANT INFORMATION

1. Does the applicant currently operate in the United States?

☐ Yes ☐ No

1a. If yes, indicate the locations where the applicant operates and the ports of entry utilized.

_____

_____

_____

2. Has the applicant previously completed and submitted a Form MCS-150?

☐ Yes ☐ No

2a. If yes, give the name under which it was submitted.

_____

_____

3. Does the applicant presently hold, or has it ever applied for operating authority or registration from the former U.S. Interstate Commerce Commission, the U.S. Federal Highway Administration, the Office of Motor Carrier Safety, or the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation under the name shown on this application, or under any other name?

☐ Yes ☐ No

3a. If yes, please identify the lead docket number(s) assigned to the application or grant of authority or registration.

_____

_____

3b. If the application was rejected before the time a lead docket number(s) was assigned, please provide the name of the applicant shown on the application.

_____

_____

3c. If yes, did FMCSA revoke the applicant's operating authority or provisional registration because the applicant failed to receive a Satisfactory safety rating or because the FMCSA otherwise determined the applicant's basic safety management controls were inadequate.

☐ Yes ☐ No

3d. If the applicant answered yes to 3c above, it must explain how it has corrected the deficiencies that resulted in revocation, explain what effectively functioning basic safety management systems the applicant has in place, and provide any information and documents that support its case. (If the applicant requires more space, **attach the information to this application form**.)

_____

_____

_____

_____

4. Does the applicant hold a Federal Tax Number from the U.S. Government?

☐ Yes ☐ No

4a. If yes, enter the number here: _____

5. Is the applicant required to register as a motor carrier with any non-North American government?

☐ Yes ☐ No

5a. If yes, give the name under which the applicant is registered with the non-North American government, the applicant's registration number, and the name of the non-North American government that issued the registration.

_____

_____

_____

_____

_____

5b. If applicant has applied to register with a non-North American government but has not yet been registered, indicate the application date.

_____

SECTION II – AFFILIATIONS INFORMATION

Disclose any relationship the applicant has, or has had, with any U.S. or foreign motor carrier, broker, or freight forwarder registered with the former ICC, FHWA, Office of Motor Carrier Safety, or Federal Motor Carrier Safety Administration within the past 3 years. For example, this relationship could be through a percentage of stock ownership, a loan, a management position, a wholly-owned subsidiary, or other arrangement.

If this requirement applies to the applicant, provide the name of the affiliated company, the latter's MC or MX number, its U.S. DOT Number, if any, and the company's latest U.S. DOT safety rating. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States. (If the applicant requires more space, **attach the information to this application form**.)

Name of affiliated company	MC or MX Number	U.S. DOT Number	U.S. DOT Safety Rating	Ever Disqualified from operating CMVs in the U.S.?

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

Applicant must submit a filing fee for certain types of registration requested (for each checked box).

Applicant seeks to provide the following transportation service:

PASSENGER REGISTRATION
❑ **For-hire Motor Carrier** of Passengers. ($300 fee required, fee is waived if carrier is exempt under 49 U.S.C. Chapter 135, Subchapter I.)
❑ **Private Motor Carrier** of Passengers. (No fee required)
PROPERTY REGISTRATION
❑ **For-hire Motor Carrier of Property (except Household Goods).** ($300 fee required; fee is waived if carrier is exempt under 49 U.S.C. Chapter 135, Subchapter I.)
❑ **For-hire Motor Carrier of Household Goods.** ($300 fee required)
❑ **Motor Private Carrier.** (No fee required)

SECTION IV – INSURANCE INFORMATION

MOTOR PASSENGER CARRIER APPLICANTS

All motor passenger carriers operating in the United States, including non-North America-domiciled carriers, must maintain public liability insurance. The amounts in parentheses represent the minimum amount of coverage required.

Applicant will use (*check only one*):

- ❑ Any vehicle has a seating capacity of 16 passengers or more ($5,000,000)
- ❑ All vehicles have seating capacities of 15 passengers or fewer only ($1,500,000)

MOTOR PROPERTY CARRIER APPLICANTS *(including Household Goods Carriers)*

NOTE: Refer to **SECTION IV** under the *Instructions to the Form OP-1(NNA)* for information on cargo insurance filing requirements for household goods carriers.

- ❑ Applicant will operate vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or more to transport:
  - ❑ Non-hazardous commodities ($750,000)
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(c) ($1,000,000).
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(b) ($5,000,000).
- ❑ Applicant will operate only vehicles having a GVWR under 10,000 pounds to transport:
  - ❑ Any quantity of Division 1.1, 1.2 or 1.3 explosives; and quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials ($5,000,000).

Does the applicant presently hold public liability insurance?

☐ Yes ☐ No

If applicant does hold such insurance, please provide the information below:

Insurance Company: _____
Address: _____
_____
Maximum Insurance Amount: _____
Policy Number: _____
Date Issued: _____
Insurance Effective Date: _____
Insurance Expiration Date: _____

SECTION V – SAFETY CERTIFICATIONS

Applicant maintains current copies of all U.S. DOT Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards, and the Hazardous Materials Regulations (if a property carrier transporting hazardous materials), understands and will comply with such Regulations, and has ensured that all company personnel are aware of the current requirements.

_____Yes

Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

1. Driver qualifications:

The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver, procedures for identifying drivers who are not complying with the U.S. safety regulations, and a description of a retraining and educational program for poorly performing drivers.

_____Yes

The carrier has procedures in place to review drivers' employment and driving histories for at least the last 3 years, to determine whether the individual is qualified and competent to drive safely.

_____Yes

The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all of its drivers operating in the United States are at least 21 years of age and possess a valid Commercial Drivers License or Non-resident Commercial Drivers license.

_____Yes

2. Hours of service:

The carrier has in place a record keeping system and procedures to monitor the hours of service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring that all operations requirements are complied with.

_____Yes

The carrier has ensured that all drivers to be used in the United States are knowledgeable of the U.S. hours of service requirements, and has clearly and specifically instructed the drivers concerning the application to them of the 11 hour, 14 hour, and 60 and 70 hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24 hour period.

_____Yes

The carrier has **attached to this application** statements describing the carrier's monitoring procedures to ensure that drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.

_____Yes

The carrier will ensure, once operations in the United States have begun, that its drivers operate within the hours of service rules and are not fatigued while on duty.

_____Yes

3. Drug and alcohol testing:

The carrier is familiar with the alcohol and controlled substance testing requirements of 49 CFR part 382 and 49 CFR part 40 and has in place a program for systematic testing of drivers.

_____Yes

The carrier has **attached to this application** the name, address, and telephone number of the person(s) responsible for implementing and overseeing alcohol and drug programs, and also of the drug testing laboratory and alcohol testing service that are used by the company.

_____Yes

4. Vehicle condition:

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and

maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

_____Yes

The carrier has inspected all vehicles that will be used in the United States before the beginning of such operations and has proof of the inspection on-board the vehicle as required by 49 CFR 396.17.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all vehicles it operates in the United States were manufactured or have been retrofitted in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards in effect at the time of manufacture.

_____Yes

The carrier will ensure that all vehicles operated in the United States are inspected at least every 90 days by a certified inspector in accordance with the requirements for a Level I Inspection under the criteria of the North American Standard Inspection, as defined in 49 CFR 350.105, once operations in the United States begin and until such time as the carrier has held permanent registration from the FMCSA for at least 36 consecutive months. After the 36-month period expires, the carrier will ensure that all vehicles operated in the United States are inspected in accordance with 49 CFR 396.17 at least once every 12 months thereafter.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter the United States.

_____Yes

5. Accident monitoring program:

The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15.

_____Yes

The carrier has **attached to this application** a copy of its accident register for the previous 12 months, or a description of how the company will maintain this register once it begins operations in the United States.

_____Yes

The carrier has established an accident countermeasures program and a driver training program to reduce accidents.

_____Yes

The carrier has **attached to the application** a description and explanation of the accident monitoring program it has implemented for its operations in the United States.

_____Yes

6. Production of records:

The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized Federal or State official.

_____Yes

The carrier is including as an **attachment to this application** the name, address and telephone number of the employee to be contacted for requesting records.

_____Yes

7. Hazardous Materials (to be completed by carriers of hazardous materials only).

The HM carrier has full knowledge of the U.S. DOT Hazardous Materials Regulations, and has established programs for the thorough training of its personnel as required under 49 CFR part 172, Subpart H and 49 CFR 177.816. The HM carrier has **attached to this application** a statement providing information concerning (1) the names of employees responsible for ensuring compliance with HM regulations, (2) a description of their HM safety functions, and (3) a copy of the information used to provide HM training.

_____Yes

The carrier has established a system and procedures for inspection, repair and maintenance of its reusable hazardous materials packages (cargo tanks, portable tanks, cylinders, intermediate bulk containers, etc.) in a safe condition, and for preparation and maintenance of records of inspection, repair, and maintenance in accordance with the U.S. DOT Hazardous Materials Regulations.

_____Yes

The HM carrier has established a system and procedures for filing and maintaining HM shipping documents.

_____Yes

The HM carrier has a system in place to ensure that all HM trucks are marked and placarded as required by 49 CFR part 172, Subparts D and F.

_____Yes

The carrier will register under 49 CFR part 107, Subpart G, if transporting any quantity of hazardous materials requiring the vehicle to be placarded.

_____Yes

7A. For Cargo Tank (CT) Carriers (of HM):

The carrier **submits with this application** a certificate of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, CT number, and CT number registration statement of the facility the carrier will be utilizing to conduct the test and inspections of such tanks required by 49 CFR part 180.

_____Yes

_____

Signature of applicant

By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding to assess civil penalties and/or lead to the revocation of the authority granted.

Form OP-1(NNA)

Safety and Compliance Information and Attachments for Section V

1. Individual responsible for safe operations and compliance with applicable regulatory and safety requirements.

NAME	ADDRESS	POSITION

2. Location where current copies of the Federal Motor Carrier Safety Regulations and other regulations are maintained.

ATTACHMENT FOR SECTION V, NO. 1, DRIVER QUALIFICATIONS
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 2, HOURS OF SERVICE

MONITORING STATEMENTS

Statements describing monitoring procedures for ensuring correctness of logbook completion by drivers and describing record keeping and driver review procedures.

ATTACHMENT FOR SECTION V, NO. 3, DRUG AND ALCOHOL TESTING

Person(s) responsible for implementing and overseeing alcohol and drug programs.

NAME	ADDRESS	POSITION

The drug testing laboratory and the alcohol testing service that are used by the carrier.

NAME	ADDRESS	TELEPHONE NO.

Form OP-1(NNA)

ATTACHMENT FOR SECTION V, NO. 4,
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

1. Describe how company will maintain accident register (49 CFR 390.15(b)) once it begins operations in U.S.

ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

2. Describe and explain accident monitoring program for operations in U.S. (49 CFR 391.25 and 391.27).

ATTACHMENT FOR SECTION V, NO. 6, PRODUCTION OF RECORDS

Contact person(s) for requesting records:

Name	Address	Telephone Number

ATTACHMENT FOR SECTION V, NO. 7, HAZARDOUS MATERIALS (TO BE COMPLETED BY CARRIERS OF HAZARDOUS MATERIALS ONLY)

Statement respecting person(s) (other than drivers) responsible for ensuring compliance with HM regulations (49 CFR 172.704) for HM activities.

ATTACHMENT FOR SECTION V, NO. 7A, (FOR CARGO TANK CARRIERS OF HM)

Cargo Tank Information (HM) (49 CFR part 180, Subpart E):

SECTION VI - HOUSEHOLD GOODS REQUIREMENTS

Household Goods Motor Carrier Applicants must :

1. Provide evidence of participation in an arbitration program and a copy of the notice they provide to shippers of the availability of binding arbitration.

2. Identify their tariff and provide a copy of the notice to shippers of the availability of that tariff for inspection, indicating how that notice is provided.

3. Disclose all relationships involving common stock, common ownership, common management, or common familial relationships between the applicant and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the date of the filing of this application.

Applicant certifies that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage.

_____

Signature

Name of affiliated person or company	Common Stock (Yes/No)	Common Ownership (Yes/No)	Common Management (Yes/No)	Family Relation (Yes/No)

SECTION VII – SCOPE OF REGISTRATION SOUGHT

1. Applicant seeks to provide the following transportation service in foreign/international commerce:

   - ❑ For a non-North American carrier to transport property between points outside of United States and all points in the United States.
   - ❑ For non-North American passenger carriers, charter and tour bus operations between points outside of United States and points in the United States.
   - ❑ For a non-North American passenger carrier to provide transportation services as a private motor carrier of passengers.

2. Indicate the principal border crossing points which applicant intends to utilize.

   _____
   _____
   _____

SECTION VIII – COMPLIANCE CERTIFICATIONS

All applicants must certify as follows:

- Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.

_____ Yes

- Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. 13303, and for receipt of filings and notices issued in connection with the enforcement of any Federal statutes or regulations.

_____ Yes

- Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and Hazardous Materials Regulations, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

_____ Yes

- Applicant is willing and able to have all vehicles operated in the United States inspected at least every 90 days by a certified inspector and have decals affixed attesting to satisfactory compliance with applicable inspection criteria. This requirement will end after applicant has held permanent registration from FMCSA for three consecutive years.

_____ Yes

- Applicant is not presently disqualified from operating a commercial vehicle in the United States.

_____ Yes

- Applicant is not prohibited from filing this application because its FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

_____ Yes

_____
Signature

All motor carriers operating within the United States, including non-North American motor carriers applying for operating authority under this form, must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States. Such requirements include, but are not limited to, all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by an OSHA state plan agency pursuant to Section 18 of the Occupational Safety and Health Act of 1970. Such requirements also include all applicable statutory and regulatory environmental standards and requirements administered by the U.S. Environmental Protection Agency or a State, local or tribal environmental protection agency. Compliance with these statutory and regulatory requirements may require motor carriers and/or individual operators to produce documents for review and inspection for the purpose of determining compliance with such statutes and regulations.

SECTION IX – APPLICANT'S OATH

APPLICANT'S OATH MUST BE COMPLETED (SIGNED) BY APPLICANT

I, _____,

(First Name) (Middle Name) (Surname) (Title)

verify under penalty of perjury, under the laws of the United States of America, that I understand the foregoing certifications and that all responses are true and correct. I certify that I am qualified and authorized to file this application. I know that willful misstatement or omission of material facts constitute Federal criminal violations under 18 U.S.C. §§ 1001 and 1621 and that each offense is punishable by up to 5 years imprisonment and a fine under Title 18, United States Code, or civil penalties under 49 U.S.C. §521(b)(2)(B) and 49 U.S.C. Chapter 149.

I further certify that I have not been convicted in U.S. Federal or State courts, after September 1, 1989, of any offense involving the distribution or possession of controlled substances, or that if I have been so convicted, that I am not ineligible to receive U.S. Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862).

_____ _____

(Signature) (Date)

_____

(Applicant's Title, e.g., President or Owner)

FMCSA FILING FEES

Fee Schedule effective January 1996
Fee for Registration . . . $300.00

FEE POLICY

- Filing fees apply only to For-hire carriers of passengers or property. The fee is waived if a For-hire carrier is exempt under 49 U.S.C. Chapter 135, Subchapter I.
- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each **type of registration** requested. If applicant requests registration as a for-hire motor carrier and as a motor private carrier, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be **sent along with the original and one copy of the application** to the appropriate address under the paragraph titled **MAILING INSTRUCTIONS** on page 10 of the instructions to this form.
- After an application is received, the filing fee is non-refundable.
- An application submitted with a personal check will be held for 30 days from the date received. The FMCSA reserves the right to discontinue processing any application for which a check is returned due to insufficient funds. No application will be processed until the fee is paid in full.

FILING FEE INFORMATION

Applicants must submit a filing fee of $300.00 for each type of registration that requires a filing fee. The total amount due is equal to the fee(s) times the number of boxes checked in ***Section III*** (where a filing fee applies) of the Form OP-1(NNA). Fees for multiple authorities may be combined in a single payment.

Total number of boxes
checked in ***Section III*** (requiring a filing fee) ___ x filing fee $ _____ = $_____

INDICATE AMOUNT $_____ AND METHOD OF PAYMENT:

☐ CHECK OR ☐ MONEY ORDER, PAYABLE TO: **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

☐ VISA ☐ MASTERCARD

Credit Card Number _____

Expiration Date: _____

Signature _____ Date: _____

Form OP-1(NNA)

[FR Doc. 06–9759 Filed 12–20–06; 8:45 am]
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Thursday,

December 21, 2006

Part III

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 386, et al.

Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 386, 390, 392, 393, 396, and Appendix G to Subchapter B of Chapter III

[Docket No. FMCSA–2005–23315]

RIN 2126–AA86

Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes regulations for entities offering intermodal chassis to motor carriers for transportation of intermodal containers in interstate commerce. As mandated by section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), this rulemaking would require intermodal equipment providers (IEPs) to register and file with FMCSA an Intermodal Equipment Provider Identification Report (Form MCS–150C); display the USDOT Number, or other unique identifier, on each intermodal container chassis offered for transportation in interstate commerce; establish a systematic inspection, repair, and maintenance program to ensure the safe operating condition of each intermodal container chassis; maintain documentation of the program; and provide a means to effectively respond to driver and motor carrier reports about intermodal container chassis mechanical defects and deficiencies. The proposed regulations would for the first time make IEPs subject to the Federal Motor Carrier Safety Regulations (FMCSRs). The agency is also proposing additional inspection requirements for motor carriers and drivers operating intermodal equipment. The intent of this rulemaking is to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained. Improved maintenance is expected to result in fewer out-of-service orders and highway breakdowns involving intermodal chassis and improved efficiency of the Nation's intermodal transportation system. To whatever extent inadequately maintained intermodal chassis are responsible for, or contribute to, crashes, this proposal would also help to ensure that commercial motor vehicle (CMV) operations are safer.

DATES: Comments must be received by March 21, 2007.

ADDRESSES: Comments should refer to Docket No. FMCSA–2005–23315, and may be filed in electronic form, mailed, or delivered to the following addresses:

- The USDOT Docket Management System (DMS) on the Web-based form at the Web link: *http://dmses.dot.gov/submit*, and type only the last 5 digits of the docket number (23315) to access the docket. If you file an electronic comment, we recommend that your name and other contact information be included.
- *Through the Federal eRulemaking Portal: http://www.regulations.gov*, using the Regulation Identification Number (RIN 2126–AA86) and following instructions on the Web-based form.
- *Facsimile (Fax):* 1–202–493–2251.
- *Mail or Deliver to:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401 (Nassif Building on the Plaza Level), Washington, DC 20590–0001.

Instructions: If you want the agency to acknowledge your comments, please include a self-addressed, stamped envelope or postcard, or simply print the acknowledgement page that appears after submitting your comments electronically.

Public Participation: All public comments and related material concerning this proposed rule in Docket No. FMCSA–2005–23315, whether in paper or electronic form, will be considered by the agency, and will be available to the public on the DMS Web site: *http://dms.dot.gov*. The agency will also consider all comments that regulations.gov forwards to it. Comments may be read and/or copied at the Docket Management facility, located at 400 Seventh Street, SW., Room PL–401 on the Plaza Level of the Nassif Building, Washington, DC, from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone may view or download comments submitted in any of DOT's dockets by the name of the commenter or name of the person signing the comment (if submitted on behalf of an association, business, labor union, or other entity). More information about DOT's privacy policy may be found in DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477, or on the DMS Web site: *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, (202) 366–4009, Vehicle and Roadside Operations Division (MC–PSV), Office of Bus and Truck Standards and Operations, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Background
- Legal Basis for the Rulemaking
- Previous Rulemaking Efforts to Improve Chassis Maintenance
- SAFETEA–LU Requirements Codified at 49 U.S.C. 31151

II. Current Rulemaking To Improve Intermodal Equipment Safety
- Rulemaking Proposal
- Part 385—Safety Fitness Procedures
- Part 386—Rules of Practice
- Part 390—Federal Motor Carrier Safety Regulations
- Part 392—Driving of Commercial Motor Vehicles
- Part 393—Parts and Accessories Necessary for Safe Operation
- Part 396—Inspection, Repair, and Maintenance
- Appendix G to Subchapter B—Minimum Periodic Inspection Standards
- Proposed Enforcement Plans
- Review of maintenance programs
- Imminent hazard determinations
- Preemption of State Statutes or Regulations
- Relationships among Intermodal Parties and Allocation of Liability
- International Implications

III. Analysis Of Safety Data
- Analysis of Roadside Inspection Data in 4 States
- Roadside Inspection Violation Data Analysis
- All Intermodal Container Chassis Violations
- Intermodal Container Chassis Violations by State
- Vehicle Out-of-Service Violations by State
- National Inspection Data—Violations for Calendar Year 2003
- FMCSA's Analysis of the Data

IV. Estimated Number Of Equipment Providers And Intermodal Container Chassis
- Equipment Providers
- Intermodal Container Chassis Population

V. Regulatory Analyses And Notices
- Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures
- Estimated Compliance Costs for Intermodal Equipment Providers
- Establishing a Systematic Inspection, Repair, and Maintenance (IRM) Program
- Recordkeeping
- Total Compliance Costs of the Proposed Regulations
- Safety and Economic Benefits of Improving Container Chassis Maintenance
- Benefits Associated With Increased Operational Efficiency
- Regulatory Flexibility Act Analysis
- Intergovernmental Review
- Paperwork Reduction Act

National Environmental Policy Act of 1969 (NEPA)
Energy Effects
Unfunded Mandates Reform Act of 1995
Civil Justice Reform
Protection of Children
Taking of Private Property
Federalism
Regulation Identification Number
List of Subjects

I. Background

Legal Basis for the Rulemaking

This rulemaking is based on the authority of the Motor Carrier Safety Act of 1984 (1984 Act) and section 4118 of SAFETEA–LU (Pub. L. 109–59, 119 Stat. 1144, at 1729, August 10, 2005, codified at 49 U.S.C. 31151).

The 1984 Act provides authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.'' 49 U.S.C. 31136(a).

This NPRM would establish a program to ensure that intermodal equipment (primarily chassis) [1] interchanged to motor carriers and used to transport intermodal containers is safe and systematically maintained. An intermodal chassis meets the definition of a ''commercial motor vehicle'' under 49 U.S.C. 31132(1)(A) because it ''has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds * * *'' The NPRM is based primarily on section 31136(a)(1), especially the mandates dealing with maintenance and equipment, and secondarily on section 31136(a)(4). Entities that interchange intermodal equipment to motor carriers would be required to establish a program to systematically inspect, repair, and maintain that equipment, if they do not already have such a program in place.

Section 4118 of SAFETEA–LU added new section 31151, entitled ''Roadability,'' to subchapter III of chapter 311 of title 49, United States Code. Section 31151(a)(1) requires the Secretary of Transportation to issue regulations to be codified in the Federal Motor Carrier Safety Regulations (FMCSRs) ''to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.'' Section 31151(a)(3) specifies, in considerable detail, a minimum of 14 items that must be included in the regulations, each of which is discussed later in the preamble and included in the proposed rules or existing agency procedures. Departmental employees designated by the Secretary are authorized to inspect intermodal equipment, and copy related maintenance and repair records (section 31151(b)). Any intermodal equipment that fails to comply with applicable Federal safety regulations may be placed out of service by Departmental or other Federal, State, or governmental officials designated by the Secretary until the necessary repairs have been made (section 31151(c)). State, local, or tribal requirements inconsistent with a regulation adopted pursuant to section 31151 are preempted (section 31151(d)). Specifically, a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, is preempted on the effective date of the final regulation resulting from this rulemaking (section 31151(e)(1)), but preemption may be waived upon application by the State if the Secretary finds that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce (section 31151(e)(2)).

All of these provisions of SAFETEA–LU are discussed in the preamble and embodied in the regulatory text of this NPRM.

Previous Rulemaking Efforts To Improve Chassis Maintenance

On February 17, 1999 (64 FR 7849), the Federal Highway Administration (FHWA), which then had responsibility for commercial motor vehicle safety, published an Advance Notice of Proposed Rulemaking (ANPRM) concerning inspection, repair, and maintenance responsibilities for intermodal container chassis. The ANPRM was in response to a petition for rulemaking filed by the American Trucking Associations (ATA). ATA argued that rail carriers, ocean carriers, and other entities that offer container chassis for transportation in interstate commerce frequently fail to ensure the container chassis are in safe and proper operating condition. ATA believed poor maintenance of this intermodal equipment was a serious safety problem and requested FHWA to make the equipment providers responsible for the roadworthiness of the container chassis tendered to motor carriers.

ATA requested that the FMCSRs be amended to make intermodal equipment providers subject to 49 CFR part 396, concerning inspection, repair, and maintenance of commercial motor vehicles. Under the ATA proposal, equipment providers would have been prohibited from offering an intermodal container chassis for transportation in such condition that it would likely cause a crash or a breakdown of the vehicle. Motor carriers would have been prohibited from certifying to equipment providers that the intermodal container chassis or container meets applicable safety regulations, unless the equipment provider provided the motor carrier with adequate equipment, time, and the proper facilities to make a full inspection of the container chassis and any necessary repairs to the equipment prior to the tendering of the equipment to the motor carrier for operation in interstate commerce. ATA also requested that the regulations be amended so motor carriers would not be liable for civil or criminal penalties for operating a container chassis, or transporting a container that did not meet the applicable safety requirements, if the equipment was offered for transportation in an unsafe or poor condition.

On October 20, 1999 (64 FR 56478), as follow-up to the ANPRM, the Office of the Secretary of Transportation (OST) announced a series of public meetings for motor carriers, equipment providers, and other interested parties to discuss inspection, repair, and maintenance practices for ensuring that container chassis and trailers are in safe and proper operating condition at all times. Representatives from the FHWA, the Federal Railroad Administration (FRA), the Maritime Administration (MARAD), and OST participated in the listening sessions. These sessions were intended to help DOT broaden its knowledge of the safety implications of industry practices involving terminal operators

[1] The intermodal equipment described are intermodal container chassis specifically designed to transport cargo containers. The loaded cargo containers are transported on ships and trains to various ports and rail facilities in the United States and then transferred to chassis trailers for transportation by highway to their final destination. Similarly, empty containers may be loaded at shippers' facilities in the United States, and then transported on a chassis trailer to ports and rail yards for subsequent portions of the movement to be handled by additional modes to other destinations in the United States or abroad. Chassis trailers carrying containerized cargo are used to transport more than $450 billion in cargo entering and leaving the United States annually.

or other parties that tender intermodal equipment to motor carriers. The sessions were held in Seattle, WA; Des Plaines (Chicago), IL; and Jamaica (New York City), NY, during November 1999.

On November 29, 2002 (67 FR 71127), FMCSA published a notice announcing the agency would study the feasibility of using the Negotiated Rulemaking process to develop rulemaking options concerning the maintenance of intermodal container chassis and trailers. The neutral convener hired by FMCSA interviewed individuals and organizations that represented interests most likely to be substantially affected by a rulemaking concerning this subject, and concluded that a negotiated rulemaking was unlikely to produce a set of consensus recommendations to FMCSA. Therefore, FMCSA decided not to conduct a negotiated rulemaking on this subject, and concluded that it would be best to withdraw the ANPRM and to start afresh.

On December 31, 2003 (68 FR 75478), FMCSA published a notice withdrawing the ANPRM. While FMCSA could quantify the costs of regulatory options that could potentially result in improved maintenance practices by equipment providers, there was insufficient data to quantify the safety benefits of a rulemaking based on the ATA petition. Available data showed that a significant number of container chassis dispatched from intermodal terminals were later found to have safety defects during roadside inspections, but the relationship between these defects and crash causation had not been substantiated.

In January of 2004, the Secretary announced that DOT would launch a safety inspection program for intermodal container chassis. The inspection program would provide added oversight to help ensure that intermodal container chassis used by motor carriers to transport intermodal cargo containers from seaports and rail yards are in safe and proper working order. The Secretary said:

''Every day millions of dollars worth of cargo are transferred from ships and rail to trailer beds and hauled away by trucks. It is essential that we have a full and complete safety program focused on the trailer beds used to haul cargo containers.''

The Secretary explained the new inspection program would be modeled after FMCSA's compliance review program already in place for the nation's interstate motor carriers. Intermodal equipment providers would be required to obtain a USDOT Number or other unique identifier and display it on their container chassis so that safety performance data could be captured and attributed to the equipment provided. FMCSA would apply the same civil penalty structure and enforcement actions used for motor carriers to intermodal equipment providers that demonstrate patterns of non-compliance with the FMCSRs.

As part of this new activity, FMCSA compiled and analyzed additional intermodal chassis inspection data from 38 States. The information derived from this analysis, particularly violations that caused vehicles to be placed out of service, provided evidence that intermodal equipment failed to meet the FMCSRs more often than non-intermodal equipment.

SAFETEA—LU Requirements Codified at 49 U.S.C. 31151

Section 4118 of SAFETEA—LU amended 49 U.S.C., chapter 311, by adding new section 31151 (49 U.S.C. 31151) titled ''Roadability.'' Section 31151 states:

The Secretary of Transportation, after providing notice and opportunity for comment, shall issue regulations establishing a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.

Section 31151(a)(3) lists 14 elements to be included in the regulations as follows:

''(A) a requirement to identify intermodal equipment providers responsible for the inspection and maintenance of intermodal equipment that is interchanged or intended for interchange to motor carriers in intermodal transportation;

''(B) a requirement to match intermodal equipment readily to an intermodal equipment provider through a unique identifying number;

''(C) a requirement that an intermodal equipment provider identified under subparagraph (A) systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, intermodal equipment described in subparagraph (A) that is intended for interchange with a motor carrier;

''(D) a requirement to ensure that each intermodal equipment provider identified under subparagraph (A) maintains a system of maintenance and repair records for such equipment;

''(E) requirements that—

''(i) a specific list of intermodal equipment components or items be identified for the visual or audible inspection of which a driver is responsible before operating the equipment over the road; and

''(ii) the inspection under clause (i) be conducted as part of the Federal requirement in effect on the date of enactment of this Act that a driver be satisfied that the intermodal equipment components are in good working order before the equipment is operated over the road;

''(F) a requirement that a facility at which an intermodal equipment provider regularly makes intermodal equipment available for interchange have an operational process and space readily available for a motor carrier to have an equipment defect identified pursuant to subparagraph (E) repaired or the equipment replaced prior to departure;

''(G) a program for the evaluation and audit of compliance by intermodal equipment providers with applicable Federal motor carrier safety regulations;

''(H) a civil penalty structure consistent with section 521(b) of title 49, United States Code, for intermodal equipment providers that fail to attain satisfactory compliance with applicable Federal motor carrier safety regulations;

''(I) a prohibition on intermodal equipment providers from placing intermodal equipment in service on the public highways to the extent such providers or their equipment are found to pose an imminent hazard;

''(J) a process by which motor carriers and agents of motor carriers shall be able to request the Federal Motor Carrier Safety Administration to undertake an investigation of an intermodal equipment provider identified under subparagraph (A) that is alleged to be not in compliance with the regulations under this section;

''(K) a process by which equipment providers and agents of equipment providers shall be able to request the Administration to undertake an investigation of a motor carrier that is alleged to be not in compliance with the regulations issued under this section;

''(L) a process by which a driver or motor carrier transporting intermodal equipment is required to report to the intermodal equipment provider or the provider's designated agent any actual damage or defect in the intermodal equipment of which the driver or motor carrier is aware at the time the intermodal equipment is returned to the intermodal equipment provider or the provider's designated agent;

''(M) a requirement that any actual damage or defect identified in the process established under subparagraph (L) be repaired before the equipment is made available for interchange to a motor carrier and that repairs of equipment made pursuant to the requirements of this subparagraph and reports made pursuant to the subparagraph (L) process be documented in the maintenance records for such equipment; and

''(N) a procedure under which motor carriers, drivers and intermodal equipment providers may seek correction of their motor carrier safety records through the deletion from those records of violations of safety regulations attributable to deficiencies in the intermodal chassis or trailer for which they should not have been held responsible.''

Section 31151(b) authorizes the Secretary or DOT employee designated by the Secretary to inspect intermodal equipment, and copy related maintenance and repair records for such equipment, on demand and display of proper credentials. Section 31151(c) extends the authority of Federal, State,

or government officials designated by the Secretary to place out of service any intermodal equipment that is determined under this section to fail to comply with applicable Federal safety regulations; to prevent its use on a public highway until the repairs necessary to bring such equipment into compliance have been completed; and to require documentation of repairs in the equipment maintenance records.

Section 31151(d) preempts statutes, regulations, orders, or other requirements of a State, a political subdivision of a State, or a tribal government relating to CMV safety, if the law, regulation, order, or other requirement exceeds or is inconsistent with Federal rules adopted to implement the roadability statute. Section 31151(e)(2) authorizes the Secretary to make a nonpreemption determination if the State requirement for the inspection and maintenance of intermodal chassis by intermodal equipment providers was in effect on or before January 1, 2005, and is as effective as the Federal requirement and does not unduly burden interstate commerce. Subsequent amendments to State requirements that were not preempted must be submitted to the agency for a preemption determination. State provisions that would be preempted may remain in effect only until the date on which implementing regulations under this section take effect. Finally, section 31151(f) defines the terms ''intermodal equipment,'' ''intermodal equipment interchange agreement,'' ''intermodal equipment provider,'' and ''interchange.''

II. Current Rulemaking To Improve Intermodal Equipment Safety

Rulemaking Proposal

The proposed regulations would, for the first time, make intermodal equipment providers (IEPs) subject to the FMCSRs. The new requirements would ensure that intermodal container chassis and trailers tendered to motor carriers by steamship lines, railroads, terminal operators, chassis pools, etc., comply with the applicable motor carrier safety regulations. The explicit inclusion of equipment providers in the scope of FMCSRs would ensure that intermodal equipment providers would be subject to the same enforcement proceedings, orders, and civil penalties as those applied to motor carriers, property brokers, and freight forwarders. The proposed rule would also impose additional requirements on motor carriers and drivers operating intermodal equipment.

FMCSA proposes to address the SAFETEA–LU requirements by adding to 49 CFR part 390, a new subpart C titled ''Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment.'' In addition, we would amend parts 385, 386, 390, 392, 393, and 396, as well as Appendix G to Subchapter B, to make the appropriate sections applicable to IEPs. With these proposed changes to the current FMCSRs, the agency will address the SAFETEA–LU requirements codified at 49 U.S.C. 31151(a)(3):

- A roadability review based on elements of the Safety Fitness Procedures to enable FMCSA to assess the safety of equipment tendered by IEPs (part 385).Section 31151(a)(3)(G).
- Application of FMCSA Rules of Practice for safety compliance proceedings (part 386). Sections 31151(a)(3)(H) and (I).
- Compliance with general safety regulations, including filing of an Intermodal Equipment Provider Identification Report (FMCSA Form MCS–150C), and display of the intermodal equipment provider's USDOT number or other unique identification number on intermodal equipment (part 390). Sections 31151(a)(3)(A), (B), (C), (D), (J), (K), and (N).
- Provisions for CMV drivers to inspect specific intermodal equipment components and be satisfied that they are in good working order before the equipment is operated over the road (part 392). Sections 31151(a)(3)(E) and (F).
- Extension of the applicability of regulations concerning parts and accessories necessary for safe operation to intermodal equipment and IEPs (part 393).Sections 31151(a)(3)(C).
- Extension of the applicability of regulations concerning inspection, repair, and maintenance of CMVs to IEPs (part 396). Sections 31151(a)(3)(C), (D), (L), and (M).

The proposed changes to each part are described below.

Part 385—Safety Fitness Procedures

FMCSA proposes to conduct roadability reviews in order to evaluate the safety and regulatory compliance status of IEPs. This activity would consist of an on-site examination of an intermodal equipment provider's inspection, repair, and maintenance operation and records to determine its compliance with applicable FMCSRs (i.e., parts 390, 393, and 396). However, FMCSA would not issue safety ratings to IEPs.

FMCSA would use its Safety Status Measurement System (SafeStat) to identify and prioritize which IEPs would be subject to a roadability review. SafeStat is an automated, data-driven analysis system designed to incorporate current on-road safety performance information on all motor carriers, and IEPs, with on-site reviews and enforcement history information, when available, in order to measure relative safety fitness. SafeStat plays an important role in determining the safety fitness in several FMCSA/State programs including the Performance and Registration Information Systems Management, National Compliance Review Prioritization, and the roadside Inspection Selection System. FMCSA would use the system to continuously quantify and monitor changes in the safety status of IEPs. The agency's initial focus would be on the Vehicle Safety Evaluation Area (SEA). For more information about SafeStat, visit FMCSA's ''SafeStat Online'' at URL: *http://ai.fmcsa.dot.gov.*

In addition to IEPs that are identified in SafeStat, a roadability review may be conducted on an IEP that falls into one of the following categories: (1) The provider is the subject of a complaint that FMCSA determines to be non-frivolous; (2) the provider has equipment involved in a pattern of recordable crashes or hazardous materials incidents; (3) the provider requests FMCSA to conduct a review of its operations; (4) the provider demonstrates a pattern of non-compliance; or (5) the agency determines there is a need for a review.

FMCSA would conduct roadability reviews under proposed §§ 385.501 and 385.503 using the current framework of the Compliance Analysis and Performance Review Information System (CAPRI). The CAPRI application provides a standardized method for conducting reviews on motor carriers, hazardous materials shippers, and cargo tank facilities. It is also used for safety audits on new carriers and Mexico-domiciled carriers seeking to operate in the United States. The application includes extensive checking for data integrity and electronic file transfer for expediting data flow, and is for use by both Federal and State enforcement officials.

Under proposed § 385.503, if FMCSA finds violations of parts 390, 393, or 396, the agency would cite the IEP for those violations. The agency may also impose civil penalties according to the civil penalty structure contained in 49 U.S.C. 521(b). FMCSA may prohibit an intermodal equipment provider from tendering any intermodal equipment

from a particular location or multiple locations if the provider's FMCSRs compliance is so deficient that its continued operation constitutes an imminent hazard to highway safety. This is authorized by 49 U.S.C. 521(b)(5)(A), which directs the agency to ''order a vehicle * * * out-of-service, or order an employer to cease all or part of the employer's commercial motor vehicle operations. In making any such order, the [agency] shall impose no restriction on any * * * employer beyond that required to abate the hazard.''

Part 386—Rules of Practice

FMCSA proposes to amend 49 CFR part 386 concerning rules of practice for enforcement proceedings before its Assistant Administrator. The purpose of the proposed changes is to apply part 386 to intermodal equipment providers now subject to FMCSA jurisdiction.

Section 386.1 Scope of the rules of this part. FMCSA would amend existing § 386.1 to include an explicit reference to intermodal equipment providers. They would be subject to the same enforcement proceedings, orders, and civil penalties as motor carriers, property brokers, and freight forwarders, with respect to the safety of their equipment tendered and their oversight of inspection, repair, and maintenance of that equipment.

Section 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited. FMCSA proposes to amend § 386.83 to extend the applicability of this section to intermodal equipment providers.

Part 390—Federal Motor Carrier Safety Regulations

Section 390.3 General applicability. Section 390.3(h) would explicitly state that intermodal equipment providers are subject to parts 385, safety fitness procedures; 386, rules of practice; 390 (except § 390.15(b)); 393, parts and accessories necessary for safe operation; and 396, inspection, repair, and maintenance of commercial motor vehicles.

Section 390.5 Definitions. FMCSA would add definitions of ''interchange,'' ''intermodal equipment,'' ''intermodal equipment interchange agreement,'' and ''intermodal equipment provider'' to § 390.5 to provide a consistent vocabulary for dealing with intermodal equipment issues. These definitions are identical to the definitions for these terms included in 49 U.S.C. 31151(f). ''Interchange'' would be the word used to describe the act of providing intermodal equipment to a motor carrier. Leasing equipment to a motor carrier is not included in this term.

''Intermodal equipment'' rather than intermodal container chassis would be the term used in the regulation. Though intermodal container chassis are by far the most common variety of intermodal equipment, FMCSA decided to propose a broader term ''intermodal equipment'' to cover all the different kinds of trailers, chassis, and associated devices used to transport intermodal containers.

''Intermodal equipment interchange agreement'' would describe the written agreement between an intermodal equipment provider and a motor carrier, which establishes the responsibilities and liabilities of both parties. The Uniform Intermodal Interchange and Facilities Access Agreement is commonly used for this purpose.

''Intermodal equipment provider'' would describe the party that interchanges the intermodal equipment with the motor carrier, and that, under these proposed rules, would be responsible for systematic inspection, repair, and maintenance of the intermodal equipment.

Section 390.15 Assistance in investigations and special studies. FMCSA would amend § 390.15(a) to add a reference to intermodal equipment providers, requiring them to provide records, information, and assistance in an investigation of an accident, as defined in 49 CFR 390.5. Intermodal equipment providers would not be required to maintain the accident register required of motor carriers in § 390.15(b), but any accident information they do retain must be made available to investigators upon request.

Section 390.19 Motor carrier, HM shipper, and intermodal equipment provider identification reports. FMCSA would require intermodal equipment providers to file an Intermodal Equipment Provider Identification Report, Form MCS–150C and to update it every two years.

Section 390.21 Marking of self-propelled CMVs, and intermodal equipment. FMCSA would require intermodal equipment providers (*i.e.*, the entity tendering the equipment, which may or may not be the owner) to mark intermodal equipment with an identification number issued by FMCSA. This number could be a USDOT number or another unique identification number. The USDOT number is used to identify all motor carriers in FMCSA's registration/information systems. It is also used by States as the key identifier in the Performance and Registration Information Systems Management (PRISM) project, a cooperative Federal/State program that makes motor carrier safety a requirement for obtaining and keeping commercial motor vehicle registration and privileges. FMCSA seeks comment on what other unique identification numbers could serve the same purpose as the USDOT number.

Part 390, Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

FMCSA proposes a new subpart C, §§ 390.40–390.44, to address the specific requirements for intermodal equipment providers in SAFETEA–LU.

Proposed § 390.40 lists all of the responsibilities of an intermodal equipment provider, including identifying its operations to FMCSA; marking intermodal equipment; inspecting, repairing, and maintaining the equipment; keeping records of inspection, repair, and maintenance; providing procedures and facilities for inspection, repair, and maintenance; and refraining from placing equipment in service if the equipment would pose an imminent hazard, as defined in § 386.72(b)(1).

Proposed paragraph (h) of § 390.40 requires that any repairs or replacements must be made in a timely manner after a driver notifies the provider of such damage, defects, or deficiencies. FMCSA proposes a limited timeframe for repair or replacement actions because, in the intermodal sector, drivers' income is usually based upon the number of trips a driver can complete in a day. Drivers who report defects or deficiencies to equipment providers face potential delays in leaving the ports or terminals while waiting for a container chassis to be repaired or replaced. Therefore, FMCSA wishes to reduce the amount of time that drivers may have to wait after pointing out defects or deficiencies, thereby encouraging the driver to make such reports. Driver reports will bring potential equipment defects and deficiencies to the equipment provider's attention so they can be remedied. Operating safe equipment is clearly in the drivers'—and FMCSA's—interest.

Proposed § 390.42(a) and (b) prescribe procedures for intermodal equipment providers and motor carriers to request correction of publicly-accessible safety violation information for which the intermodal equipment provider or motor carrier should not have been held responsible. An intermodal equipment provider or motor carrier would use FMCSA's DataQs system for this purpose. The DataQs system is an electronic means for filing concerns

about Federal and State data released to the public by FMCSA. Through this system, data concerns are automatically forwarded to the appropriate office for resolution. The system also allows filers to monitor the status of each filing.

Proposed § 390.42(c) and (d) prescribe procedures for requesting that FMCSA investigate any motor carrier or intermodal equipment provider that may be in noncompliance with FMCSA requirements.

Proposed § 390.44 prescribes the responsibilities of drivers and motor carriers, as opposed to intermodal equipment providers, when operating intermodal equipment. The driver would be required to make a pre-trip inspection and would not be allowed to operate the equipment on the highway if the equipment is not in good working order. The driver or the motor carrier would also be required to report any damage or deficiencies in the equipment at the time the equipment is returned to the provider. This report would have to include, at a minimum, the items listed in § 396.11(a)(2).

Proposed § 390.46 would address preemption by the FMCSRs of State and local laws and regulations concerning inspection, repair, and maintenance. Generally, a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to the inspection, repair, and maintenance of intermodal equipment is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed by the FMCSRs.

Part 392—Driving of Commercial Motor Vehicles

FMCSA proposes to amend § 392.7 to cover intermodal equipment similar to the current requirements for other CMVs. The proposal would require drivers preparing to transport intermodal equipment to make a visual or audible inspection of specific components of intermodal equipment, and to satisfy the driver that the intermodal equipment was in good working order before operating it over the road.

Part 393—Parts and Accessories Necessary for Safe Operation

FMCSA proposes to revise § 393.1 to make equipment providers responsible for offering in interstate commerce intermodal equipment that is equipped with all required parts and accessories. The proposed changes would ensure each required component and system is in safe and proper working order. This requirement is separate and distinct from the provisions of part 396, which cover responsibilities for inspection, repair, and maintenance of the CMV or chassis, without specifying all of the parts and accessories necessary for safe operation.

Part 396—Inspection, Repair, and Maintenance

Part 396 would be amended to require intermodal equipment providers to establish a systematic inspection, repair, and maintenance program and to maintain records documenting the program. Equipment providers would also be required to comply with FMCSA's periodic and annual inspection regulations. Furthermore, intermodal equipment providers would be required to establish a process by which a motor carrier or driver could report the defects or deficiencies on container chassis that they discover or that are reported to them. Intermodal equipment providers would then be required to document whether they have repaired the defect or deficiency, or that repair was unnecessary, before the intermodal equipment was interchanged.

Section 396.1 Scope. FMCSA proposes to revise § 396.1 to require every intermodal equipment provider to comply with, and be knowledgeable of, the applicable FMCSA regulations.

Section 396.3 Inspection, repair, and maintenance. FMCSA proposes to amend § 396.3 to require intermodal equipment providers to be responsible for the systematic inspection, repair, and maintenance of intermodal equipment, and to keep the associated records.

Section 396.11, Driver vehicle inspection reports. FMCSA proposes to amend § 396.11 to add a new paragraph (a)(2) specifying that the intermodal equipment provider must have a process to receive reports of defects or deficiencies in the equipment. Proposed paragraph (a)(2) lists the specific components of intermodal equipment that must be included on the driver vehicle inspection report.

Section 396.12, Procedures governing the acceptance by intermodal equipment providers of reports required under § 390.44(b) of this chapter from motor carriers and drivers. FMCSA would add a new § 396.12 to require intermodal equipment providers to establish a procedure to accept reports of defects or deficiencies from motor carriers or drivers, repair the defects that are likely to affect safety, and document the procedure.

Sections 396.17, Periodic Inspection, 396.19, Inspector qualifications, 396.21, Periodic inspection recordkeeping requirements, 396.23 Equivalent to periodic inspection. FMCSA proposes to revise these sections to make clear their application to intermodal equipment providers.

Section 396.25, Qualifications of brake inspectors. In its ANPRM of February 3, 1989 (54 FR 5518), concerning Federal standards for the maintenance and inspection of CMV brakes, FMCSA concluded that the legislation requiring the rulemaking action applied only to employees of motor carriers [section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988, (Subtitle B of Title IX of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, 102 Stat. 4181, at 4531) now codified at 49 U.S.C. 31137(b)]. Section 9110(b) required regulations to ensure that CMV brakes are properly maintained and inspected by ''appropriate employees.'' Because this provision amended the Motor Carrier Safety Act of 1984 (the 1984 Act) and was codified in section 31137, ''employee'' had the meaning given to that term in 49 U.S.C. 31132(2), which specifically means ''a mechanic.'' However, the term ''employer'' in section 31132(3) means, among other things, a person who ''owns or leases a commercial motor vehicle * * * or assigns an employee to operate it.'' The agency generally treated the 1984 Act term ''employer'' as equivalent to ''motor carrier.'' But since independent repair and maintenance shops neither own nor lease CMVs, nor assign employees to operate them, the agency concluded that mechanics (employees) who did not work for a motor carrier (employer) were not covered. ''An example of this would be independent garage owners and their mechanics.'' (54 FR 5518).

The example was correct, but the statutory term ''employer'' also describes intermodal equipment providers who own CMVs, namely intermodal chassis. Such equipment providers and their mechanics are therefore subject to the 1984 Act, including the brake inspector qualifications adopted pursuant to 49 U.S.C. 31137(b), which are now codified at § 396.25.

Appendix G to Subchapter B—Minimum Periodic Inspection Standards

FMCSA proposes to amend Appendix G, item 6 (Safe Loading) to add devices used to secure an intermodal container to a chassis. These devices include rails or support frames, tiedown bolsters, locking pins, clevises, clamps, and hooks.

Proposed Enforcement Plans

Review of Maintenance Programs

If this proposal is promulgated as a final rule, FMCSA would initiate reviews of intermodal equipment providers' maintenance programs similar to the reviews FMCSA currently conducts on motor carriers' safety management controls.

- The reviews would examine equipment providers' compliance with FMCSA commercial motor vehicle safety regulations to which they are subject, especially parts 390, 393, and 396 and Appendix G. Intermodal equipment providers would be held responsible for the inspection, repair, and maintenance of their intermodal equipment, using standards similar to those used by motor carriers for the inspection, repair, and maintenance of their trailers.
- The reviews may be triggered when roadside inspection reports, crash report data, or driver or carrier complaints indicate a pattern of non-compliance by an equipment provider.
- FMCSA would develop a procedure to review IEPs' compliance with the applicable FMCSRs, with a focus on the safe operating condition of the intermodal equipment, the involvement of that equipment in recordable highway crashes, and the intermodal equipment provider's safety management controls. The agency would develop review procedures, enforcement procedures, and rules of practice relevant to the responsibility of equipment providers to tender roadworthy equipment to motor carriers. However, if FMCSA were to subject an intermodal equipment provider to an operations out-of-service order, the order would prevent that provider from tendering equipment to motor carriers. The order would not apply to other transportation-related activities of an intermodal equipment provider that is a steamship company or rail carrier. Intermodal equipment providers that fail to attain satisfactory compliance with applicable federal motor carrier safety regulations would be subject to a civil penalty structure consistent with 49 U.S.C. 521(b).

Imminent Hazard Determinations

Under 49 U.S.C. 31151(a)(3)(I), the Secretary of Transportation is required to prohibit intermodal equipment providers from placing intermodal equipment in service on the public highways to the extent such providers or their equipment are found to pose an ''imminent hazard.''

The authority to declare that a motor carrier poses an imminent hazard is codified in 49 U.S.C. 521(b)(5). If FMCSA, after an investigation, determines that violations of the FMCSRs or the statutes under which they were established pose an ''imminent hazard'' to safety, the agency is required to order the vehicle or employee operating that vehicle out of service, or order a motor carrier to cease all or part of its commercial motor vehicle operations.

Imminent hazard is defined in 49 U.S.C. 521(b)(5)(B) and 49 CFR 386.72(b)(1) to mean ''any condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately.'' An imminent hazard may be a violation that is recurring and can be remedied by the carrier's ceasing the violation (e.g., an intermodal equipment provider is discovered operating intermodal equipment that has been declared out of service). It may also be argued that a motor carrier that continually and frequently violates multiple regulatory requirements poses an imminent hazard to the motoring public.

FMCSA proposes to issue an Imminent Hazard Out-of-Service (OOS) Order to any intermodal equipment provider whose intermodal chassis substantially increase the likelihood of serious injury or death if not taken out of service immediately, consistent with its treatment of motor carriers. Use of the Imminent Hazard OOS Order is limited to violations of certain FMCSRs (49 CFR parts 385, 386, 390–399, and some of part 383). Such an order is a serious matter and is usually a last resort when a serious safety problem exists that substantially increases the likelihood of serious injury or death and is unlikely to be resolved through any other means available.

FMCSA could issue Imminent Hazard OOS Orders to an intermodal equipment provider's: (1) Specific vehicle; (2) terminal or facility; and/or (3) all equipment tendered by the provider. Where an Imminent Hazard OOS Order is issued, the agency would only impose restrictions necessary to abate the hazard.

FMCSA's goal is to ensure compliance with its regulations and thereby ensure safety. Studies show that compliant companies have lower crash rates, better insurance rates, and pay less for crash related expenses (e.g., cargo damage, legal fees, towing, medical expenses).

Preemption of State Statutes or Regulations

Sections 31151(d) and (e) preempt certain State, political subdivision, and tribal government regulations. In general, the Federal rules would preempt the statutes, regulations, orders, or other requirements of a State, a political subdivision of a State, or a tribal organization relating to commercial motor vehicle safety if the provisions of those rules exceed or are inconsistent with an FMCSA requirement. If a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers was in effect on January 1, 2005, it would remain in effect only until the effective date of a final rule.

However, a State may request a nonpreemption determination for any requirement for the periodic inspection of intermodal chassis by IEPs that was in effect on January 1, 2005. FMCSA would issue a determination if it is decided that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce. In order to trigger this review, the State must apply to the agency for a determination before the effective date of the final rule. The agency would make a determination with respect to any such application within 6 months after the date on which it is received.

If a State amends a regulation for which it previously received a nonpreemption determination, it must apply for a determination of nonpreemption for the amended regulation. Any amendment to a State requirement not preempted under this subsection because of a determination by the FMCSA may not take effect unless: (1) It is submitted to the agency before the effective date of the amendment; and (2) the FMCSA determines that the amendment would not cause the State requirement to be less effective than the Federal requirement and would not unduly burden interstate commerce.

Relationship Among Intermodal Parties and Allocation of Liability

Section 31151(a)(1) requires that FMCSA issue regulations to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained. However, FMCSA believes the statute suggests that the agency should not attempt to allocate liability between parties tendering and using intermodal equipment. Rather than finding fault among intermodal parties or involving the Government in individual disputes (such as who damaged a particular container chassis), the rulemaking would establish programmatic responsibility for intermodal equipment maintenance. The concept is that a

maintenance program would produce safer equipment—safety being in the interest of the traveling public and of the government.

The definition of ''intermodal equipment interchange agreement'' in Section 31151(f)(2) is ''the Uniform Intermodal Interchange and Facilities Access Agreement or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities *and liabilities* of both parties with respect to the interchange of the intermodal equipment.'' [Emphasis added]

Neither the section 31151 language nor this proposal would relieve motor carriers of liability for damage they may inflict on intermodal container chassis. This proposed rulemaking would likely reduce the likelihood of crashes attributed to the mechanical condition and roadability of intermodal container chassis, but it would not involve the Department unnecessarily in the commercial relations or allocation of liability between intermodal parties.

International Implications

Because section 31151 was codified in subchapter III of chapter 311 of title 49, United States Code, the jurisdictional definitions in 49 U.S.C. 31132 apply. The term ''United States'' is defined in § 31132(10) as ''the States of the United States and the District of Columbia.'' Section 31151 does not address the question of its own geographical reach, so it must be read as limited to the United States, as defined in section 31132(10). This means that intermodal equipment providers (IEPs) tendering equipment to motor carriers in Puerto Rico, the Virgin Islands or any other U.S. territory are not directly subject to the requirements of this rule. Nonetheless, any jurisdiction that adopts the relevant portions of the FMCSRs as territorial law would have the authority to enforce them. There is also a strong presumption against extra-territorial application of a statute. Nothing in the language or legislative history of section 31151 suggests that Congress intended to make it applicable outside the territory of the United States. Therefore, IEPs tendering equipment to motor carriers in Canada, Mexico, or Central America would not be subject to the requirements of this rule, even if the motor carrier immediately transports the container/chassis combination across the border into this country. Once in the U.S., however, the intermodal equipment would be subject to these proposed rules, including marking requirements and to existing equipment-related FMCSRs. Enforcement would be taken against a motor carrier pulling an unmarked or defective chassis, even if the chassis originated with an IEP physically located outside the United States.

IEPs physically outside the United States, as defined in section 31132(10), are not required by this proposed rule to: (1) File a Form MCS–150C; (2) have a systematic inspection, repair and maintenance program; (3) create a repair lane for defects discovered by the driver just before leaving the terminal; or (4) maintain a system for receiving reports of defects and deficiencies from drivers returning intermodal equipment. FMCSA cannot conduct roadability reviews of IEPs based in foreign countries or non—''United States'' territories (because they are not subject to the rules), prohibit such IEPs from tendering defective equipment to motor carriers (because that occurs beyond the jurisdiction of FMCSA), or issue them civil penalties for failure to comply with these rules.

On the other hand, any intermodal equipment operated in interstate commerce in the United States must be marked with a USDOT number or other unique identifier. Otherwise, the motor carrier pulling the chassis/container combination would have violated these proposed regulations. As motor carriers are unlikely to accept the risk of fines for transporting unmarked chassis, foreign or non-—''United States'' IEPs that know their equipment will operate within the United States may find it necessary, for business reasons, to file a Form MCS–150C and mark their equipment. FMCSA will accept registration applications from such entities and issue them USDOT numbers or other unique identifiers. In these cases, however, the assignment of an identifying number does not amount to an assertion of jurisdiction over the foreign or non—United States IEP. Doing so, however would not subject such IEPs to FMCSA jurisdiction beyond the borders of the United States, so the purpose of the identifying number could not be fully realized.

The challenge for the agency is to maximize the benefits of section 31151 and these proposed rules—when non—''United States'' IEPs tender equipment that subsequently travels in the United States—without exceeding the agency's statutory authority or the principles of international law. FMCSA solicits comments on all aspects of this problem.

III. Analysis of Safety Data

Analysis of Roadside Inspection Data in 4 States

FMCSA asked the John A. Volpe National Transportation Systems Center (Volpe) to conduct a special study of roadside inspection results for container chassis. Inspections can be of several types, ranging from full or walk-around inspections (Levels 1 and 2) to vehicle-only inspections (Level 5). The type of unit inspected is indicated by a code and the types of violations found may be categorized as driver violations, vehicle violations (such as defects in brakes, tires or lights), or hazardous material violations. The Volpe analyses covered results from Level 1, 2, or 5 inspections, and for ''Unit 2'' in tractor-semitrailer combinations, the type of vehicle being inspected had to be coded as a semitrailer (code 9). ''Unit 2'' refers to the semitrailer in a power unit-semitrailer combination. Out-of-service (OOS) and violation rates were calculated using FMCSA's Motor Carrier Management Information System (MCMIS) inspection data on ''Unit 2'' vehicles. That is, the data came from Level 1, 2, and 5 inspections of the non-intermodal and intermodal semitrailers, but not the tractors involved. All violations were vehicle violations.

Results of the Volpe study are summarized here; the complete report is available in the docket for this NPRM.

The analysis of roadside inspection safety data included two phases. The first phase included a Four-State Analysis. The study team obtained intermodal inspection data from four States—California, Louisiana, South Carolina, and Texas—that have procedures for collecting and maintaining intermodal roadside inspection data at the State level and that have adopted container chassis roadability legislation. The data obtained were for the calendar years 2000 through part of 2003.

The Four-State Analysis results presented in Table 1 show, for each of the four reporting States, the total number of Level 1, 2, and 5 roadside inspections, and the OOS rates for non-intermodal semitrailers and intermodal semitrailers (*i.e.*, Unit 2). Vehicle OOS violations represent the most serious types of FMCSR violations found on the vehicle, or those violations FMCSA believes are most likely to result in a crash.

TABLE 1.—OUT-OF-SERVICE (OOS) RATES OF NON-INTERMODAL AND INTERMODAL SEMITRAILERS FOR THE FOUR-STATE ANALYSIS (2000–2003)

State	Unit 2—Semitrailers					
	Non-intermodal (NI)		Intermodal (I)		Difference in OOS rate (I–NI)	Percent difference in OOS rate (I–NI)/NI
	Number of inspections	OOS rate (percent)	Number of inspections	OOS rate (percent)		
CA[1]	875,881	14.6	33,523	17.7	3.1	21.2
LA[2]	27,216	8.8	76	26.3	17.5	198.9
SC[1]	60,674	14.9	1,982	21.4	6.5	43.6
TX[2]	150,260	16.1	2,032	24.8	8.7	54.0

[1] Data for 2000–2002 and part of 2003.
[2] Data for 2002 only.
Note: The data in this table came from Level 1, 2, and 5 inspections of the non-intermodal and intermodal semitrailers, but not the tractors involved. All violations were vehicle violations (violation categories 15–30).

The researchers noted that in each of the four States, the OOS rate for intermodal semitrailers was higher than the OOS rate for non-intermodal semitrailers. The percentage difference between the non-intermodal and intermodal semitrailer OOS rates in each State was more than 20 percent, with intermodal container chassis being in worse mechanical condition than other types of semitrailers. Table 2 shows, for each of the four States, the total number of Level 1, 2, and 5 roadside inspections and the percentages of non-intermodal and intermodal semitrailer (i.e., Unit 2) inspections with vehicle violations. Note that the violation totals represented in Table 3 include all violations (i.e., not just OOS but also non-OOS violations) found on the trailing unit.

TABLE 2.—TOTAL VIOLATION RATES OF NON-INTERMODAL AND INTERMODAL SEMITRAILERS FOR THE FOUR-STATE ANALYSIS (2000–2003)

State	Unit 2—Semitrailers					
	Non-intermodal (NI)		Intermodal (I)		Difference in violation rate (I–NI)	Percent difference in violation rate (I–NI)/NI
	Number of inspections	Total violation rate (percent)	Number of inspections	Total violation rate (percent)		
CA[1]	875,881	32.8	33,523	32.8	0.0	0.0
LA[2]	27,216	28.2	76	43.4	15.2	53.9
SC[1]	60,674	38.7	1,982	38.9	0.2	0.5
TX[2]	150,260	60.9	2,032	55.8	−5.1	−8.4

[1] Data for 2000–2002 and part of 2003.
[2] Data for 2002 only.
Note: The data in this table came from Level 1, 2, and 5 inspections of the non-intermodal and intermodal semitrailers, but not the tractors involved. All violations were vehicle violations (violation categories 15–30).

Table 2 shows that in California and South Carolina, the percentages of non-intermodal and intermodal semitrailers with vehicle violations were the same or nearly the same. In Texas, the percentage of non-intermodal semitrailers with vehicle violations was 5.1 percentage points higher than the percentage of intermodal semitrailers with vehicle violations. In Louisiana, the percentage of intermodal semitrailers with vehicle violations was 15.2 percentage points higher than the percentage of non-intermodal semitrailers with vehicle violations. However, FMCSA recognizes the limited number of Louisiana intermodal trailer inspections (only 76 inspections compared to 1,982 inspections in South Carolina, 2,032 inspections in Texas, and 33,523 inspections in California) on which to base this comparison.

The roadside inspection data from Texas contain a code that identifies the type of intermodal container chassis ownership: carrier owned or non-carrier-owned. The OOS and ''all'' violation analyses were re-run to compare the results for these two groups. Table 3 shows the OOS rates for carrier-owned and non-carrier-owned intermodal container chassis for inspections performed in Texas. Table 3 shows the total (or ''all'') vehicle violation rates for carrier-owned and non-carrier-owned intermodal container chassis for inspections performed in Texas.

Table 3 shows that the non-carrier-owned intermodal semitrailers (i.e., container semitrailers tendered by equipment providers) had an OOS rate of 25.3 percent compared to an OOS rate of 19.2 percent for the carrier-owned intermodal semitrailers. Table 4 shows that 55.7 percent of the non-carrier-owned intermodal semitrailers had vehicle violations compared to 57.5 percent of the carrier-owned intermodal semitrailers.

While FMCSA has examined both total violation rates and OOS rates, it is the OOS rate FMCSA focuses on in this proposed rule because that rate is based on the most serious violations of the FMCSRs. These violations are listed in the Commercial Vehicle Safety Alliance's (CVSA) North American Uniform Out-of-Service Criteria, a set of enforcement tolerances used by Federal, State, and Provincial agencies conducting commercial motor vehicle inspections in theUnited States, Canada, and Mexico.

TABLE 3.—OUT-OF-SERVICE (OOS) RATES OF CARRIER-OWNED AND NON-CARRIER-OWNED INTERMODAL SEMITRAILERS IN TEXAS (2002)

State	Unit 2—Semitrailers					
	Non-carrier-owned (NCO) intermodal		Carrier-owned (CO) intermodal		Difference in OOS rates (NCO–CO)	Percent difference in OOS rates (NCO–CO)/CO
	Number of inspections	OOS rate (percent)	Number of inspections	OOS rate (percent)		
TX	1,865	25.3	167	19.2	6.1	31.8

Note: The data in this table came from Level 1, 2, and 5 inspections of the non-intermodal and intermodal semitrailers, but not the tractors involved. All violations were vehicle violations (violation categories 15–30).

TABLE 4.—TOTAL VIOLATION RATES OF CARRIER-OWNED AND NON-CARRIER-OWNED INTERMODAL SEMITRAILERS IN TEXAS (2002)

State	Unit 2—Semitrailers					
	Non-carrier-owned (NCO) intermodal		Carrier-owned (CO) intermodal		Difference in violation rates (NCO–CO)	Percent difference in violation rates (NCO–CO)/CO
	Number of inspections	Vehicle violation rate (percent)	Number of inspections	Vehicle violation rate (percent)		
TX	1,865	55.7	167	57.5	−1.8	−3.1

Note: The data in this table came from Level 1, 2, and 5 inspections of non-intermodal and intermodal semitrailers, but not the tractors involved. All violations were vehicle violations (violation categories 15–30).

The second phase of this analysis used data collected during roadside inspections conducted during an intensive annual activity known as RoadCheck. FMCSA requested that States conduct inspections of intermodal equipment, where possible and appropriate, as part of the focus of International RoadCheck 2004 (conducted beginning in June 2004).[2]

Table 5 shows the RoadCheck 2004 inspection totals and out-of-service rates compared to the Four-State Analysis inspections.

TABLE 5.—COMPARISON OF NON-INTERMODAL VS. INTERMODAL OUT-OF-SERVICE (OOS) RATES

Analysis	Non-Intermodal			Intermodal		
	Number of inspections	OOS rate (percent)		Number of inspections	OOS rate (percent)	
		Tractors	Semitrailers		Tractors	Semitrailers
RoadCheck Inspections	312,751	11.3	18.0	4,038	17.3	22.1
Four-State Inspections	1,114,029	13.7	14.7	37,615	16.4	18.3

Note: RoadCheck inspection data are cross-section data obtained from 38 States from June 1 through September 23, 2004, except for California where data had been collected in June 1–23 only. Four-State inspection data were time-series data collected from 2000 through part of 2003 in four States—California, Texas, South Carolina, and Louisiana.

Table 5 shows that the OOS rates for intermodal equipment—both tractors and semitrailers—are consistently higher than the OOS rates for commercial motor vehicles hauling non-intermodal semitrailers. This suggests that intermodal container chassis are more likely to be operated in an unsafe mechanical condition than non-intermodal semi-trailers

As part of RoadCheck 2004, FMCSA also asked inspectors to identify the ownership of intermodal container chassis at the time of the vehicle inspection.[3] Table 6 summarizes OOS rates by container chassis ownership.

TABLE 6.—INTERMODAL OUT-OF-SERVICE (OOS) RATE BY TYPE OF CHASSIS OWNERSHIP

Type of chassis owners	Number of inspections	Tractors		Semitrailers/Chassis	
		Number of OOS inspections	OOS rate (percent)	Number of OOS inspections	OOS rate (percent)
Motor Carrier	94	21	22.3	16	17.0
Leased	191	45	23.6	54	28.3

[2] Detailed analysis of the RoadCheck Inspection Data collected in MCMIS, included in the RIA, is provided in Docket FMCSA–2005–23315.

[3] Volpe Center, ''Feasibility Study on Collecting Intermodal Chassis Crash and Inspection Data,'' prepared for FMCSA, September 29, 2004.

TABLE 6.—INTERMODAL OUT-OF-SERVICE (OOS) RATE BY TYPE OF CHASSIS OWNERSHIP—Continued

Type of chassis owners	Number of inspections	Tractors		Semitrailers/Chassis	
		Number of OOS inspections	OOS rate (percent)	Number of OOS inspections	OOS rate (percent)
Shipper	167	41	24.6	33	19.8
Railroads	68	21	30.9	20	29.4
Unknown	150	17	11.3	47	31.3
Total	670	145	21.6	170	25.4

While data in Table 6 are relatively limited, they do show that intermodal container chassis owned by motor carriers have lower OOS rates than intermodal container chassis owned by all other non-motor carriers.

While the total number of violations cited per inspection for intermodal container chassis may be comparable to the total number of violations per inspection of non-intermodal semitrailers, the data indicate the defects or deficiencies observed on intermodal container chassis are likely to be more severe than those noted on non-intermodal semitrailers (or those violations resulting in vehicle OOS orders). Therefore, it appears intermodal container chassis are, as a group of commercial vehicles, more likely to be in need of repairs than other types of semitrailers, and that the defects and deficiencies are more likely to be of the type that are likely to cause a crash or breakdown of the vehicle.

Roadside Inspection Violation Data Analysis

All Intermodal Container Chassis Violations

FMCSA examined the violations cited during intermodal container chassis inspections to determine what specific problems were being found during the inspections and whether it is likely a driver could have detected them if they were present when the driver picked up the container chassis.

Table 7 shows the most frequently cited violations in the inspection records of the four States' data. The most common violation was ''Inoperable Lamp (Other than Head/Tail),'' which accounted for 25.4 percent of all violations. Combined with other lamp/light violations, they account for 34.0 percent of all violations. Tire-related violations account for 12.2 percent of all violations. Violations that can be readily detected by the driver, including those that are lamp/light and tire-related, account for more than half of all the violations cited for intermodal container chassis.

TABLE 7.—DISTRIBUTION OF INTERMODAL SEMITRAILER VIOLATIONS (2000–2003)

Unit 2—Intermodal semitrailers

Violation		Rank	Count	Percent of total
Code	Description			
393.9	Inoperable lamp (other than head/tail) [3]	1	4,909	25.4
396.3(a)(1)	Inspection/Repair and Maintenance [2]	2	4,688	24.3
393.75(c)	Tire—Other tread depth less than 2/32 of inch [3]	3	1,950	10.1
393.47	Inadequate brake lining for safe stopping [2]	4	1,315	6.8
393.11	No/defective lighting devices/reflectors/projected [3]	5	885	4.6
393.100(e)	Improper securement of intermodal containers [3]	6	593	3.1
396.3(a)(1)BA	Brake—Out of adjustment [1]	7	486	2.5
393.201(a)	Frame cracked/broken/bent/loose [3]	8	446	2.3
393.45(a)(4)	Brake hose/tubing chafing and/or kinking [2]	9	407	2.1
393.70	Fifth wheel [3]	10	407	2.1
393.207(c)	Leaf spring assembly defective/missing [2]	11	396	2.1
393.25(f)	Stop lamp violations [3]	12	371	1.9
393.50	Inadequate reservoir for air/vacuum brakes [1]	13	283	1.5
393.19	No/defective turn/hazard lamp as required [3]	14	245	1.3
393.75(a)(1)	Tire—Ply or belt material exposed [3]	15	227	1.2
393.75(b)	Tire—Front tread depth less than 4/32 of inch [3]	16	176	0.9
393.48(a)	Inoperative/defective brakes [1]	17	175	0.9
393.205(c)	Wheel fasteners loose and/or missing [3]	18	159	0.8
393.9T	Inoperable tail lamp [3]	19	152	0.8
396.17(c)	Operating a CMV without periodic inspection [3]	20	120	0.6
	Subtotal—Top 20 Violations	.....	18,390	95.3
	Other Violations	.....	905	4.7
	Total—All Violations	.....	19,295	100.0

[1] Violation not readily detectable by driver.
[2] Violation sometimes detectable by driver or needs more study.
[3] Violation generally detectable by driver.

Violations involving defects or deficiencies that drivers were unlikely to detect during a visual inspection account for only 7 percent of all violations on intermodal container chassis in the four States. The remaining 93 percent of violations are either items the driver could have observed during a visual inspection of the container chassis, or are under further study by FMCSA to determine the likelihood of the driver being able to detect the defect or deficiency.

Intermodal Container Chassis Violations by State

California dominates the results in the previous section because of the number of inspections performed by that State. However, significant differences were evident in the types of violations cited from State to State. As Table 8 shows, the violation described as ''Inspection/Repair and Maintenance'' represented 31.0 percent of all violations cited in California. On the other hand, lamp problems were the predominant problems in all the other States, accounting for 47.5 percent of violations in Texas, 45.7 percent in South Carolina, and 57.8 percent in Louisiana.

The second most frequently cited violation in Louisiana and South Carolina was the ''Improper Securement of [an] Intermodal Container,'' while for Texas, the second most frequently cited violations were brake-related issues.

The third most frequently cited violations in Louisiana and South Carolina were brake-related issues, while for Texas it was ''Improper Securement of [an] Intermodal Container.'' California's violations were somewhat unique among the four States, as only three of their top ten violations were items drivers could have detected during a visual inspection of the container chassis. It is possible that violation code differences among the States account for some of the variability in specific defects or deficiencies listed.

TABLE 8.—INTERMODAL SEMITRAILER VIOLATIONS BY STATE (CA, LA, SC, AND TX) DURING 2000–2003

Unit 2—Intermodal semitrailer violations					
Violation		Percent of total violations in state			
Code	Description	CA	LA	SC	TX
393.9	Inoperable lamp (other than head/tail) [3]	30.3	19.7	24.2	
396.3(a)(1)	Inspection/Repair and Maintenance [2]	31.0	.....	3.6	
393.75(c)	Tire—Other tread depth less than 2/32 of inch [3]	11.9	3.9	5.2	3.4
393.47	Inadequate brake lining for safe stopping [2]	8.7			
393.11	No/defective lighting devices/reflectors/projected [3]	.....	26.3	4.0	28.8
393.100(e)	Improper securement of intermodal containers [3]	.....	.....	11.4	14.7
396.3(a)(1)BA	Brake—Out of adjustment [1]	1.3	6.6	3.8	8.1
393.201(a)	Frame cracked/broken/bent/loose [3]	3.0			
393.45(a)(4)	Brake hose/tubing chafing and/or kinking [2]	.....	1.3	7.4	7.6
393.70	Fifth wheel [1]	2.7			
393.207(c)	Leaf spring assembly defective/missing [2]	2.6			
393.25(f)	Stop lamp violations [3]	.....	10.5	8.2	8.3
393.50	Inadequate reservoir for air/vacuum brakes [1]	1.9			
393.19	No/defective turn/hazard lamp as required [3]	.....	.....	4.0	6.5
393.75(a)(1)	Tire—Ply or belt material exposed [3]	1.4			
393.48(a)	Inoperative/defective brakes [1]	.....	1.3		
393.205(c)	Wheel fasteners loose and/or missing [3]	.....	1.3		
393.9T	Inoperable tail lamp [3]	.....	1.3	5.3	2.3
396.17(c)	Operating a CMV without periodic inspection [3]	.....	1.3	.....	2.3
393.75(a)	Flat tire or fabric exposed [3]	.....	1.3		
393.20	No/improper mounting of clearance lamps [3]	.....	.....	.....	1.6
393.102	Improper securement system (tiedown assemblies) [3]	.....	21.1		
393.207(a)	Axle positioning parts defective/missing [2]	.....	1.3		
393.28	Improper or no wiring protection as required [3]	.....	2.6		
	Total—Top 10 Violations	94.9	100.0	77.2	83.6
	Other Violations	5.1	0.0	23.8	16.4
	All Violations	100.0	100.0	100.0	100.0

[1] Violation not readily detectable by driver.
[2] Violation sometimes detectable by driver or needs more study.
[3] Violation generally detectable by driver.

Vehicle Out-of-Service Violations by State

Table 9 shows the top ten OOS violations for intermodal semitrailers in the four States. Similar to all violations in the previous section, the most frequently cited OOS violations were readily detectable by the driver, but the patterns of individual violations differed among the four States. In California, ''Inoperable Lamp (Other than Head/Tail),'' a violation a driver could easily discover, accounted for almost 49 percent of the OOS violations in the State, and ''Inspection/Repair and Maintenance,'' a violation that the driver would be less likely to discover, accounted for almost 22 percent of the OOS violations.

In the other three States, the most frequently cited type of OOS violation is one that could readily be detected by the driver; namely, proper securement of containers and loads. Specifically, these violations accounted for 61.5 percent of Louisiana violations, 33.3 percent of South Carolina violations, and 40.0 percent of Texas violations. The second most frequently cited type of violation in these three States was also readily detectable by the driver: Lamp-related violations. In these three

States, lamp-related violations accounted for 26.9 percent of Louisiana violations, 46.5 percent of South Carolina violations, and 38.9 percent of Texas violations.

Problems with securing containers and loads are not evident among the top ten California violations. During a January 2004 field trip to the Los Angeles area,[4] FMCSA staff and Volpe researchers determined California inspectors use the ''Inspection/Repair and Maintenance'' violation to cover miscellaneous items, such as cracked windshields, and not necessarily improperly secured containers and loads. Further investigation is required to determine why container securement is not identified as a separate issue in California, as it is in the other States.

TABLE 9.—INTERMODAL SEMITRAILER OOS VIOLATIONS IN CA, LA, SC, AND TX DURING 2000–2003

Unit 2—Intermodal semitrailer OOS violations					
Violation		Percent of total violations in state			
Code	Description	CA	LA	SC	TX
393.9	Inoperable lamp (other than head/tail) [3]	48.8	7.7	22.2	
396.3(a)(1)	Inspection/Repair and Maintenance [2]	21.8		2.2	1.0
393.75(c)	Tire—Other tread depth less than 2/32 of inch [3].	9.9			1.1
393.47	Inadequate brake lining for safe stopping [2]	6.1			
393.11	No/defective lighting devices/reflectors/projected [3].		11.5		
393.100(e)	Improper securement of intermodal containers [3].			28.3	39.0
396.3(a)(1)BA	Brake—Out of adjustment [1]	1.4	3.8	1.9	6.8
393.201(a)	Frame cracked/broken/bent/loose [3]	1.8			
393.70	Fifth wheel [1]	2.7			
393.207(c)	Leaf spring assembly defective/missing [2]	3.0			
393.25(f)	Stop lamp violations [3]		7.7	12.4	16.5
393.50	Inadequate reservoir for air/vacuum brakes [1]	0.9			
393.19	No/defective turn/hazard lamp as required [3]			7.9	20.8
393.75(a)(1)	Tire—Ply or belt material exposed [3]	1.0			
393.48(a)	Inoperative/defective brakes [3]				1.9
393.9T	Inoperable tail lamp [3]			4.0	1.6
393.75(a)	Flat tire or fabric exposed [3]		3.8	1.9	1.0
393.100	No or improper load securement [3]			5.0	1.0
393.75(a)(3)	Tire—Flat and/or audible air leak [3]			2.4	3.1
393.102	Improper securement system (tiedown assemblies) [3].		61.5		
393.207(b)	Adjustable axle locking pin missing/disengaged [3].				1.0
393.207(a)	Axle positioning parts defective/missing [2]		3.8		
	Total—Top 10 OOS Violations	96.5	100.0	88.1	94.7
	Other Violations	3.5	0.0	11.9	5.3
	All Violations	100.0	100.0	100.0	100.0

[1] Violation not readily detectable by driver.
[2] Violation sometimes detectable by driver or needs more study.
[3] Violation generally detectable by driver.

Table 10 contains results from FMCSA's analysis of inspection of intermodal container chassis during RoadCheck 2004. RoadCheck 2004 inspection analysis found that the most frequently cited OOS violation was ''Brakes out of adjustment,'' which accounts for 15.3 percent of all violations. ''Inoperable lamp'' was second, accounting for 11.6 of all OOS violations. Brake-related violations accounted for 35.3 percent of all OOS violations, while light-related violations accounted for 31.4 percent of the total. Load securement violations accounted for 18.6% of all violations, while tire-related violations accounted for 7.5 percent of all violations.

TABLE 10.—OOS VIOLATIONS IN INSPECTIONS OF INTERMODAL CHASSIS ROADCHECK 2004 ANALYSIS

Unit 2—Semitrailers				
Violation		Rank	Count	Percent of total
Code	Description			
396 3A1BA	Brake—Out of adjustment [1]	1	41	15.3
393 9	Inoperable lamp (other than head/tail) [3]	2	31	11.6
393 19	Failing to Equip Vehicle with Operative Turn Signal(s) [3]	3	30	11.2
393 48(a)	Failing to Equip Vehicle with Operative Brakes [1]	4	25	9.3

[4] Volpe Center and FMCSA representatives visited the Ports of Los Angeles and Long Beach, CA, guided by members of the California Highway Patrol from January 21–22, 2004.

TABLE 10.—OOS VIOLATIONS IN INSPECTIONS OF INTERMODAL CHASSIS ROADCHECK 2004 ANALYSIS—Continued

Unit 2—Semitrailers				
Violation		Rank	Count	Percent of total
Code	Description			
393 100(e)	Improper Securement of Intermodal Containers [3]	5	25	9.3
393 126	No/improper intermodal container securement [3]	6	25	9.3
396 3A1B	Brakes (General) [2]	7	21	7.8
393 25(f)	Stop Lamp Violations [3]	8	20	7.5
396 3(a)(1)	Failing to inspect vehicle for safe operation [2]	9	8	3.0
393 75(a)(3)	Tire—Flat and/or audible air leak [3]	10	5	1.9
393 47	Inadequate/Contaminated Brake Linings [2]	11	4	1.5
393 75(a)	Operating with tires having fabric or cords exposed [3]	12	4	1.5
393 75(a)(1)	Tire—Ply or belt material exposed [3]	13	4	1.5
393 75(f)	Tire—Load Weight rating/under inflated [3]	14	4	1.5
393 75(a)(4)	Tire—Cut Exposing ply and/or belt material [3]	15	3	1.1
393 9T	Inoperable tail lamp [3]	16	3	1.1
396 3A1BL	Brake-reserve system pressure loss [3]	17	2	0.7
393 207(a)	Operating Vehicle with Defective/Misaligned Axle or Axle parts [1].	18	2	0.7
393 50	Inadequate Reservoir for Air/Vacuum Brakes [1]	19	2	0.7
393 207(b)	Operating Vehicle with Adj. Axle Assy. With locking Pin Defects [3].	20	2	0.7
	Subtotal—Top 20 Violations	.....	261	97.4
	Total Vehicle Violations on Level 1, 2, 5 Inspections	.....	268	100.0

[1] Violation not readily detectable by driver.
[2] Violation sometimes detectable by driver or needs more study.
[3] Violation generally detectable by driver.

National Inspection Data—Violations for Calendar Year 2003

In addition to examining roadside inspection data from California, Louisiana, South Carolina, and Texas, FMCSA reviewed inspection results for motor carriers that identified themselves on the Motor Carrier Identification Report (Form MCS–150) as engaged in intermodal operations only, and those engaged in intermodal operations as one of their primary operations. The data for these categories of carriers was compared with data for all motor carriers.

There are 641 motor carriers that indicate the only type of activity they engage in is intermodal operations. There are 12,032 motor carriers that include the intermodal operations entry as one of the types of transportation activity they engage in. The total number of motor carriers is greater than 685,000. However, FMCSA analysts believe the number of truly ''active'' motor carriers is probably less than 500,000 (*i.e.*, those currently moving freight or passengers, operating under their own authority and with required filings on record with FMCSA).

Table 11 data show a small difference (2 percent) between the OOS rate for semitrailers being transported by motor carriers in all types of operations and semitrailers being transported by motor carriers involved in both intermodal and non-intermodal operations. However, there is a significant difference between the semitrailer OOS rates for motor carriers engaged exclusively in intermodal operations versus those with combined operations and all motor carriers. The semitrailer OOS rate for intermodal-only operations was 25 percent. The semitrailer OOS rate for motor carriers engaged in intermodal operations combined with some other type of operation(s) was 15 percent. The semitrailer OOS rate for all motor carriers was 13 percent.

The nationwide data from FMCSA's MCMIS suggest the mechanical condition of intermodal container chassis operated by the motor carriers typically selected for roadside inspections is significantly worse than the semitrailers operated by motor carriers in all types of operations. Although there are huge differences in the population size of intermodal-only motor carriers versus all motor carriers, and the total number of vehicle inspections conducted on intermodal-only carriers versus all other motor carriers, FMCSA cannot ignore the disparity in the condition of the vehicles.

TABLE 11.— OUT-OF-SERVICE (OOS) RATES OF ALL AND INTERMODAL-ONLY CARRIERS; DATA FROM THE MOTOR CARRIER MANAGEMENT INFORMATION SYSTEM (MCMIS) CY–2003

Commodity segment	Number of vehicle inspections CY2003	No. of vehicle inspections with 1 or more OOS violations		Percent OOS rate	
		Unit 1 (tractor)	Unit 2 (semitrailer)	Unit 1 (tractor)	Unit 2 (semitrailer)
Intermodal Only (n=641)	2,894	519	725	18	25
Intermodal + Other (n=12,032)	145,377	15,963	22,428	11	15
All Motor Carriers (n=>500,000)	1,476,245	135,000	186,073	9	13

Source: Motor Carrier Management Information System (MCMIS), MCMIS Staff, Run Date—April 29, 2004.

FMCSA's Analysis of the Data

FMCSA believes the data suggest that the percentage of intermodal container chassis being operated in unsafe mechanical condition is likely to be greater than the percentage of non-intermodal semitrailers in unsafe operating condition, based on the inspection data obtained from CA, LA, SC, and TX as part of the Four-State Analysis and the inspection data analyzed as part of the RoadCheck 2004 safety data analysis. While the number of violations cited per inspection for intermodal container chassis may be comparable to the number of violations per inspection of non-intermodal semitrailers, the data indicate the defects or deficiencies observed on intermodal container chassis are likely to be more severe than those noted on non-intermodal semitrailers. Thus, it appears intermodal container chassis are, as a group of commercial vehicles, more likely to be in need of repairs than other types of semitrailers.

Container chassis, as a vehicle type, should not be considered inherently unsafe. Data from Texas concerning inspection results segregated by ownership suggest that container chassis controlled by motor carriers are better maintained than container chassis offered by IEPs to motor carriers. FMCSA's primary safety concern is with the container chassis offered by IEPs, because the agency's research indicates that these chassis do not appear to be covered by inspection, repair, and maintenance programs comparable to those of motor carriers that control their own intermodal equipment, or motor carriers responsible for maintaining other types of semitrailers.

While there is very limited information to determine the extent to which the mechanical condition of intermodal container chassis may contribute to crashes, the data suggest that it is more likely than not that current maintenance practices of many IEPs do not ensure container chassis are in safe and proper operating condition at all times on the highways. Further, the types of defects or deficiencies found on such container chassis during roadside inspections are often so severe the vehicle must be placed OOS. It must be acknowledged, however, that a very high percentage of these violations could have been detected by drivers, had they made—or had the opportunity to make—an adequate visual inspection before leaving the intermodal facility.

Regardless of the lack of crash data on a national level, the information reviewed to date is cause for concern. The Volpe Center, in a 2004 analysis conducted for FMCSA using the FMCSA Roadside Intervention Model, estimated that 55.6 percent of all the CMV crashes avoided as a result of roadside interventions (i.e., roadside inspections and traffic enforcement stops) in 2003 were attributable to the vehicle violations found at the time of the inspection. More recent study has highlighted the role of the driver among crash-related factors. It is clear, though, that attention to equipment condition yields safety benefits. In addition to our continued focus on the driver, FMCSA believes that action should be taken to reduce, to the greatest extent practicable, potential future crashes caused by the mechanical condition of the intermodal container chassis. This rulemaking would also ensure that intermodal container chassis meet the same level of safety as other semitrailers operated in interstate commerce.

IV. Estimated Number of Equipment Providers and Intermodal Container Chassis

Equipment Providers

Container chassis are specialized truck trailers with twist locks. An intermodal container chassis is a reusable asset of its owner. The chassis can belong to virtually any participant in the transportation or logistics chain: (1) Carriers, including ocean shipping lines, railroads, and trucking companies; (2) equipment leasing companies; and (3) shippers. FMCSA estimates that there are 108 non-motor-carrier intermodal equipment providers, consisting of 93 steamship lines, 5 railroads, and 10 container chassis pool operators.[5]

According to the Intermodal Association of North America (IANA), there are 5,500 motor carriers and 65 IEPs that are signatories to the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA), representing approximately 90 percent of the intermodal movements.[6] Furthermore, MCMIS contains information on the motor carriers that identify themselves on the Motor Carrier Identification Report (FMCSA Form MCS–150) as engaging in intermodal operations only, as well as those that include intermodal operations as one of their primary operations, and all other motor carriers. As stated previously, the MCMIS database indicates there are 12,032 motor carriers that included intermodal cargo as one of the cargo types they may carry.

Given that, according to the IANA database, about 5,500 motor carriers are signatories of UIIA, this analysis assumes that about 46 percent of the 12,032 motor carriers in MCMIS, or about 5,600 motor carriers, are engaged in intermodal cargo container operations as a primary operation. Only some of these carriers own or otherwise control (i.e., lease) intermodal container chassis or trailers. In response to FMCSA's survey questionnaire regarding operational characteristics of intermodal tractor-trailers, three out of nine motor carriers (or one-third), suggested that they owned, leased, or otherwise controlled intermodal container chassis for extended periods of time (i.e., beyond one trip). Therefore, FMCSA assumes that one-third of the 5,600 motor carriers engaged in intermodal cargo container operations, or about 1,900 motor carriers, actually own or lease/control intermodal container chassis.

It is difficult to obtain precise estimates of the size and scope of national intermodal container chassis operations. There is no census or database of intermodal container chassis providers that is comparable to FMCSA's MCMIS Census File of motor carriers, which provides not only the name and location of each motor carrier, but also its size, as measured by the number of power units. Therefore, the number of IEPs has been estimated using a combination of MCMIS, IANA, and ATA reports, as well as information obtained from port authority and railroad Web sites. However, FMCSA believes that the 1,900 motor carriers that own intermodal container chassis are already subject to systematic maintenance requirements and would not incur any additional cost burden due to the proposed rule.

Intermodal Container Chassis Population

Information on the number of intermodal container chassis owned by the various equipment owners/providers was as difficult to obtain as the number of intermodal container chassis providers. Based on articles in the motor carrier trade press, FMCSA estimates that there are between 750,000 and 800,000 container chassis in service. According to the Institute of International Container Lessors (IICL) Annual Chassis Fleet Survey,[7] IICL members owned approximately 320,000

[5] The number of equipment providers is estimated from information in the Containerization International Yearbook 2004 for 99 port terminals in the United States. The number of steamship lines is estimated from the direct call liner services at the terminal level.

[6] *http://www.intermodal.org/Assn* Initiatives.html.

[7] *http://www.iicl.org/PDF%20Docs/16thFleetSurveyChassis.pdf.*

container chassis in 2004. According to the IICL, member companies own almost 40 percent of the world's container chassis, as well as own and lease a high percentage of the U.S. container chassis fleet.[8] To be conservative, FMCSA estimates that there are approximately 850,000 intermodal container chassis currently in operation in the United States.

Based on the IICL data on intermodal container chassis, FMCSA assumes the estimated 10 container chassis pool operators control about 38 percent, or 320,000 container chassis. Therefore, this NPRM assumes that steamship lines, railroads, and motor carriers currently own about 530,000 intermodal container chassis in operation in the United States.

Through its surveys of intermodal equipment providers, FMCSA obtained information on about 281,100 intermodal container chassis, or roughly 53 percent of the total number of intermodal container chassis owned by members of the Ocean Carrier Equipment Management Association (OCEMA), Association of American Railroads (AAR), and American Trucking Associations.[9] Based on the information from the three industry associations, about 80 percent of the reported 281,100 intermodal container chassis are owned by the steamship lines, 20 percent are owned by railroads, and less than 0.02 percent of the reported 281,100 intermodal container chassis are owned by the motor carriers. Therefore, based on the reported average fleet size of 22 intermodal container chassis per motor carrier, FMCSA believes that the estimated 1,900 motor carriers that own chassis have approximately 41,800 intermodal container chassis. FMCSA then estimates that 80 percent of the rest of the intermodal container chassis (that is, the 488,200 container chassis that are not owned by either equipment lessors or motor carriers), or approximately 392,000 intermodal container chassis, are owned by the steamship lines and approximately 96,200 are owned by the railroads. Table 12 shows the estimated number of container chassis by owner.

TABLE 12.—ESTIMATED NUMBER OF INTERMODAL CHASSIS BY OWNER

Description of entities	Estimated number of affected entities	Estimated number of chassis
Steamship Lines	93	392,000
Railroads	5	96,200
Common-pool Operators/Equipment Lessors	10	320,000
Motor Carriers	1,900	41,800
Total	2,008	850,000

V. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures)

FMCSA has determined that this rulemaking action is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, and significant under DOT regulatory policies and procedures because of substantial public and Congressional interest concerning the maintenance and roadability of intermodal container chassis and the responsibilities of intermodal equipment providers (IEPs). However, it has been estimated that the economic impact of this proposed rule would not exceed the annual $100 million threshold for economic significance. OMB has reviewed this proposed rule. Improved maintenance is expected to result in fewer out-of-service (OOS) orders and highway breakdowns involving intermodal chassis and improved efficiency of the Nation's intermodal transportation system. To the extent inadequately maintained intermodal chassis are responsible for, or contribute to, crashes, this proposal would also help to ensure that CMV operations are safer, thus reducing the deleterious effect on drivers addressed in section 31136(a)(4). Given the cost results contained in the next section, Estimate of the Compliance Costs for Intermodal Equipment Providers, FMCSA anticipates this rule would not have a significant economic impact on IEPs.

Periodic (annual) inspection is required for every commercial motor vehicle in accordance with current § 396.17.[10] Periodic inspection is intended to complement and be consistent with the more stringent § 393.3 (systematic) inspection, repair, and maintenance (IRM) requirements proposed in the NPRM. Currently, most intermodal container chassis undergo a periodic (annual) inspection. Although existing rules requiring the periodic inspection do not apply directly to IEPs, as a business practice IEPs perform the inspection to ensure motor carriers will accept the chassis. However, many IEPs do not appear to have in place the systematic inspection, repair and maintenance programs (49 CFR 396.3) that provide continuous, on-going oversight of their equipment throughout the year. Therefore, the explicit inclusion of the IEP in § 396.3 of the FMCSRs would make them responsible for compliance with the requirements of applicable statutes and the corresponding regulations.

The proposed amendments to the FMCSRs would explicitly require IEPs to ensure the equipment they tender to motor carriers and drivers complies with the safety requirements in place for other types of trailers operated in interstate commerce. For those equipment providers that have in place systematic inspection, repair, and maintenance programs, including providing the opportunity for CMV drivers to assess the safe operating condition of intermodal container chassis before taking them on the highway and repairing or replacing equipment found to have deficiencies, this proposed rulemaking would impose minimal additional costs. Equipment providers that do not have such systematic programs in place would incur the costs of establishing and maintaining the programs.

[8] *http://www.iicl.org/members.htm.*

[9] For the 3 industry associations, seven out of 18 major ocean common carriers, three out of 5 railroads, and 9 motor carriers responded to a variety of questions regarding chassis ownership and operations.

[10] The term ''commerical motor vehicle'' includes each unit in a combination vehicle. For example, for a tractor semitrailer, full trailer combination, the tractor, semitrailer, and the full trailer (including the converter dolly if so equipped) must each be inspected.

The proposed regulations also address a program for FMCSA to evaluate and audit the compliance of IEPs with those sections of the FMCSRs applicable to them. If FMCSA finds evidence that an IEP is not complying with the regulations concerning intermodal equipment safety, the proposed regulations would allow FMCSA to take appropriate action to bring about compliance with the regulation.

The proposed rule would have some impact upon the responsibilities of drivers and motor carriers. Motor carriers would continue to bear responsibility for the safe operation of equipment in their control on the highways and for the systematic IRM of all motor vehicles, including intermodal equipment, under their control for 30 days or more. Drivers would continue to be responsible for assessing the safe operating condition of the CMVs they will drive (§ 392.7 and § 396.13), and to note and report on defects or deficiencies that could affect the CMV's safety of operation or result in a mechanical breakdown (§ 396.11). IEPs would need to acknowledge receiving that information, and must either repair the equipment or provide a replacement chassis. However, IEPs and their agents may also request FMCSA to undertake an investigation of a motor carrier that is alleged to not be in compliance with regulations issued under the authority of 49 U.S.C. 31151.

Excluding potential costs associated with systematic IRM (§ 396.3) requirements, FMCSA estimates equipment providers' costs to comply with the proposed information collection and recordkeeping requirements would be modest, because the requirements would be limited in scope (filing the Identification Form MCS–150C, marking intermodal equipment with the provider's USDOT number or other identifying number unique to that provider, and complying with recordkeeping requirements associated with equipment inspection, repair, and maintenance).

The economic benefits of this rule are estimated to include (1) safety benefits from avoiding crashes involving intermodal equipment, and (2) efficiency benefits resulting from a reduction in vehicle OOS orders on intermodal chassis, wait times for truckers to receive chassis, and other changes in chassis operations that improve productivity.

The sections below provide details on the estimated costs and benefits of this proposed rule.

Estimated Compliance Costs for Intermodal Equipment Providers

Potential costs considered as a result of this proposed rule include the following:

- Filing Intermodal Equipment Provider Identification Report (Form MCS–150C);
- Displaying a unique USDOT number or other identification number on each chassis;
- Establishing a systematic inspection program, and a repair and maintenance program to ensure the safe operating condition of each chassis;
- Maintaining documentation of the inspection program; and
- Establishing a reporting system for defective and deficient equipment.

When considering costs of the proposed rule, it should be recognized that some of those costs are already being incurred by the industry. As mentioned previously, periodic inspections of intermodal equipment by those controlling that equipment (§ 396.17(c)) are apparently being performed at least once every 12 months, as required. Additionally, as presented later in the discussion of inspection, repair and maintenance costs, surveys of steamship lines and railroads that are also IEPs indicate that at least some of those equipment providers are engaging in regular repair and preventative maintenance, as well as in various inspection activities. Furthermore, information from motor carriers indicates that some are currently doing limited repair and maintenance on the chassis that are tendered by IEPs to them. Therefore, the costs of this rule are lower than they would be if IEPs were not performing any inspections, repairs, or maintenance.

Total first-year costs associated with this proposed rule range from $28 to $41 million, depending on equipment providers' current inspection, maintenance, and repair programs for their chassis. Total discounted costs over the 10-year analysis period range from $147 to $242 million, using a seven percent discount rate.

A copy of FMCSA's preliminary Regulatory Impact Analysis (RIA) is included in this rulemaking docket.

Filing Intermodal Equipment Provider Identification Report (MCS–150C)

Currently, a motor carrier is required to file a Motor Carrier Information Report (Form MCS–150) with FMCSA before it begins to operate in interstate commerce and to file an update of the report every 24 months. The proposed rule would require each equipment provider to register with FMCSA (if it has not already done so) and to obtain a USDOT number or other unique identification number by submitting an Intermodal Equipment Provider Identification Report, Form MCS–150C, to FMCSA. Additionally, each entity must file an update to its initial MCS–150C filing at least every 24 months. FMCSA estimates that 108 entities (93 steamship lines, 5 railroads, and 10 common pool operator/equipment lessors) will need to submit Forms MCS–150C.

Form MCS–150C would be a single-page form that includes questions about basic information, e.g., name, address, telephone number, numbers and types of equipment, etc. FMCSA estimates it would take 20 minutes to complete Form MCS–150C the first time that it is filed.[11]

According to national employment and wage data from the Occupational Employment Statistics survey published by the Department of Labor, Bureau of Labor Statistics, a first line supervisor/manager in a transportation and material moving occupation (those FMCSA believes will be filling out Form MCS–150C) earned a median hourly wage of about $21.08. Total compensation for a supervisor/manager responsible for filing a Form MCS–150C is estimated at $30.79, of which $21.08 is the wage and salary and $9.71 is the benefit.

This evaluation estimates that IEPs would incur a one-time cost of approximately $10.27 per entity (⅓ hour times $30.79), or about $1,110 ($10.27 × 108 = $1,109.16) for the industry to prepare and submit MCS–150Cs to FMCSA. As mandated in section 217 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), Pub. L. 106–159, 113 Stat. 1748, at 1767 (December 9, 1999), the MCS–150 need not be updated more frequently than every two years. FMCSA estimates the biennial update would take considerably less time than the original submission, because most of the information is likely to be the same, and equipment providers would already have had the experience of completing the form at least once before. For purposes of this analysis, the biennial update is estimated to take 10 minutes.[12] In addition to the one-time filing cost, IEPs would also incur a recurrent charge of $5.13 per entity

[11] FMCSA, Motor Carrier Identification Report, 65 FR 70509, November 24, 2000.

[12] The estimated time requirements for chassis owners and providers to fill out an MCS–150C for the first time and biennially are consistent with FMCSA's estimate of the time it takes motor carriers to fill out an MCS–150.

biennially. Table 13 summarizes the estimated first-year costs of initially filing a MCS–150C form with FMCSA, as well as subsequent costs incurred filing the biennial update every two years. Note that motor carriers already are required to file Form MCS–150, so they would not incur any new costs associated with this aspect of the proposed rule.

TABLE 13.—COSTS OF FILING THE INTERMODAL EQUIPMENT PROVIDER IDENTIFICATION REPORT (FORM MCS–150C)

Provider	Number of entities	Existing costs	Additional costs due to the NPRM	
			Initial (1st-year) costs	Total recurring costs (years 2–10)*
Steamship Lines	93	None	$955	$1,618
Railroads	5	None	52	88
Common-pool Operators	10	None	103	173
Motor Carriers	1,900	19,502	0	0
Total	2,008	19,502	1,110	1,880

* Net present value over a 10-year period using a 7 percent discount rate.

Displaying a USDOT Number or Other Unique Identification Number on Each Container Chassis

The proposed rule would require all IEPs who tender such equipment to motor carriers to mark their container chassis with a unique USDOT number that is assigned to those filing the MCS–150C, or another number unique to that entity. FMCSA does not mandate a particular method of vehicle identification; thus, the costs associated with this proposal would vary depending on the method used to mark the container chassis with the required type of marking (i.e., USDOT number versus an alternative identifier). FMCSA believes that the vast majority of IEPs would use either stencils or decals for marking, because these are the cheapest methods. This assumption and the following assumptions on time and material requirements for container chassis marking are consistent with FMCSA's Final Rulemaking analysis for Commercial Motor Vehicle Marking published in the **Federal Register** on June 2, 2000, at 65 FR 35287. FMCSA has estimated that material costs for marking a container chassis with a USDOT number or other unique identification number decrease with increasing fleet size; that is, marking for smaller fleets is estimated at $20 per unit, while marking for IEPs with more than 20 units in their fleet is estimated at approximately $10 per vehicle. The material cost decreases to approximately $2.50 per vehicle for a fleet of more than 1,000 units. The chassis marking costs would impact only those equipment providers of intermodal container chassis who tender such equipment to other parties. This NPRM assumes the material costs associated with marking of intermodal container chassis would average approximately $6.25 per container chassis.[13]

FMCSA estimates that the average time to affix a USDOT number or other unique identification number would be about 12 minutes. According to national employment and wage data from the Occupational Employment Statistics survey, the median hourly wage rate for a painter of transportation equipment is $16.39. Incorporating a 31.5 percent benefits package yields a total hourly compensation rate of $21.55. Assuming 12 minutes per marking, the labor cost to mark each intermodal container chassis is estimated to be roughly $4 per container chassis after rounding.

Combining the above estimates for material and labor, FMCSA estimates that the total costs to mark one intermodal container chassis with a USDOT number or other unique identification number is about $11 (after rounding). First-year costs would equal $8.9 million to mark all container chassis operating in the United States. Subsequently, every year thereafter, a portion of the chassis will be retired and replaced by new chassis, each of which will need to be marked. FMCSA estimates that the operational life of a chassis is 14 years on average. Consequently, for the purposes of this analysis, it is assumed that 1/14th of the chassis fleet is retired and replaced annually. Total recurring costs (in years two through 10 of the analysis period) equals $3.9 million, with total 10-year chassis marking costs estimated at $12.8 million (after rounding). Table 14 illustrates the estimated number of container chassis and costs of marking. The cost estimates assume the identification number would be applied with a stencil and spray paint. If the identification number were to be applied using decals, recurring costs may be somewhat higher to account for replacement of decals that loosen over time. Note that motor carriers are assumed to incur no costs associated with the chassis marking requirements, because it is believed that generally they do not tender chassis to other parties for drayage.

[13] The $6.25 estimate is the average of $2.50 and $10.00. We assume that there would be a negligible number of equipment providers owning fewer than 6 chassis. Therefore, the highest material cost, $20 per unit, was not used in this analysis. FMCSA acknowledges that the estimated container chassis marking cost of $6.25 per container chassis is conservative and probably over-estimates the costs of compliance.

TABLE 14.—ESTIMATED COST OF CHASSIS MARKING

Owner type	Entities	Total number of chassis controlled [14]	Existing costs	Additional costs due to the NPRM	
				Initial costs	Total for recurring costs (years 2–10)*
Steamship Lines	93	392,000	None	$4,327,680	$1,882,232
Railroads	5	96,200		1,062,048	461,886
Common-pool Operators	10	320,000		3,532,800	1,536,507
Motor Carriers	1,900	41,800		0	0
Total	2,008	850,000	$0	8,922,528	3,880,625

* Net present value over a 10-year period using a 7 percent discount rate.

Establishing a Systematic Inspection, Repair, and Maintenance (IRM) Program

Periodic inspections. Current regulations (49 CFR 396.17) require motor carriers or their agents to conduct periodic (annual) inspections of their equipment. With regard to intermodal chassis, these inspections appear to be conducted for the most part by IEPs. As a result of research conducted prior to this rulemaking (i.e., surveys, port visits, roadside inspections), FMCSA concluded that the IEPs did in fact appear to be conducting the vast majority of inspections that would satisfy § 396.17 requirements regarding periodic (annual) inspections of the chassis. As such, FMCSA believes there would be no new costs to equipment providers or motor carriers for periodic (annual) inspections of intermodal chassis because of this proposed rule.

Systematic inspections. In addition to the periodic (annual) inspection regulations (396.17), § 396.3 requires every motor carrier or their agent to systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control. The parts and accessories are required to be in safe and proper operating condition at all times. These parts and accessories include those specified in Part 393 and any additional parts and accessories that may affect the safety of operation, including but not limited to frame and frame assemblies, suspension systems, axles and attaching parts, wheels and rims, and steering systems. However, the proposed rule now would explicitly require IEPs to comply with the systematic inspection, repair, and maintenance requirements of § 396.3. These requirements do not provide specific intervals for the routine inspections, or provide inspection criteria.

Frequency of inspection. As regards estimating costs of making the systematic inspection, maintenance, and repair requirements applicable to intermodal equipment providers, FMCSA first attempted to determine whether the equipment providers had maintenance or repair programs that could satisfy some or all of the proposed § 396.3 requirements. Responses from the survey of steamship lines indicated that the seven entities queried were fully complying with existing systematic inspection, maintenance, and repair regulations. However, anecdotal information obtained from port visits and participation in roadside inspections of intermodal chassis by FMCSA analysts indicated otherwise. Because SAFETEA–LU explicitly requires intermodal equipment providers to comply with the systematic inspection, repair, and maintenance requirements of § 396.3, the relevant question then becomes whether there are any new costs associated with this aspect of the proposed rule. Motor carriers were already directly subject to these requirements, and this proposed rule would simply ensure the transfer of this responsibility to non-motor carrier IEPs.

As a result of its investigation, FMCSA concluded that there was a significant probability that full compliance was not being achieved with the existing regulations. IEPs, as a customary business practice, do not provide systematic inspection, repair and maintenance programs. Consequently, for the purpose of estimating the economic costs of this proposed rule, FMCSA assumes that non-motor carrier IEPs would in fact be required to undertake new costs because of this rulemaking. Whether or not this accurately represents the current situation, our assumption of less than full compliance is conservative because it helps ensure that FMCSA does not underestimate the economic costs of this proposed rule.

Because the regulatory impact analysis (RIA) must quantify the number of additional inspections to be conducted each year as a result of this proposed rule, FMCSA estimates about one a year is conducted by IEPs now, but four are needed for a reasonable systematic inspection, repair and maintenance program. We estimate that, on average, three additional inspections would be required for that portion of the non-motor carrier owned or controlled intermodal chassis currently in operation (even though the proposed rule sets no explicit requirements on the number of inspections per chassis under a systematic IRM program). FMCSA believes that a minimally-compliant IEP could fulfill the requirements of this proposal. For the purposes of estimating costs for the RIA, this assumption would effectively amount to a quarterly inspection program for the chassis owned or controlled by IEPs.

Regarding the number of chassis being maintained in a manner consistent with the regulations, FMCSA estimates between 25 and 50 percent of the existing intermodal chassis population are currently not being properly maintained.[15] Two estimates are chosen here due to the uncertainty associated with current systematic maintenance practices. FMCSA estimates that each chassis that is not currently maintained would receive three additional inspections each year on average as part of systematic IRM programs implemented or modified as a result of this proposed rule. Conversely, it is estimated that the remainder, or 50 to 75 percent of all chassis currently in use,

[14] This term ''controlled'' is loosely defined here as those chassis owned or leased (long term) by the entity and for which they have responsibility or decision-making authority over maintenance.

[15] This percent is based on the agency's analyses of the AAR and OCEMA responses to its surveys, as well as from information gathered from our port visits.

are already provided at least four complete inspections per year and therefore, would not require any additional inspections as a result of this proposed rule.

This analysis uses an average of 30 minutes to conduct an inspection of an intermodal chassis and that a transportation inspector earning $30.79 per hour in wages and benefits would perform the inspections, supported by a mechanic. This is based on data from the AAR survey response. It is also consistent with the amount of time to complete a Level V inspection. The mechanic is assumed to devote 15 minutes to the inspection, the inspector 30 minutes. The median hourly wage for a mobile heavy equipment mechanic is estimated from employment and wage data from Occupational Employment Statistics to be $17.69 as of May 2003. Assuming benefits are equal to 31.5 percent of wages, the total loaded labor cost of the mechanic would be $23.26 per hour. The total cost of each additional inspection of an intermodal chassis would be $21.21. This cost estimate is consistent with the AAR members' estimates of annual inspection costs of $20 if performed by their own personnel and $18 if outsourced to an on- or off-site terminal inspection operator. The cost of four inspections per year would be $84.84.

Additional Maintenance and Repair Costs. FMCSA recognizes that the maintenance and repair activities of some systematic IRM programs might need to be expanded in order to bring the programs into full compliance with the proposed requirements. For the most part, however, the primary change anticipated is that maintenance and repair will become more proactive and less reactive. For instance, some IEPs currently perform preventative maintenance when driver, inbound, outbound, or roadability inspections at terminals find problems (or during the annual inspection required by the FMCSRs). The proposed rule would make the preventative maintenance of those providers more regular or time-based. This would place necessary maintenance and repair activities upstream in the interchange process reducing the ''reactive'' nature of that activity.

There will most likely be some shift of repair costs from motor carriers to IEPs, but the magnitude of this shift is uncertain. However, FMCSA believes this shift represents a transfer payment of existing costs, and therefore is not expected to impact the overall costs or benefits of the proposed rule.

Total Systematic Maintenance Program Costs. Table 15 shows the estimated costs of IRM programs for IEPs, based on assumptions about existing compliance. Estimates are presented for the cases where (1) 50 percent of all chassis are assumed to be in compliance with existing systematic inspection, repair, and maintenance regulations (requiring no additional inspections per year), while the other 50 percent are assumed to require three additional inspections per year (where the fourth quarterly inspection represents the annual inspection, which FMCSA believes is already being performed); and (2) where 75 percent of all chassis are assumed to be in compliance with existing regulations (requiring no additional inspections per year), while the other 25 percent would require three additional inspections per year. As Table 15 indicates, according to FMCSA assumptions for this analysis, the proposed rule is expected to add between $13.5 million and $27.0 million per year to the cost of systematic IRM programs for IEPs, depending on the percentage of chassis which are already believed to be in compliance with the existing systematic inspection, repair, and maintenance regulations. The estimated total present value of the cost of systematic IRM requirements for equipment providers over a 10-year period is estimated to be between $95 million and $190 million. Annual costs associated with this rulemaking represent an increase of one to three percent in the costs of systematic IRM programs already undertaken by non-motor carrier IEPs, based on information obtained from equipment provider surveys regarding the average annual maintenance costs incurred per chassis.

TABLE 15.—ESTIMATED COST OF SYSTEMATIC INSPECTION, REPAIR, AND MAINTENANCE PROGRAMS FOR CHASSIS

Intermodal provider	Number of		Existing inspection, repair, and maintenance costs		Additional costs due to NPRM	
	Providers	Chassis	Assuming 50% of chassis are in full compliance and 50% require three additional inspections per year	Assuming 75% of chassis are in full compliance and 25% require three additional inspections per year	Assuming 50% of chassis are in full compliance and 50% require three additional inspections per year	Assuming 75% of chassis are in full compliance and 25% require three additional inspections per year
Steamship Lines	93	392,000	.....	.....	.....	.....
Railroads	5	96,200	.....	.....	.....	.....
Common-pool Operators	10	320,000	$913,771,250	$927,292,625	$27,042,750	$13,521,375
Motor Carriers	1,900	41,800	.....	.....	.....	.....
Total	2,008	850,000	.....	.....	.....	.....

Recordkeeping

As stated earlier, FMCSA believes that the systematic IRM program called for in the proposed rule will require four inspections of intermodal chassis per year, on average.

FMCSA estimates that the time needed to document and file each inspection report is approximately 3 minutes. Therefore, this analysis assumes that it would take each IEP approximately 3 minutes on average per intermodal chassis per inspection to document and retain the inspection reports. Assuming that a transportation inspector earning $30.79 per hour in wages and benefits would perform the inspections and document the findings, the total cost to document and retain each inspection report is estimated to be approximately $2 per intermodal chassis per inspection (or ($30.79/60) × 3 minutes).

Annual Inspections. Under current regulations, motor carriers are required

to comply with the periodic recordkeeping requirements of § 396.21, and the proposed rule would not impose any additional recordkeeping requirements on them. Additionally, based on its research, FMCSA believes that other IEPs (i.e., steamship lines, railroads, and common pool operators) are currently inspecting their chassis on an annual basis. As such, for the purposes of this analysis, these other IEPs are assumed to prepare a report that is equivalent to the one required by § 396.21, given that FMCSA has received no information through its surveys, port visits, or roadside inspection activities, that would indicate otherwise. The proposed regulatory change, consequently, will not impose any additional regulatory requirements on the other IEPs relating to their annual inspections.

Systematic Inspections. It is assumed that motor carriers are currently performing full inspections of intermodal chassis they control four times per year. This is not assumed to be the case for IEPs, however. Some portion of chassis owned or controlled by other (non-motor carrier) equipment providers (between 25 percent and 50 percent in this analysis) are assumed to be inspected once annually. Consequently, the proposed regulatory change will require additional recordkeeping for non-motor carrier IEPs.

Assuming that the recordkeeping for each intermodal chassis inspection costs $2, and that these intermodal equipment providers will need to perform three additional inspections per year per chassis, the recordkeeping requirements of the proposed regulatory change are expected to cost the non-motor carrier IEPs an additional $6 per chassis per year.

Total Cost of Recordkeeping. Table 16 presents the total annual estimated cost of recordkeeping currently and under the proposed regulations, along with the increase in the cost of recordkeeping attributable to the new regulations.

TABLE 16.—ESTIMATED COST OF SYSTEMATIC INSPECTION, REPAIR, AND MAINTENANCE RECORDKEEPING

Description	Estimated number of		Existing annual costs	Annual cost under the proposed regulations	Change in annual costs attributable to the proposed regulations
	Providers	Chassis			
Steamship Lines	93	392,000	$784,000	$3,136,000	$2,352,000
Railroads	5	96,200	192,400	769,600	577,200
Common-pool Operators	10	320,000	640,000	2,560,000	1,920,000
Motor Carriers	1,900	41,800	334,400	334,400	0
Total	2,008	850,000	1,950,800	6,800,000	4,849,200

The annual cost of recordkeeping attributable to the proposed rule is $4,849,200. Over the 10-year analysis period, the present value of the cost of recordkeeping would be $38,907,752.

New Reporting System for Defective/Deficient Equipment. The proposed rule would require that IEPs establish a system for motor carriers and drivers to report to the IEPs any defects or deficiencies in tendered chassis that would affect the safety of the operation of those chassis or result in its mechanical breakdown on the road. This proposed change would require: (1) The establishment of the system; (2) the minimum information that the IEP must obtain from motor carriers and drivers; (3) the corrective actions that must be taken when a chassis is identified as being defective or deficient in some way; and (4) the retention period for all documentation that is generated as a consequence of this system. This requirement would be added to the FMCSRs in a new § 396.12. All of these potential impacts are discussed.

Nature of Notification. The discovery of a chassis problem by a driver could occur at any of a variety of locations. It might occur during the driver's mandated inspection of the chassis at the start of a trip, during the movement over the public roadways from the origin terminal to the destination of the container on the chassis, or at the destination. Potentially, the discovery could occur hundreds of miles distant from the intermodal providers' nearest operational location. The average length of haul for chassis transported by the nine trucking firms that responded to FMCSA's intermodal survey varied from 11–20 miles to 150–200 miles.

For purposes of this analysis, FMCSA assumes that no additional costs will be incurred in order for IEPs to receive notification of problems. Because problems with chassis already occur, FMCSA believes that such systems are already well established to address problems. Additionally, FMCSA received no information during its data collection immediately prior to this rulemaking to indicate otherwise, and the agency found such systems already in place during its port visits. Consequently, no additional costs are expected to result.

Motor Carriers and Drivers. For the systems established by IEPs to be effective, motor carriers and drivers must report defective or deficient chassis. Proposed § 390.44 would require drivers to report to the IEP, or its agent, the condition of each vehicle operated. Also, motor carriers and drivers are responsible for taking only roadworthy chassis on the public roadways, so it would be in their best interest to report any problems with defective or deficient chassis that are encountered.

For purposes of this analysis, FMCSA assumes that no additional costs will be incurred by drivers and motor carriers in order to notify chassis providers of problems with defective or deficient chassis. Problems with chassis already occur, and drivers or motor carriers are already contacting providers (whether in person or by phone) to inform them of those problems. Additionally, FMCSA believes that the new application of the systematic IRM requirement to equipment providers will generally result in these problems being noticed and corrected prior to the transfer of the chassis.

Driver Chassis Inspection Reports. According to proposed § 396.12, the reports to be received by the IEP from the motor carrier and the driver will need to include the following information:

- The name of the motor carrier responsible for the operation of the chassis at the time the defect or deficiency was discovered by or reported to the driver;

• The USDOT identification number or other unique identification number of the motor carrier;
• The date and time the report was submitted; and
• The defects or deficiencies reported by the motor carrier or driver.

As mentioned before, chassis currently experience problems that are being reported to IEPs. With the possible exception of the USDOT identification number or other unique identification number, good business practice would seem to require that all of the information mandated in reports under new § 396.12 is currently being collected. Additionally, FMCSA received no information during its data collection immediately prior to this rulemaking to indicate otherwise. Therefore, no additional costs are expected to result from the required driver chassis inspection reports.

Corrective Actions. Proposed § 396.12 would require each IEP to establish a system for motor carriers and their drivers to report damage, defects, and deficiencies. After a chassis returns to the possession of the IEP, § 396.12 would mandate that the provider must correct any reported defects or deficiencies in the chassis that make the chassis not roadworthy. Furthermore, before a provider can place the chassis in service, the provider must document the actions taken to correct any reported defect or deficiency, or must document that repairs were unnecessary.

Based on information obtained from equipment provider surveys FMCSA has concluded that IEPs currently have repair facilities for dealing with chassis that are not roadworthy. Additionally, during its port visits, FMCSA staff identified repair facilities at all the terminals they toured. Consequently, § 396.12 would not require the establishment of new facilities, nor is there any reason to believe that the new section will necessitate any expansion of existing facilities.

Good business practice for chassis providers and their service departments would include documenting repairs made or documenting that repairs were not made. This information assists those monitoring the cost and work of repair facilities. Information obtained from the equipment providers' surveys confirmed that IEPs are indeed following good business practice. The proposed § 396.12 would not increase the need for this documentation. It might, however, change the nature of the documentation somewhat. For instance, if a chassis were brought in for a defective wheel and no wheel problem could be found, then current documentation might just say ''Checked wheels.'' Under the proposed § 396.12, the documentation might say ''Check wheels after receiving trouble report from motor carrier. Complete check revealed no problem.'' FMCSA believes any change in documentation would be minor and would not materially add to the costs of the providers, however.

Retention of Records. Under proposed § 396.12, all documentation must be kept for a period of three months from the date of a trouble report. Available intermodal chassis provider industry information indicates that records of inbound and outbound inspections are kept between one and seven years, with three to five years being typical.[16] FMCSA has no reason to expect that repair records, which are arguably more critical to the operation of intermodal chassis providers than records on inbound and outbound inspections, would be kept for less time. Additionally, FMCSA received no information during its data collection effort immediately prior to this rulemaking to indicate otherwise. Consequently, the retention of records, as required by proposed § 396.12, would not add to the costs of intermodal chassis providers.[17]

Overall Impact. The overall impact of proposed § 396.12, Procedures for intermodal equipment providers to accept reports required by § 390.44(b), on the costs of intermodal chassis providers, is believed to be negligible. All required actions regarding the collection and retention of records are currently being performed in one form or another, according to FMCSA survey analysis and other research (port visits). Proposed § 396.12 is not expected to add materially to the current workload of intermodal chassis providers, their service organizations, or to motor carriers and their drivers.

Total Compliance Costs of the Proposed Regulations

Table 17 summarizes the expected compliance costs attributable to the proposed regulation.

TABLE 17.—ESTIMATED COSTS OF THE PROPOSED RULE

Requirement	Existing costs (annual)	Additional costs due to the NPRM		
		Initial cost (year 1)	Total for recurring costs (years 2–10)**	Total cost (years 1–10)**
Filing MCS–150C	$19,502	$1,110	$1,880	$2,990.
Chassis Marking	$0	$9,384,000	$4,081,352	$13,465,352.
Systematic Inspection, Repair, and Maintenance Costs.	$913,771,250 to $927,292,625.	$13,521,375 to $27,042,750.	$81,447,105 to $162,894,210.	$94,968,480 to $189,936,960.
Recordkeeping	$1,950,800	$4,849,200	$34,058,752	$38,907,952.
§ 396.12	*	$0	$0	$0.
Total Costs	$915,741,552 to $929,262,927.	$27,292,899 to $40,814,274.	$119,388,362 to $200,835,467.	$146,681,261 to $241,649,741.

* Included in the costs of other actions.
** Net present value over a 10-year period using a 7 percent discount rate.

The total compliance costs, or the sum of the total initial and total recurring costs, are expected to be between $147 million and $242 million. Consistent with OMB directives, this is the present value of the expected cost stream calculated over a 10-year period using a 7 percent discount rate.

FMCSA seeks comment on the cost analysis.

[16] Information on intermodal chassis operations submitted by OCEMA to FMCSA in 2004 in response to questions posed by FMCSA.

[17] Alternatively, any costs associated with the retention of records for the proposed defective and deficient equipment reporting system could be assumed to be covered by the costs associated with recordkeeping.

Safety and Economic Benefits of Improving Container Chassis Maintenance

The purpose of the proposed regulation is to ensure that intermodal chassis used to transport intermodal containers are safe. The explicit inclusion of IEPs in the scope of the FMCSRs would ensure that IEPs could be subject to the same enforcement proceedings, orders, and civil penalties as those applied to motor carriers today. The systematic inspection, maintenance, and repair requirements would ensure safer and more reliable container chassis on the nation's highways. The expected benefits of the proposed rule include the following:

- Increased safety of intermodal chassis operation as a result of reducing crashes attributable to those chassis;
- Increased operational efficiency of intermodal chassis as a result of—
  - Reducing the vehicle out-of-service rate;
  - Reducing the average idle time spent by truckers waiting for chassis repairs on the road;
  - Reducing the average time spent by truckers at rail terminals or port facilities waiting to be given a roadworthy chassis. This effectively decreases congestion costs at those facilities, which are typically located in urban areas.

The following sections quantify the potential benefits of the proposed rule by estimating the number of crashes avoided to justify the compliance costs directly or indirectly imposed by the rule. The sections also provide qualitative discussion of benefits of the proposed rule where quantitative estimates are not available.

Threshold Analysis for Safety Benefits. Section III of this document contains data analysis conducted by FMCSA that shows that intermodal trailers have significantly higher vehicle out-of-service (OOS) rates than non-intermodal trailers. The results indicate that chassis owned by a motor carrier appear to have lower OOS rates than the comparable equipment owned by non-motor carrier equipment providers. These findings are still considered preliminary because the sample size of chassis inspection data by ownership type was quite small. The proposed rule's explicit inclusion of IEPs would better enable FMCSA to determine whether and how equipment providers are complying with provisions of the FMCSRs and to compel compliance, if necessary. Additionally, FMCSA analysts believe that a portion of the chassis currently in use will receive additional inspections each year, because this proposed rule explicitly requires non-motor carrier intermodal equipment providers to comply with the existing systematic inspection, repair, and maintenance regulations. A better-inspected, maintained, and repaired intermodal chassis fleet would be likely to result in a decrease in crashes on the Nation's highways.

The estimated cost of a crash involving a fatal injury is $3.57 million for a truck tractor with one trailer, and the costs of non-injury or property-damage-only crashes are estimated to be $12,077 each. The estimated average cost of a crash reported to police involving a truck tractor with one trailer is $76,698.[18] Using recent data on the number of crashes involving truck tractors with single trailers, Table 18 estimates the total crash costs for these vehicles. The cost estimate shown in Table 18 includes the cost of fatal and injury crashes, but does not include the costs associated with property-damage-only crashes.

TABLE 18.—ESTIMATED COSTS OF CRASHES INVOLVING TRUCK TRACTORS WITH TRAILERS, 2002

Truck tractors	Fatal crashes	Injury crashes	Total estimated costs
1 trailer	2,937	42,000	$3,447 million.

Source: ''Traffic Safety Facts 2002'', available at: *http://www-nrd.nhtsa.dot.gov/Pubs/TSF2002.pdf.*

As stated, the rule is expected to result in compliance costs of between $28 million and $41 million in the first year, and $147 million and $242 million over the entire 10-year analysis period. The proposed rule should result in benefits that are greater than the cost of compliance, which would result in a positive cost/benefit ratio. Focusing on saved lives alone, the proposed rule would need to prevent between 8 and 12 fatalities per year attributable to crashes involving intermodal chassis over the 10-year period. These 8 to 12 fatalities represent just 0.2% to 0.3% of the 3,762 fatalities in combination truck crashes in calendar year 2003. At the break-even point, compliance costs equal the benefits attributable to avoiding just a few of the fatal crashes that would have occurred in the absence of the proposed regulation. Of course, reduced injuries, property damage, and other incident consequences would reduce the number of lives that would need to be saved in order for the rule to be cost-beneficial. We believe the proposed rule is likely to prevent enough crashes to justify the costs.

Benefits Associated With Increased Operational Efficiency

While operating efficiency is not something FMCSA regulates, we note that in addition to the safety benefits, the proposed rule is likely to produce benefits from improved operational efficiency. Currently, from our research, FMCSA concludes there is no standard procedure for a truck driver or motor carrier to follow when confronted with an intermodal chassis placed OOS as a result of a roadside inspection. One of the uncertainties is the issue of responsibility. If the chassis's problem developed after the driver left the terminal, then the contractual responsibility in many cases lies with the commercial driver and the motor carrier, not with the equipment provider. If, however, the chassis problem was a pre-existing condition, then the chassis owner is responsible. According to IANA, many equipment providers have service contracts with repair vendors. If a chassis problem needs to be fixed in order for the driver to resume operation, these vendors are often called to provide the repairs. Additional uncertainty surrounds the question of authorization for this repair, because the service contract is between the service vendor and the chassis provider and the provider would have to authorize a repair request. In some cases, the truck driver's motor carrier

[18] Estimated in 2003 dollars calculated using the gross domestic product (GDP) deflator, and estimates from ''Revised Costs of Large Truck and Bus Involved Crashes,'' final report to FMCSA by Eduard Zaloshnja and Ted Miller, available at: *http://ai.volpe.dot.gov/CarrierResearchResults/CarrierResearchContent.asp.*

would have to make arrangements with the chassis provider's service vendor to repair the chassis.

The potential reduction of OOS rates would increase the operational efficiency of intermodal transportation as a whole. A chassis placed OOS must not be operated until the repairs required by an OOS order have been made. According to information provided to FMCSA by ATA members, carriers spend, on average, 3 hours of a driver's time and 1.5 hours of other employees' time to correct each vehicle OOS order received on chassis tendered by an equipment provider. The opportunity cost for a truck driver and one employee's time is calculated at $116.35 per vehicle OOS order attributable to a problem chassis.[19] Note that this is considered a conservative estimate, because FMCSA used an average commercial driver wage rate to estimate the opportunity costs of a vehicle OOS order, in lieu of a ''revenue per tractor'' estimate, which would be higher because it accounts for the opportunity cost of the vehicle as well as the driver.

Given that, on average, 18.5 percent of roadside inspections of intermodal chassis result in vehicle OOS violations, cost savings, in terms of the opportunity cost of driver and motor carriers' time, would quickly add up, as there are approximately 850,000 intermodal chassis in operation in the U.S. Roadside repair costs for intermodal chassis, other than those involved in vehicle OOS orders, may also be significantly reduced, given evidence indicating that intermodal chassis typically have more equipment defects and deficiencies than non-intermodal trailers. Clearly, a reduction in equipment violations severe enough to cause a chassis to be placed OOS would mean less disruption of supply chains. FMCSA attempted conservatively to estimate the number of intermodal chassis vehicle OOS orders that would be avoided as a result of this proposed rule. We assumed that this proposal would reduce the intermodal chassis OOS rate to the national vehicle OOS rate for all trailers (discussed earlier in this NPRM in Table 11). Initial results indicate that such changes could reap efficiency benefits of $40,000 to $410,000 annually. Again, FMCSA considers these estimates to be conservative, because it used a driver wage rate, rather than an average revenue per tractor estimate, to determine the opportunity costs of vehicle OOS orders. Complete details of this analysis are contained in the full RIA in the docket.

At intermodal terminal facilities, the effect of the proposed rule would be to reduce the time needed for motor carriers to pick up a roadworthy chassis. Motor carriers report that they currently spend between 30 minutes and 2 to 3 hours to find a roadworthy chassis. That means that motor carriers could save between $11.69 and $46.78 in driver's costs alone, if this wait/search time could be completely eliminated. The proposed rule, by mandating that chassis providers implement systematic inspection, maintenance, and repair programs, can be expected to reduce the number of defective chassis being offered in service, and thereby reduce the time needed by truck drivers to find a roadworthy chassis.

Delays at a port or rail intermodal terminal and on the road due to poor container chassis condition affect only a small segment of the motor carrier industry. However, delays at intermodal facilities and the related issue of poor container chassis condition on the road are crucially important to trucking firms that pick up and deliver freight at ports and rail terminals. Drayage firms that service ports, especially, operate in a highly competitive market, with many small motor carriers and owner-operators competing to provide services. The drivers are typically paid per load and operate on very slim profit margins. Delays at port or rail facilities as well as on the road impose a cost on these firms in lost revenues and profits. The reduced efficiency of this critical link in the transportation system also imposes costs on intermodal freight customers.

Intermodal freight volume is expected to continue to grow, and ports and rail terminals must improve competitiveness both locally and globally. This will require the utilization of existing infrastructure and greater economic efficiency. The amount of cargo moving in maritime containers is forecasted to grow nearly three-fold by 2020, rising from 57 million twenty-foot containers in 2000 to 163 million in 2020. Systematic inspection, repair, and maintenance of intermodal container chassis would ensure safe operation of these container chassis on the road, which in turn would enhance the reliability and economic efficiency of the intermodal freight traffic in the U.S.[20]

Table 19, below, compares the current Federal requirements with new requirements proposed in this NPRM and shows the benefits and costs associated with the proposals.

[19] Using National employment and wage data, the median hourly wage for a truck driver is estimated at $16.01 and supervisor/manager is estimated at $21.08. With fringe benefits added to the wages, the hourly wage and salaries are estimated at $23.39 and $30.70 for truck driver and the manager/supervisor respectively.

[20] Principles for a U.S. Public Freight Agenda in a Global Economy, from Martin E. Robins and Anne Strauss–Wieder, Metropolitan Policy Program, Brookings Institution, January 2006, citiing Nariman Behravesh, ''The US and Global Outlook: Storm Clouds on the Horizon?'' Global Insight, Port of New York and New Jersey Port Economic Briefing, October 2004.

TABLE 19.—COMPARISON OF COSTS AND BENEFITS OF THE PROPOSED REGULATION

Regulatory provisions	Comparison		Discounted 10-year costs	Benefits
	Current requirement	NPRM		
Part 386—Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings.	Enables the Assistant Administrator to determine whether a motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of FMCSA has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations.	Explicitly includes intermodal equipment providers.	No new costs associated with this provision.	Explicit inclusion of intermodal equipment providers would make them subject to the provisions or requirements of applicable statutes and the corresponding regulations; and, if violations are found, the Assistant Administrator could issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both. This will result in the following: 1. Increased safety of the intermodal container chassis operation and reduced crashes involving intermodal container chassis. 2. Increased operational efficiency of the intermodal container chassis operation. a. Reduced number of vehicle out-of-service orders related to poor intermodal container chassis condition. b. Reduced idle time spent by the driver and the truck while waiting for required repairs on the container chassis. c. Reduced time spent by truck drivers to find road worthy container chassis at the port or rail terminals. 3. Revised rules that explicitly require equipment providers to be responsible for the safety and security of their equipment: a. Eliminate externality issues that are involved when one party's (owners of intermodal container chassis—steamship lines and railroads) actions impose uncompensated costs (in terms of lost productivity, uncompensated repair costs, and decrease in overall profit margin) on another party (motor carriers). Eliminate potential barriers to information on scope and jurisdiction of FMCSRs.

TABLE 19.—COMPARISON OF COSTS AND BENEFITS OF THE PROPOSED REGULATION—Continued

Regulatory provisions	Comparison		Discounted 10-year costs	Benefits
	Current requirement	NPRM		
Part 390—General applicability.	Applies to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce. Motor carriers must assist in investigations and special studies. Motor carriers must file Form MCS–150. CMVs must be marked as specified.	Explicitly includes intermodal equipment providers and intermodal equipment.	1. $2,990 to file MCS–150C. 2. $13.5 million over 10 years for chassis marking costs.	
Part 393—Parts and Accessories Necessary for Safe Operation.	Every employer and employee shall comply and be conversant with the requirements and specifications of this part. No employer shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part.	Equipment providers would be held accountable for offering in interstate commerce intermodal equipment that is not equipped with all required parts and accessories and would be required to ensure that each of those components are in safe and operable condition.	No new cost associated with this provision.	
Part 396—Inspection, Repair, and Maintenance.	Every motor carrier, its officers, drivers, agents, representatives and employees shall comply and be conversant with the rules of this part. Every motor carrier shall systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control and keep the necessary records.	Intermodal equipment providers would be required to: 1. Comply and be conversant with the rules of this part. 2. Establish a systematic inspection, repair, and maintenance program and comply with inspection and recordkeeping requirements established in part 396 for motor carriers. 3. Establish a system for motor carriers and drivers to report defects and deficiencies in intermodal equipment, and to keep records.	1. No new cost associated with annual (periodic) inspection provision. 2. Equipment providers may incur an additional cost of $95–190 million over 10-year analysis period to achieve full compliance with Systematic inspection, repair, and maintenance requirements, depending upon current degree of compliance with part 396. 3. There may be an additional cost of $38.9 million over the 10-year analysis period in new recordkeeping costs.	

FMCSA requests comment on the costs and benefits estimated in this analysis.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. While we believe the rulemaking will not have a significant economic impact on a substantial number of small entities, we have chosen not to certify the proposed rule at this point. Instead, we decided to complete an Initial Regulatory Flexibility Analysis (IRFA) and solicit comments on our analysis. The IRFA and the attached regulatory impact analysis (RIA) include our discussion of the regulatory impacts, and the reasons for our recommended action.

Need for the NPRM: On January 26, 2004, the Secretary of Transportation announced that the USDOT would launch a safety inspection program for intermodal container chassis. The inspection program would provide added oversight to help ensure that the intermodal container chassis used by motor carriers to transport intermodal cargo containers are in safe and proper working order.

The announcement explained the new inspection program would be modeled on FMCSA's compliance review program already in place for the Nation's interstate motor carriers. Chassis providers would be required to obtain a USDOT number and display it on their chassis so that safety performance data could be captured. FMCSA would apply the same penalty structure and enforcement actions used for motor carriers to intermodal equipment providers demonstrating patterns of non-compliance with the new safety requirements.

Subsequently, Section 4118 of SAFETEA–LU was enacted and directs the Department of Transportation to undertake a rulemaking relating to the roadability of intermodal equipment. FMCSA, working in coordination with

other USDOT agencies, initiated this new rulemaking to advance the Department's safety goal without unnecessarily involving the Department in the commercial relations or allocation of liability between intermodal parties.

Description of Actions: In this NPRM, FMCSA is proposing to amend the FMCSRs to require entities that offer intermodal container chassis for transportation in interstate commerce to (i) file a Motor Carrier Identification Report (FMCSA Form MCS–150), (ii) display on each chassis a unique identification number (e.g., USDOT number) assigned or approved by FMCSA, (iii) establish a systematic inspection, repair and maintenance program to ensure the safe operating condition of each chassis and maintain documentation of the program and (iv) provide a means for effectively responding to driver and motor carrier complaints about the condition of intermodal container chassis.

Identification of potentially affected small entities: Entities likely to be affected by the NPRM are 93 steamship lines, 5 railroads, 10 common pool operators, and 1,900 motor carriers. All 93 steamship lines are foreign entities, and the provisions of the RFA do not apply to foreign entities.[21] According to the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. The following table indicates the percentage of affected entities defined as ''small businesses.'' [22]

The railroads that own intermodal chassis are assumed to be 5 major railroads in the United States and would not be considered small business as defined by the SBA. Additionally, it is FMCSA's belief that most of the common-pool operators that own intermodal chassis would not be classified as small business by SBA size standards, given the average size of the chassis pools they are estimated to be operating.[23]

The for-hire trucking industry in the United States consists of over 113,000 interstate motor carriers.[24] Data from FMCSA's Licensing and Insurance (L&I) database indicates roughly 125,000 active for-hire motor carriers. For-hire operators are those that offer truck transportation services to the public. The major sectors of for-hire trucking are household goods carriers, bulk carriers, tank carriers, refrigerated carriers, less-than-truckload (LTL) carriers, truckload carriers, and other specialized carriers.[25] Owner-operators, as the term implies, are independent owners of individual trucks or small fleets.[26] They generally function as for-hire carriers or provide contract or ad hoc support to larger for-hire carriers or other commercial trucking operations. In addition to for-hire carriers and owner-operators, over 480,000 other companies and governmental entities operate private fleets of trucks, which deliver and distribute products and services for their parent organizations.[27]

TABLE 20.—SMALL BUSINESS SIZE STANDARDS FOR THE POTENTIALLY AFFECTED INDUSTRIES

NAICS	Description	SBA Size Standards		Percent of industry that is small business
		Revenue (millions)	Employee	
Not Applicable	Steamship lines	NA	NA	NA
482112	Railroads		1,500	NA
532490*	Other Commercial/Industrial Machinery and Equipment Rental and Leasing	$6.0		94
484110	General Freight Trucking, Local	21.5		75
484121	General Freight Trucking, Long Distance, Truckload			74
484122	General Freight Trucking, Long Distance, Less Than Truckload	21.5		72
484220	Specialized Freight (except Used Goods) Trucking, Local	21.5		73
484230	Specialized Freight (except Used Goods) Trucking, Long Distance	21.5		77

*NAICS codes assumed for common-pool operators/shippers as equipment lessors listed in IICL Web site, such as Interpool Inc., identified them as SIC 7359 in the financial statements submitted with Securities and Exchange Commission.

The proposed rule would affect only a small percentage of trucking firms, since only approximately 1,900 trucking companies own intermodal chassis. These motor carriers belong to the five ''484'' NAICS codes identified in Table 20. For the most part, these entities would incur minimal increased costs to comply with the provisions of this NPRM, since they are already subject to the FMCSRs; indeed, the NPRM would most likely reduce overall operational costs for most of these entities, since some of the burden for inspection, maintenance, and repair will indirectly shift to non-motor carrier chassis providers.

The RIA assumes that the 10 equipment lessors (common pool operators) own an estimated 320,000 intermodal chassis or about 32,000 chassis per entity. Therefore, based on this information, we assumed that these firms fall into the 20 largest firms in this NAICS codes and earned about $3.06 billion or average revenue of $153.2 million.[28] To have a significant impact on these entities, the estimated compliance cost would have to exceed one percent of the annual revenue stream or sales, or about $1.5 million per firm per year for the 20 largest firms in NAICS 532490.[29] Although there is much uncertainty regarding the impact on common chassis pool operators (since the agency had difficulty

[21] See *www.sba.gov/advo/laws/title3_s2993.html*.

[22] Table 17 has been calculated using 1997 Economic Census Data (2002 data for all NAICS codes are not currently available) and combining it with SBA's size standards to estimate the number of small business. The 1997 data for revenue have been adjusted for 2003 revenue figures since SBA revenue size is given in 2003 dollars. The estimate was ''at least'' since there were firms that did not have revenues reported.

[23] A list of common-pool operators is available on the IICL Web site. The NAICS listed here represents all firms that provide support service to road transportation. Common-pool operators are part of this over-all group.

[24] 2002 Economic Census, Transportation and Warehousing, U.S. Bureau of the Census, Washington, DC, 2004, available on the Internet at *www.census.gov/prod/ec02/ec0248i09.pdf*.

[25] American Trucking Trends 2003, American Trucking Associations, Inc., Alexandria, VA, 2003, p. 7.

[26] Owner-Operator Independent Drivers Association Web site at *www.ooida.com*.

[27] American Trucking Trends 2003, American Trucking Associations, Inc., Alexandria, VA, 2003, p. 6, reports a total of 585 thousand interstate motor truck operators of all types. The source of the information was identified as filings with the Federal Motor Safety Administration (FMSCA) as of August 2002.

[28] 1997 Economic Census figures adjusted to 2003 dollars.

[29] Adjusting 1997 revenue reported by the 1997 Economic Census with GDP inflation adjustor.

acquiring information on them), it is believed that in some cases, the need to implement systematic IRM programs by common chassis pool operators may result in compliance costs exceeding one percent of annual revenues. Because of this uncertainty, FMCSA has decided against certifying no significant impact on a substantial number of small entities, and has instead decided to prepare an IRFA. Therefore, FMCSA invites public comment on it.

Reporting and recordkeeping requirements: This NPRM includes a new requirement for reporting and recordkeeping for steamship lines, railroads and common pool operators that own intermodal chassis. We estimate that there are 108 such entities, none of which is a small business that would be subject to the new recordkeeping requirement.

Related Federal rules and regulations. With respect to the safe transportation of intermodal chassis, there are no related rules or regulations issued by other departments or agencies of the Federal Government.

Conclusion. Based on the assessment in the regulatory evaluation, we conclude that there will not be a significant economic impact on a substantial number of small entities.

Intergovernmental Review

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. FMCSA has analyzed this proposal and determined that it would require revisions to existing information collection requirements subject to approval by OMB. This includes the requirement for entities that offer intermodal container chassis for transportation in interstate commerce to: (1) File an Intermodal Equipment Provider Identification Report (FMCSA Form MCS–150C, a variant on the currently-approved Motor Carrier Identification Report, Form MCS–150); (2) establish a systematic inspection, repair, and maintenance program to ensure the safe operating condition of each item of intermodal equipment tendered to motor carriers and to maintain documentation of the program in accordance with 49 CFR part 396; and (3) provide a means for an intermodal equipment provider to effectively respond, using a variant of the Driver-Vehicle Inspection Report currently approved by OMB, to driver and motor carrier complaints about the condition of intermodal container chassis. It is anticipated that electronic recordkeeping would be allowed to reduce, to the greatest extent practicable, the costs associated with complying with the recordkeeping requirements.

There are two currently approved information collections that would be affected by this NPRM: (1) Motor Carrier Identification Report (FMCSA form MCS–150), OMB Control No. 2126–0013, approved at 74,896 burden hours through July 31, 2007; and (2) Inspection, Repair, and Maintenance, OMB Control No. 2126–0003, approved at 59,093,245 burden hours through February 28, 2006. Table 21 shows the FMCSA estimated number of intermodal container chassis by owner.

TABLE 21.—ESTIMATED NUMBER OF INTERMODAL CHASSIS BY OWNER

Types of entities	Estimated number of affected entities	Estimated number of chassis
Steamship Lines	93	392,000
Railroads	5	96,200
Common-pool operators/Equipment Lessors	10	320,000
Total	108	808,200

The total annual burden hours for the two current information collections above are 59,168,141. Table 22 depicts the proposed and current burden hours associated with the information collections.

TABLE 22.—PROPOSED AND CURRENT INFORMATION COLLECTION BURDENS

OMB approval number	Burden hours currently approved	Burden hours proposed	Change
2126–0013	74,896	74,932	36
2126–0003	59,093,245	59,214,495	121,230
Total	59,168,141	59,289,427	121,266

The following is an explanation of how each of the information collections shown above would be impacted by this proposal.

OMB Control No. 2126–0003. Intermodal equipment providers (IEPs) would be required to establish a systematic inspection, repair, and maintenance program and maintain records documenting the program. They would also be required to establish a process for a motor carrier or its driver to report defects or deficiencies they discover or which are reported to them. The estimated burden for the proposed revision to this existing information collection would be 121,230 burden hours [808,200 chassis controlled by non-motor-carrier IEPs × 3 inspections/year × 3 minutes recordkeeping per inspection × 1 hr/60 minutes].

OMB Control No. 2126–0013. The proposed rule would require each equipment provider to obtain a unique

DOT Number by submitting a Form MCS–150C to FMCSA, and to update its initial report every 2 years. FMCSA estimates that this would result in an increase of 36 burden hours for 108 affected IEPs [108 IEPs × 20 minutes / 60 minutes].

The proposals contained in this NPRM, affecting two currently approved information collections, would result in a net increase of 121,266 burden hours in the agency's information collection budget.

FMCSA requests comments on whether the collection of information is necessary for the agency to meet its goal of reducing truck crashes, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimated information collection burden; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the information collection burden on respondents, including the use of automated collection techniques or other forms of information technology.

You may submit comments to OMB on the information collection burden addressed by this NPRM. OMB must receive your comments by January 22, 2007. Mail or hand deliver your comments to: *Attention:* Desk Officer for the Department of Transportation, Dockets Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act of 1969 (NEPA)

FMCSA analyzed this rule for the purpose of the NEPA (42 U.S.C. 4321 *et seq.*) and conducted an environmental assessment under the procedures in FMCSA Order 5610.1, published March 1, 2004 (69 FR 9680). Under FMCSA Order 5610.1, the environmental assessment focuses only on those resource categories that are of interest to the public and/or important to the decision: Public Health and Safety, Hazardous Materials Transportation, Socioeconomics, Solid Waste Disposal, and other Special Areas of Consideration. A copy of the draft environmental assessment has been placed in the docket.

Table 23 presents a comparison of the potential environmental and socioeconomic consequences of the Proposed-Action Alternative and No-Action Alternative from the draft environmental assessment.

TABLE 23.—ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES

Category	Proposed-action alternative	No-action alternative [1]
Public Health and Safety	Moderate positive impact	Moderate negative impact.
Hazardous Materials Transportation	Negligible to minor net positive impact	Negligible to minor net negative impact.
Socioeconomics	Moderate net positive impact	Moderate net negative impact.
Solid Waste Disposal	Negligible to minor positive and negative impact.	Negligible to minor negative impact.
Additional ''Special Areas of Consideration''		
Air Quality	Negligible to minor positive impact	Negligible to minor negative impact.
Noise	No impact	No impact.
Endangered Species	Negligible to minor positive impact	Negligible to minor negative impact.
Resources protected by the NHPA	Negligible positive impact	Negligible negative impact.
Wetlands	Negligible to minor positive impact	Negligible to minor negative impact.
Section 4(f) resources	Negligible to minor positive impact	Negligible to minor negative impact.

[1] The ''No-Action'' Alternative is evaluated from a dynamic perspective (i.e., considers both short- and long-run impacts). So, while the ''No-Action'' Alternative results in no impacts in the short-run (since there is no change in existing regulations), in the long run, it is estimated to have negative impacts, since the analysis assumes intermodal transportation continues to grow in future years.

Table 23 lists the impact categories for which there exists a potential for a positive or negative indirect impact from the Proposed-Action Alternative (this proposed rule). Without certain key pieces of information (e.g., crash data on a national level, exact number and safety record of intermodal equipment providers, and detailed transportation routes over which intermodal equipment is used), it is impossible to accurately quantify most of these impacts, though a qualitative rationale for these conclusions is offered in the draft environmental assessment.

Nevertheless, it is evident from Table 23 that the only potentially negative environmental or socioeconomic impact of the Proposed-Action Alternative (this proposed rule) involves a potentially minor to negligible negative indirect impact on solid waste disposal (caused by an increase in the amount of solid waste disposed via regular equipment maintenance). Nevertheless, that may be offset by a positive impact on solid waste disposal (caused by decreasing the amount of solid waste generated via crashes).

The beneficial impacts of the proposed rulemaking—most importantly the positive impacts on public health and safety in addition to positive indirect impacts on aspects of the physical and human environment—are in contrast to the No-Action Alternative, which has the potential to negatively impact most of the resources evaluated in the draft environmental assessment. Note that the No-Action Alternative is evaluated from a dynamic perspective, which considers both short- and long-run effects. While in the short run the No-Action Alternative has no impact (since no regulations change), there are potential impacts in the long run, because growth in intermodal transportation is assumed to continue.

FMCSA seeks comment on the draft environmental assessment.

Energy Effects

FMCSA has analyzed this action under Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' The agency has determined that it is not a ''significant energy action'' under that order because it does not appear to be economically significant (i.e., a cost of more than $120.7 million in a single year) based upon analyses performed at this stage of the rulemaking process, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Unfunded Mandates Reform Act of 1995

This proposed rule does not impose an unfunded mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), resulting in the

expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $120.7 million or more (adjusted for inflation) in any one year.

Civil Justice Reform

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

Protection of Children

FMCSA has analyzed this section under Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks.'' The agency does not believe this rulemaking would be an economically significant rule, nor does it concern an environmental risk to health or safety that may disproportionately affect children.

Taking of Private Property

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

Federalism

FMCSA has analyzed this rulemaking action in accordance with the principles and criteria of Executive Order 13132, entitled ''Federalism,'' and determined that it has federalism implications within the meaning of the Order.

The Federalism Order applies to ''policies that have federalism implications,'' which it defines as regulations and other actions ''that have substantial direct effects on the States, on the relationship between the national government and the States, and on the distribution of power and responsibilities among the various levels of government.'' Sec. 1(a). The key concept here is ''substantial direct effects on the States.''

Section 31151(d) preempts ''a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to commercial motor vehicle safety'' if it ''exceeds or is inconsistent with a requirement imposed under or pursuant to'' 49 U.S.C. 31151. In other words, FMCSA's final rule establishing maintenance and related requirements for intermodal equipment will preempt any State or local law or regulation on the same subject.

Nonetheless, there are exceptions to this principle. ''[A] State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005'' is preempted on the effective date of the final rule adopted under this proceeding [section 31151(e)(1)] unless, notwithstanding section 31151(d), the Secretary of Transportation ''determines that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce'' [section 31151(e)(2)(A)]. A State must request a non-preemption determination before the effective date of the FMCSA final rule [section 31151(e)(2)(B)], and no subsequent amendment to a non-preempted requirement may take effect unless it is first submitted to the Secretary, who must find that the amendment is no less effective than the FMCSA requirements and does not unduly burden interstate commerce [section 31151(e)(2)(C)].

Section 31151 clearly has preemptive effect. Although most of the States which adopted statutes regulating the maintenance of intermodal equipment did not enforce them for several years, section 31151 will foreclose the opportunity for States to enact future legislation on this subject which is inconsistent with the Agency's regulations. We believe this constitutes a ''substantial direct effect[ ] on the States.'' However, section 31151 does not have ''substantial direct effects * * * on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government.'' The intermodal equipment affected by this rulemaking operates in interstate commerce. The regulation of interstate commerce is constitutionally and historically vested in the Federal government, not the States. The assertion of Federal authority in this area does not change the traditional relationship between the national government and the States, nor does it affect the constitutional and practical distribution of power and responsibilities among the various levels of government.

Section 3(b) of the Federalism Order provides that ''[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.'' The constitutional authority and statutory mandate for this rulemaking are clear and explicit.

FMCSA has determined that this action would have a substantial direct effect on States. However, because existing State laws on the maintenance of intermodal equipment are so few and narrow in scope, the Agency has also determined that this action would not impose substantial additional costs or burdens on the States.

The Agency will consult with the States on the Federalism implications of this proposed regulation, as required by E.O. 13132. Also, State and local governments will have an additional opportunity to address this issue during the comment period as indicated under **ADDRESSES**.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN shown on the first page of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Intermodal equipment roadability, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials, Intermodal equipment provider, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 390

Highway safety, Intermodal equipment providers, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 392

Highway safety, Intermodal equipment providers, Motor carriers.

49 CFR Part 393

Highway safety, Intermodal equipment providers, Motor carriers, Motor vehicle safety.

49 CFR Part 396

Highway safety, Intermodal equipment providers, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FMCSA proposes to amend Subchapter B, Chapter III of Title 49 of the Code of the Code of Federal Regulations, as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, 31151, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

2. Amend § 385.1 by adding paragraph (e) to read as follows:

§ 385.1 Purpose and scope.

* * * * *

(e) Subpart F of this Part establishes procedures to perform a roadability review of intermodal equipment providers to determine their compliance with the applicable Federal Motor Carrier Safety Regulations (FMCSRs).

3. Amend part 385 by adding a new Subpart F—Intermodal Equipment Providers (§§ 385.501–383.503) to read as follows:

Subpart F—Intermodal Equipment Providers

§ 385.501 Roadability review.

(a) FMCSA will perform roadability reviews of intermodal equipment providers, as defined in § 390.5 of this chapter. A roadability review is a review by the FMCSA of the intermodal equipment provider's compliance with the applicable FMCSRs.

(b) FMCSA will evaluate the results of the roadability review using the criteria in Appendix A to this Part as they relate to compliance with Parts 390, 393, and 396 of this chapter.

§ 385.503 Results of roadability review.

(a) FMCSA will not assign a safety rating to an intermodal equipment provider. However, the FMCSA may cite the intermodal equipment provider for violations of Parts 390, 393, and 396 of this chapter and may impose civil penalties.

(b) FMCSA may prohibit the intermodal equipment provider from tendering specific items of equipment determined to constitute an imminent hazard.

(c) FMCSA may prohibit an intermodal equipment provider from tendering any intermodal equipment from a particular location or multiple locations if the agency determines that the intermodal equipment provider's compliance with the FMCSRs is so deficient that the provider's continued operation constitutes an imminent hazard to highway safety.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

4. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; sec. 206, Pub. L. 106–159, 113 Stat. 1763; and 49 CFR 1.45 and 1.73.

5. Revise the heading of part 386 to read as set forth above.

6. Revise § 386.1 to read:

§ 386.1 Scope of the rules in this part.

(a) The rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration (FMCSA), under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379), and the Hazardous Materials Regulations (49 CFR parts 171–180).

(b) The purpose of the proceedings is to enable the Assistant Administrator:

(1) To determine whether a motor carrier, intermodal equipment provider (as defined in § 390.5 of this chapter), property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and

(2) To issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both, if such violations are found.

7. Revise § 386.83 to read as follows:

§ 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

(a)(1) *General rule.* A commercial motor vehicle (CMV) owner or operator, including an intermodal equipment provider, that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final agency order, is prohibited from operating in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until FMCSA has received full payment of the penalty.

(2) *Civil penalties paid in installments.* The FMCSA Service Center may allow a CMV owner or operator, including an intermodal equipment provider, to pay a civil penalty in installments. If the CMV owner or operator, including an intermodal equipment provider, fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. A CMV owner or operator, including an intermodal equipment provider, that fails to pay the full outstanding balance of its civil penalty within 90 days after the date of the missed installment payment, is prohibited from operating in interstate commerce on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the entire penalty.

(3) *Appeals to Federal Court.* If the CMV owner or operator, including an intermodal equipment provider, appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so directs.

(b) *Show-cause proceeding.* (1) The FMCSA will notify a CMV owner or operator, including an intermodal equipment provider, in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the CMV owner or operator, including an intermodal equipment provider, being prohibited from operating in interstate commerce.

(2) The notice will order the CMV owner or operator, including an intermodal equipment provider, to show cause why it should not be prohibited from operating in interstate commerce on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If a CMV owner's or operator's, including an intermodal equipment provider's, principal place of business is in a foreign country, the notice will be delivered to the CMV owner's or operator's designated agent.

(c) A CMV owner or operator, including an intermodal equipment provider, that continues to operate in interstate commerce in violation of this section may be subject to additional

sanctions under paragraph IV (h) of appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under 11 U.S.C. chapter 11. CMV owners or operators, including intermodal equipment providers, in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (i.e., chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

8. Revise the authority citation for part 390 to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31151, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

9. Amend § 390.3 by adding a new paragraph (h) to read:

§ 390.3 General applicability.

* * * * *

(h) *Intermodal equipment providers.* The rules in the following provisions of subchapter B of this chapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of Part 385, Safety Fitness Procedures.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) Part 390, Federal Motor Carrier Safety Regulations; General, *except* § 390.15(b) concerning accident registers.

(4) Part 393, Parts and Accessories Necessary for Safe Operation.

(5) Part 396, Inspection, Repair, and Maintenance.

10. Amend § 390.5 by adding, in alphabetical order, definitions for ''*Interchange*,'' ''*Intermodal equipment*,'' ''*Intermodal equipment interchange agreement*,'' and ''*Intermodal equipment provider*'' to read:

§ 390.5 Definitions.

* * * * *

Interchange means the act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider, but it does not include the leasing of equipment to a motor carrier for primary use in the motor carrier's freight hauling operations.

Intermodal equipment means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.

Intermodal equipment interchange agreement means the Uniform Intermodal Interchange and Facilities Access Agreement or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

Intermodal equipment provider means any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

* * * * *

11. Revise § 390.15(a) to read as follows:

§ 390.15 Assistance in investigations and special studies.

(a) Each motor carrier and intermodal equipment provider must do the following:

(1) Make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or authorized third party representative within such time as the request or investigation may specify.

(2) Give an authorized representative all reasonable assistance in the investigation of any accident including providing a full, true, and correct response to any question of the inquiry.

* * * * *

12. Amend § 390.19 by revising the section heading, the introductory text of paragraph (a), paragraph (b), the introductory text of paragraph (c), and paragraphs (d), (e), and (f) to read as follows:

§ 390.19 Motor carrier, HM shipper, and intermodal equipment provider identification reports.

(a) Each motor carrier that conducts operations in interstate commerce must file a Motor Carrier Identification Report, Form MCS–150. Each motor carrier that operates in intrastate commerce, and that requires a hazardous materials safety permit under part 385, subpart E of this chapter, must file a combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B. Each intermodal equipment provider that offers intermodal equipment for transportation in interstate commerce must file an Intermodal Equipment Provider Identification Report, Form MCS–150C. They must do so at the following times:

* * * * *

(b) The Motor Carrier Identification Report, Form MCS–150, the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B, and the Intermodal Equipment Provider Identification Report, Form MCS–150C, with complete instructions, are available from the FMCSA Web site at: *http://www.fmcsa.dot.gov* (Keyword ''MCS–150'' or ''MCS–150B'' or ''MCS–150C''); from all FMCSA Service Centers and Division offices nationwide; or by calling 1–800–832–5660.

(c) The completed Motor Carrier Identification Report, Form MCS–150, Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B, or Intermodal Equipment Provider Identification Report, Form MCS–150C must be filed with FMCSA Office of Information Management.

* * * * *

(d) Only the legal name or single trade name may be used on the motor carrier's or intermodal equipment provider's identification report (Form MCS–150, MCS–150B, or MCS–150C).

(e) A motor carrier or intermodal equipment provider is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) for—

(1) Failing to file a Motor Carrier Identification Report, Form MCS–150, the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B, or the Intermodal Equipment Provider Identification Report, Form MCS–150C.

(2) Furnishing misleading information or making false statements on the Form MCS–150, Form MCS–150B, or Form MCS–150C.

(f) Upon receipt and processing of the Motor Carrier Identification Report, Form MCS–150, the Combined Motor

Carrier Identification Report and HM Permit Application, Form MCS–150B, or the Intermodal Equipment Provider Identification Report, Form MCS–150C, FMCSA will issue the motor carrier or intermodal equipment provider an identification number (USDOT Number), or advise an intermodal equipment provider it may use an identification number unique to that entity.

(1) The motor carrier must display the number on each self-propelled CMV, as defined in § 390.5, along with additional information required by § 390.21.

(2) The intermodal equipment provider must display its assigned number on each unit of interchanged intermodal equipment.

* * * * *

13. Amend § 390.21 by revising the section heading and paragraphs (a), (b)(2), and (c)(1) to read as follows:

§ 390.21 Marking of self-propelled CMVs and intermodal equipment.

(a) *General.* Every self-propelled CMV and each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to subchapter B of this chapter must be marked as specified in paragraphs (b), (c), and (d) of this section.

(b) * * *

(2) The identification number issued by FMCSA to the motor carrier or intermodal equipment provider, preceded by the letters ''USDOT.''

* * * * *

(c) * * *

(1) Appear on both sides of the self-propelled CMV or interchanged intermodal equipment;

* * * * *

14. Amend part 390 by adding a new subpart C (§§ 390.40–390.46) to read as follows:

Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

Sec.

390.40 What responsibilities do intermodal equipment providers have under the FMCSRs?
390.42 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?
390.44 What are the responsibilities of drivers and motor carriers operating intermodal equipment?
390.46 Are State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations (FMCSRs)?

Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

§ 390.40 What responsibilities do intermodal equipment providers have under the FMCSRs?

An intermodal equipment provider must—

(a) Identify its operations to the FMCSA by filing the form required by § 390.19.

(b) Mark its intermodal equipment with the USDOT Number or other identifying number unique to that entity as required by § 390.21.

(c) Systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, in a manner consistent with § 396.3(a)(1), as applicable, all intermodal equipment intended for interchange with a motor carrier.

(d) Maintain a system of driver vehicle inspection reports submitted to the intermodal equipment provider as required by § 396.11 of this chapter.

(e) Maintain a system of inspection, repair, and maintenance records as required by § 396.12 of this chapter for equipment intended for interchange with a motor carrier.

(f) Periodically inspect equipment intended for interchange, as required under § 396.17 of this chapter.

(g) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, have procedures in place, and provide sufficient space, for drivers to perform a pre-trip inspection of tendered intermodal equipment.

(h) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or replace the equipment, prior to the driver's departure. The repairs or replacement must be made in a timely manner after being notified by a driver of such damage, defects, or deficiencies.

(i) Refrain from placing intermodal equipment in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in § 386.72(b)(1) of this chapter.

§ 390.42 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?

(a) An intermodal equipment provider or its agent may electronically file questions or concerns at *http://dataqs.fmcsa.dot.gov* about Federal and State data released to the public by FMCSA, including safety violations attributable to deficiencies in intermodal chassis or trailers for which it should not have been held responsible because a motor carrier certified the equipment as passing the pre-trip inspection.

(b) A motor carrier or its agent may electronically file questions or concerns at *http://dataqs.fmcsa.dot.gov* about Federal and State data released to the public by FMCSA. These include safety violations attributable to deficiencies in intermodal chassis or trailers for which it should not have been held responsible because they concerned defects or deficiencies in parts or accessories that a driver could not readily detect during a pre-trip inspection performed in accordance with § 392.7(a) and (b) of this chapter.

(c) An intermodal equipment provider, or its agent, may request FMCSA to investigate a motor carrier believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

(d) A motor carrier or its agent may request FMCSA to investigate an intermodal equipment provider believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

§ 390.44 What are the responsibilities of drivers and motor carriers operating intermodal equipment?

(a) Before operating intermodal equipment over the road, the driver accepting the equipment must inspect the equipment components listed in § 392.7(b) of this chapter and must be satisfied that they are in good working order.

(b) A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. The report must include, at a minimum, the items in § 396.11(a)(2) of this chapter.

§ 390.46 Are State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations (FMCSRs)?

(a) *Generally.* Pursuant to 49 U.S.C. 31151(d), a law, regulation, order, or

other requirement of a State, a political subdivision of a State, or a tribal organization relating to the inspection, repair, and maintenance of intermodal equipment is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed by the FMCSRs.

(b) Pre-existing State requirements—(1) *In general.* Pursuant to 49 U.S.C. 31151(e)(1), unless otherwise provided in paragraph (b)(2) of this section, a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, shall remain in effect only until the effective date of the FMCSA final rule entitled ''Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment''.

(i) *Nonpreemption determinations.*—(A) *In general.* Pursuant to 49 U.S.C. 31151(e)(2), and notwithstanding paragraph (a) of this section, a State requirement described in paragraph (b)(1) of this section is not preempted by the FMCSA final rule on ''Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment'' if the Administrator determines that the State requirement is as effective as the FMCSA final rule and does not unduly burden interstate commerce.

(ii) Application required. Paragraph (b)(2)(i) of this section applies to a State requirement only if the State applies to the Administrator for a determination under this subparagraph with respect to the requirement before the effective date of the final rule. The Administrator will make a determination with respect to any such application within 6 months after the date on which the Administrator receives the application.

(iii) Amended State requirements.—If a State amends a regulation for which it previously received a nonpreemption determination from the Administrator under paragraph (b)(2)(i) of this section, it must apply for a determination of nonpreemption for the amended regulation. Any amendment to a State requirement not preempted under this subsection because of a determination by the Administrator may not take effect unless it is submitted to the Agency before the effective date of the amendment, and the Administrator determines that the amendment would not cause the State requirement to be less effective than the FMCSA final rule on ''Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment'' and would not unduly burden interstate commerce.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

15. Revise the authority citation for Part 392 to read as follows:

Authority: 49 U.S.C. 13902, 31136, 31151, 31502; and 49 CFR 1.73.

16. Amend § 392.7 by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 392.7 Equipment, inspection, and use.

* * * * *

(b) Drivers preparing to transport intermodal equipment must additionally make a visual or audible inspection of the following components before operating that equipment, and must be satisfied that they are in good working order before the equipment is operated over the road:

Rails or support frames.

Tie down bolsters.

Locking pins, clevises, clamps, or hooks.

Sliders or sliding frame lock.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

17. Revise the authority citation for part 393 to read as follows:

Authority: 49 U.S.C. 322, 31136, 31151 and 31502; sec. 1041(b), Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

18. Revise § 393.1 to read as follows:

§ 393.1 Scope of the rules of this part.

(a)(1) Every motor carrier and its employees must be knowledgeable of and comply with the requirements and specifications of this part.

(2) Every intermodal equipment provider and its employees responsible for the inspection, repair, and maintenance of intermodal equipment interchanged to motor carriers must be knowledgeable of and comply with the applicable requirements and specifications of this part.

(b) No motor carrier may operate a commercial motor vehicle, or cause or permit such a vehicle to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

(c) No intermodal equipment provider may operate intermodal equipment, or cause or permit such equipment to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

19. Revise the authority citation for part 396 to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31151, and 31502; and 49 CFR 1.73.

20. Revise § 396.1 to read as follows:

§ 396.1 Scope.

(a) Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection or maintenance of motor vehicles must be knowledgeable of and comply with the rules of this part.

(b) Every intermodal equipment provider, its officers, agents, representatives, and employees directly concerned with the inspection or maintenance of intermodal equipment interchanged to motor carriers must be knowledgeable of and comply with the rules of this part.

21. Amend § 396.3 by revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 396.3 Inspection, repair, and maintenance.

(a) *General.* Every motor carrier and intermodal equipment provider must systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles and intermodal equipment subject to its control.

* * * * *

(b) *Required records.* Motor carriers, except for a private motor carrier of passengers (nonbusiness), must maintain, or cause to be maintained, records for each motor vehicle they control for 30 consecutive days. Intermodal equipment providers must maintain or cause to be maintained, records for each unit of intermodal equipment they tender or intend to tender to a motor carrier. These records must include:

* * * * *

22. Amend § 396.11 by revising paragraph (a) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

(a) *Report required.*

(1) *Motor carriers.* Every motor carrier must require its drivers to report, and every driver must prepare a report in writing at the completion of each day's work on each vehicle operated. The report must cover at least the following parts and accessories:

—Service brakes including trailer brake connections
—Parking (hand) brake
—Steering mechanism
—Lighting devices and reflectors
—Tires
—Horn
—Windshield wipers
—Rear vision mirrors
—Coupling devices

—Wheels and rims
—Emergency equipment

(2) *Intermodal equipment providers.* Every intermodal equipment provider must have a process to receive driver reports of defects or deficiencies in the intermodal equipment operated. The driver must report on, and the process to receive reports must cover, the following parts and accessories:

—King pin upper coupling device
—Rails or support frames
—Tie down bolsters
—Locking pins, clevises, clamps, or hooks
—Sliders or sliding frame lock
—Wheels, rims, lugs, tires
—Lighting devices, lamps, markers, and conspicuity marking material
—Air line connections, hoses, and couplers
—Brakes

* * * * *

23. Add § 396.12 to read as follows as follows:

§ 396.12 Procedures for intermodal equipment providers to accept reports required by § 390.44(b) of this chapter.

(a) *System for reports.* Each intermodal equipment provider must establish a system for motor carriers and drivers to report to it any damage, defects, or deficiencies discovered by, or reported to, the motor carrier or driver which would—

(1) Affect the safety of operation of the intermodal equipment, or

(2) Result in its mechanical breakdown while transported on public roads.

(b) *Report content.* The system required by paragraph (a) of this section must include documentation of all of the following:

(1) Name of the motor carrier responsible for the operation of the intermodal equipment at the time the damage, defects, or deficiencies were discovered by, or reported to, the driver.

(2) Motor carrier's USDOT Number or other unique identifying number.

(3) Date and time the report was submitted.

(4) All damage, defects, or deficiencies reported to the equipment provider by the motor carrier or its driver.

(c) *Corrective action.* (1) Prior to allowing or permitting a motor carrier to transport a piece of intermodal equipment for which a motor carrier or driver has submitted a report about damage, defects or deficiencies, each intermodal equipment provider or its agent must repair reported damage, defects, or deficiencies that are likely to affect the safety of operation of the vehicle.

(2) Each intermodal equipment provider or its agent must document whether the reported damage, defects, or deficiencies have been repaired, or whether repair is unnecessary, before the vehicle is operated again.

(d) *Retention period for reports.* Each intermodal equipment provider must maintain all documentation required by this section for a period of three months from the date that a motor carrier or its driver submits the report to the intermodal equipment provider or its agent.

24. Revise §§ 396.17, 396.19, 396.21, 396.23, and 396.25 to read as follows:

§ 396.17 Periodic inspection.

(a) Every commercial motor vehicle must be inspected as required by this section. The inspection must include, at a minimum, the parts and accessories set forth in appendix G of this subchapter. The term commercial motor vehicle includes each vehicle in a combination vehicle. For example, for a tractor semitrailer, full trailer combination, the tractor, semitrailer, and the full trailer (including the converter dolly if so equipped) must each be inspected.

(b) Except as provided in § 396.23 and this paragraph, motor carriers must inspect or cause to be inspected all motor vehicles subject to their control. Intermodal equipment providers must inspect or cause to be inspected intermodal equipment that is interchanged or intended for interchange to motor carries in intermodal transportation.

(c) A motor carrier must not use a commercial motor vehicle, and an intermodal equipment provider must not tender equipment to a motor carrier for interchange, unless each component identified in appendix G to this subchapter has passed an inspection in accordance with the terms of this section at least once during the preceding 12 months and documentation of such inspection is on the vehicle. The documentation may be:

(1) The inspection report prepared in accordance with § 396.21(a), or

(2) Other forms of documentation, based on the inspection report (e.g., sticker or decal), that contain the following information:

(i) The date of inspection;

(ii) Name and address of the motor carrier, intermodal equipment provider, or other entity where the inspection report is maintained;

(iii) Information uniquely identifying the vehicle inspected if not clearly marked on the motor vehicle; and

(iv) A certification that the vehicle has passed an inspection in accordance with § 396.17.

(d) A motor carrier may perform the required annual inspection for vehicles under the carrier's control that are not subject to an inspection under § 396.23(b)(1). An intermodal equipment provider may perform the required annual inspection for intermodal equipment interchanged or intended for interchange to motor carriers that is not subject to an inspection under § 396.23(b)(1).

(e) In lieu of the self inspection provided for in paragraph (d) of this section, a motor carrier or intermodal equipment provider responsible for the inspection may choose to have a commercial garage, fleet leasing company, truck stop, or other similar commercial business perform the inspection as its agent, provided that business operates and maintains facilities appropriate for commercial vehicle inspections and it employs qualified inspectors, as required by § 396.19.

(f) Vehicles passing roadside or periodic inspections performed under the auspices of any State government or equivalent jurisdiction or the FMCSA, meeting the minimum standards contained in appendix G of this subchapter, are considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed. If a vehicle is subject to a mandatory State inspection program, as provided in § 396.23(b)(1), a roadside inspection may only be considered equivalent if it complies with the requirements of that program.

(g) It is the responsibility of the motor carrier or intermodal equipment provider to ensure that all parts and accessories on vehicles for which they are responsible that do not meet the minimum standards set forth in appendix G to this subchapter are repaired promptly.

(h) Failure to perform properly the annual inspection required by this section causes the motor carrier or intermodal equipment provider to be subject to the penalty provisions of 49 U.S.C. 521(b).

§ 396.19 Inspector qualifications.

(a) Motor carriers and intermodal equipment providers must ensure that the individual(s) performing an annual inspection under § 396.17(d) or (e) is (are) qualified as follows:

(1) Understands the inspection criteria set forth in part 393 and

appendix G of this subchapter and can identify defective components;

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an inspection; and

(3) Is capable of performing an inspection by reason of experience, training, or both as follows:

(i) Successfully completed a State or Federal-sponsored training program or has a certificate from a State or Canadian Province that qualifies the person to perform commercial motor vehicle safety inspections, or

(ii) Has a combination of training and/or experience totaling at least 1 year. Such training and/or experience may consist of:

(A) Participation in a commercial motor vehicle manufacturer-sponsored training program or similar commercial training program designed to train students in commercial motor vehicle operation and maintenance;

(B) Experience as a mechanic or inspector in a motor carrier or intermodal equipment maintenance program;

(C) Experience as a mechanic or inspector in commercial motor vehicle maintenance at a commercial garage, fleet leasing company, or similar facility; or

(D) Experience as a commercial vehicle inspector for a State, Provincial, or Federal Government.

(b) Motor carriers and intermodal equipment providers must retain evidence of an individual's qualifications under this section. They must retain this evidence for the period during which the individual is performing annual motor vehicle inspections for the motor carrier or intermodal equipment provider, and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a State periodic inspection program or at the roadside as part of a random roadside inspection program.

§ 396.21 Periodic inspection recordkeeping requirements.

(a) The qualified inspector performing the inspection must prepare a report that:

(1) Identifies the individual performing the inspection;

(2) Identifies the motor carrier operating the vehicle or intermodal equipment provider intending to interchange the vehicle to a motor carrier;

(3) Identifies the date of the inspection;

(4) Identifies the vehicle inspected;

(5) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in appendix G to this subchapter; and

(6) Certifies the accuracy and completeness of the inspection as complying with all the requirements of this section.

(b)(1) The original or a copy of the inspection report must be retained by the motor carrier, intermodal equipment provider, or other entity that is responsible for the inspection for a period of fourteen months from the date of the inspection report. The original or a copy of the inspection report must be retained where the vehicle is either housed or maintained.

(2) The original or a copy of the inspection report must be available for inspection upon demand of an authorized Federal, State, or local official.

(3) *Exception.* If the motor carrier operating the commercial motor vehicles did not perform the commercial motor vehicle's last annual inspection, or if an intermodal equipment provider did not itself perform the annual inspection on equipment intended for interchange to a motor carrier, the motor carrier or intermodal equipment provider is responsible for obtaining the original or a copy of the last annual inspection report upon demand of an authorized Federal, State, or local official.

§ 396.23 Equivalent to periodic inspection.

(a) A motor carrier or an intermodal equipment provider may meet the requirements of § 396.17 through a State or other jurisdiction's roadside inspection program. The inspection must have been performed during the preceding 12 months. If using the roadside inspection, the motor carrier or intermodal equipment provider must retain a copy of an annual inspection report showing that the inspection was performed in accordance with the minimum periodic inspection standards set forth in appendix G to this subchapter. If the motor carrier operating the commercial vehicle is not the party directly responsible for its maintenance, the motor carrier must deliver the roadside inspection report to the responsible party in a timely manner. When accepting such an inspection report, the motor carrier or intermodal equipment provider must ensure that the report complies with the requirements of § 396.21(a).

(b)(1) If a commercial motor vehicle is subject to a mandatory State inspection program that is determined by the Administrator to be as effective as § 396.17, the motor carrier or intermodal equipment provider must meet the requirement of § 396.17 through that State's inspection program. Commercial motor vehicle inspections may be conducted by State personnel, at State authorized commercial facilities, or by the motor carrier or intermodal equipment provider itself under the auspices of a State authorized self-inspection program.

(2) Should the FMCSA determine that a State inspection program, in whole or in part, is not as effective as § 396.17, the motor carrier or intermodal equipment provider must ensure that the periodic inspection required by § 396.17 is performed on all commercial motor vehicles under its control in a manner specified in § 396.17.

§ 396.25 Qualifications of brake inspectors.

(a) Motor carriers and intermodal equipment providers must ensure that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles, are performed in compliance with the requirements of this section.

(b) For purposes of this section, brake inspector means any employee of a motor carrier or intermodal equipment provider who is responsible for ensuring all brake inspections, maintenance, service, or repairs to any commercial motor vehicle, subject to the motor carrier's or intermodal equipment provider's control, meet the applicable Federal standards.

(c) No motor carrier or intermodal equipment provider may require or permit any employee who does not meet the minimum brake inspector qualifications of paragraph (d) of this section to be responsible for the inspection, maintenance, service, or repairs of any brakes on its commercial motor vehicles.

(d) The motor carrier or intermodal equipment provider must ensure that each brake inspector is qualified as follows:

(1) Understands the brake service or inspection task to be accomplished and can perform that task;

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an assigned brake service or inspection task; and

(3) Is capable of performing the assigned brake service or inspection by reason of experience, training or both as follows:

(i) Has successfully completed an apprenticeship program sponsored by a State, a Canadian Province, a Federal agency or a labor union, or a training program approved by a State, Provincial, or Federal agency, or has a certificate from a State or Canadian Province that qualifies the person to perform the assigned brake service or inspection task (including passage of Commercial Driver's License air brake tests in the case of a brake inspection);

(ii) Has brake-related training or experience or a combination thereof totaling at least one year. Such training or experience may consist of:

(A) Participation in a training program sponsored by a brake or vehicle manufacturer or similar commercial training program designed to train students in brake maintenance or inspection similar to the assigned brake service or inspection tasks; or

(B) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task in a motor carrier or intermodal equipment provider maintenance program; or

(C) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task at a commercial garage, fleet leasing company, or similar facility.

(e) No motor carrier or intermodal equipment provider may employ any person as a brake inspector unless the evidence of the inspector's qualifications required under this section is maintained by the motor carrier or intermodal equipment provider at its principal place of business, or at the location at which the brake inspector is employed. The evidence must be maintained for the period during which the brake inspector is employed in that capacity and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain evidence of qualifications to inspect air brake systems for such inspections performed by persons who have passed the air brake knowledge and skills test for a Commercial Driver's License.

25. Amend Appendix G to Subchapter B—Minimum Periodic Inspection Standards, in Paragraph 6. Safe Loading, by adding new subparagraph 6.c to read as follows:

Appendix G to Subchapter B of Chapter III—Minimum Periodic Inspection Standards

* * * * *

6. Safe loading.

* * * * *

c. Container securement devices on intermodal equipment—All devices used to secure an intermodal container to a chassis, including rails or support frames, tiedown bolsters, locking pins, clevises, clamps, and hooks that are cracked, broken, loose, or missing.

* * * * *

Issued on: December 11, 2006.

John H. Hill,

Administrator.

[FR Doc. E6–21380 Filed 12–20–06; 8:45 am]

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December 21, 2006

Part IV

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172 and 174

Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172 and 174

[Docket No. RSPA–04–18730 (HM–232E)]

RIN 2137–AE02

Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA), in consultation with the Federal Railroad Administration (FRA) and the Transportation Security Administration (TSA), is proposing to revise the current requirements in the Hazardous Materials Regulations applicable to the safe and secure transportation of hazardous materials transported in commerce by rail. Specifically, we are proposing to require rail carriers to compile annual data on specified shipments of hazardous materials, use the data to analyze safety and security risks along rail transportation routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. We are also proposing clarifications of the current security plan requirements to address en route storage, delays in transit, delivery notification, and additional security inspection requirements for hazardous materials shipments. In today's edition of the **Federal Register**, TSA is publishing an NPRM proposing additional security requirements for rail transportation.

DATES: Submit comments by February 20, 2007. To the extent possible, we will consider late-filed comments as we develop a final rule.

ADDRESSES: You may submit comments identified by the docket number RSPA–04–18730 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001. If sent by mail, comments are to be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard.
- *Hand Delivery:* Docket Management System; 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.

Instructions: You must include the agency name and docket number RSPA–04–18730 for this notice at the beginning of your comment. Internet users may access comments received by DOT at *http://dms.dot.gov.* Note that comments received may be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document.

While all comments should be sent to DOT's Docket Management System (DMS), comments or those portions of comments PHMSA determines to include trade secrets, confidential commercial information, or sensitive security information (SSI) will not be placed in the public docket and will be handled separately. If you believe your comments contain trade secrets, confidential commercial information, or SSI, those comments or the relevant portions of those comments should be appropriately marked so that DOT may make a determination. PHMSA procedures in 49 CFR part 105 establish a mechanism by which commenters may request confidentiality.

In accordance with 49 CFR 105.30, you may ask PHMSA to keep information confidential using the following procedures: (1) Mark ''confidential'' on each page of the original document you would like to keep confidential; (2) send DMS both the original document and a second copy of the original document with the confidential information deleted; and (3) explain why the information is confidential (such as a trade secret, confidential commercial information, or SSI). In your explanation, you should provide enough information to enable PHMSA to determine whether the information provided is protected by law and must be handled separately.

In addition, for comments or portions of comments that you believe contain SSI as defined in 49 CFR 15.7, you should comply with Federal regulations governing restrictions on the disclosure of SSI. See 49 CFR 1520.9 and 49 CFR 15.9, Restrictions on the disclosure of sensitive security information. For example, these sections restrict the sharing of SSI to those with a need to know, set out the requirement to mark the information as SSI, and address how the information should be disposed. Note also when mailing in or using a special delivery service to send comments containing SSI, comments should be wrapped in a manner to prevent the information from being read. PHMSA and TSA may perform concurrent reviews on requests for designations as SSI.

After reviewing your request for confidentiality and the information provided, PHMSA will analyze applicable laws and regulations to decide whether to treat the information as confidential. PHMSA will notify you of the decision to grant or deny confidentiality. If PHMSA denies confidentiality, you will be provided an opportunity to respond to the denial before the information is publicly disclosed. PHMSA will reconsider its decision to deny confidentiality based on your response.

Regarding comments not marked as confidential, prior to posting comments received in response to this notice in the public docket, PHMSA will review all comments, whether or not they are identified as confidential, to determine if the submission or portions of the submission contain information that should not be made available to the general public. PHMSA will notify you if the agencies make such a determination relative to your comment. If, prior to submitting your comment, you have any questions concerning the procedures for determining confidentiality or security sensitivity, you may call one of the individuals listed below under **FOR FURTHER INFORMATION CONTACT** for more information.

FOR FURTHER INFORMATION CONTACT: William Schoonover, (202) 493–6229, Office of Safety Assurance and Compliance, Federal Railroad Administration; or Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal hazardous materials transportation law (Federal hazmat law, 49 U.S.C. 5101 *et seq.*, as amended by § 1711 of the Homeland Security Act of 2002, P.L. 107–296 and Title VII of the 2005 Safe, Accountable, Flexible and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU))

authorizes the Secretary of the Department of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.'' The Secretary has delegated this authority to PHMSA (formerly the Research and Special Programs Administration).

The Hazardous Materials Regulations (HMR: 49 CFR parts 171–180) promulgated by PHMSA under the mandate in section 5103(b) govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate. Consistent with this security authority, in March 2003, PHMSA adopted new transportation security requirements for offerors and transporters of certain classes and quantities of hazardous materials and new security training requirements for hazardous materials employees. The security regulations, which are explained in more detail below, require offerors and carriers to develop and implement security plans and to train their employees to recognize and respond to possible security threats.

When PHMSA adopted its security regulations, shippers and rail carriers were informed these regulations were ''the first step in what may be a series of rulemakings to address the security of hazardous materials shipments.'' 68 FR 14509, 14511 (March 25, 2003). PHMSA also noted ''TSA is developing regulations that are likely to impose additional requirements beyond those established in this final rule,'' and stated it would ''consult and coordinate with TSA concerning security-related hazardous materials transportation regulations * * *'' 68 FR 14511.

Under the Aviation and Transportation Security Act (ATSA), Public Law 107–71, 115 Stat. 597 (November 19, 2001), and delegated authority from the Secretary of Homeland Security (DHS), the Assistant Secretary of DHS for TSA has broad responsibility and authority for ''security in all modes of transportation * * *''[1] ATSA authorizes TSA to take immediate action to protect against threats to transportation security.

TSA's authority over the security of transportation stems from several provisions of 49 U.S.C. 114. In executing its responsibilities and duties, TSA is specifically empowered to develop policies, strategies and plans for dealing with threats to transportation.[2] As part of its security mission, TSA is responsible for assessing intelligence and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies to address such threats.[3] TSA also is to enforce security-related regulations and requirements,[4] ensure the adequacy of security measures for the transportation of cargo,[5] oversee the implementation and ensure the adequacy of security measures at transportation facilities,[6] and carry out other appropriate duties relating to transportation security.[7] TSA is charged with serving as the primary liaison for transportation security to the intelligence and law enforcement communities.[8]

In sum, TSA's authority with respect to transportation security is comprehensive and supported with specific powers related to the development and enforcement of regulations, security directives, security plans, and other requirements. Accordingly, under this authority, TSA may identify a security threat to any mode of transportation, develop a measure for dealing with that threat, and enforce compliance with that measure.

As is evident from the above discussion, DHS and DOT share responsibility for hazardous materials transportation security. The two departments consult and coordinate on security-related hazardous materials transportation requirements to ensure they are consistent with the overall security policy goals and objectives established by DHS and the regulated industry is not confronted with inconsistent security guidance or requirements promulgated by multiple agencies. To that end, on August 7, 2006, PHMSA and TSA signed an annex to the September 28, 2004 DOT–DHS Memorandum of Understanding (MOU) on Roles and Responsibilities. The purpose of the annex is to delineate clear lines of authority and responsibility and promote communications, efficiency, and non-duplication of effort through cooperation and collaboration in the area of hazardous materials transportation security based on existing legal authorities and core competencies. Similarly, on September 28, 2006, FRA and TSA signed an annex to address each agency's roles and responsibilities for rail transportation security. The FRA–TSA annex recognizes that FRA has authority over every area of railroad safety (including security) and that FRA enforces PHMSA's hazardous materials regulations. The FRA–TSA annex includes procedures for coordinating (1) planning, inspection, training, and enforcement activities; (2) criticality and vulnerability assessments and security reviews; (3) communicating with affected stakeholders; and (4) use of personnel and resources. Copies of the two annexes are available for review in the public docket for this rulemaking.

Consistent with the principles outlined in the PHMSA–TSA annex, PHMSA and FRA collaborated with TSA to develop this NPRM. In today's edition of the **Federal Register**, TSA is publishing an NPRM proposing additional security requirements for rail transportation. The TSA rulemaking would enhance security in the rail transportation mode by proposing requirements on freight and passenger railroads, rail transit systems, and on facilities with rail connections that ship, receive, or unload certain hazardous materials. The TSA rulemaking is intended to augment the proposals in this NPRM.

Hazardous materials are essential to the economy of the United States and the well being of its people. Hazardous materials fuel motor vehicles, purify drinking water, and heat and cool homes and offices. Hazardous materials are used for farming and medical applications, and in manufacturing, mining, and other industrial processes. Railroads carry over 1.7 million shipments of hazardous materials annually, including millions of tons of explosive, poisonous, corrosive, flammable and radioactive materials.

The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage.

[1] See 49 U.S.C. 114(d). The TSA Assistant Secretary's current authorities under ATSA have been delegated to him by the Secretary of Homeland Security. Under Section 403(2) of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2315 (2002) (HSA), all functions of TSA, including those of the Secretary of Transporation and the Undersecretary of Transportation of Security related to TSA, transferred to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2., the Secretary delegated to the Assistant Secretary (then referred to as the Administrator of TSA), subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including that in Section 403(2) of the HSA.

[2] 49 U.S.C. 114(f)(3).

[3] 49 U.S.C. 114(f)(1)–(5), (h)(l)–(4).

[4] 49 U.S.C. 114(f)(7).

[5] 49 U.S.C. 114(f)(10).

[6] 49 U.S.C. 114(f)(11)

[7] 49 U.S.C. 114(f)(15).

[8] 49 U.S.C. 114(f)(1) and (5).

The same characteristics of hazardous materials causing concern in the event of an accidental release also make them attractive targets for terrorism or sabotage. Hazardous materials in transportation are frequently transported in substantial quantities and are potentially vulnerable to sabotage or misuse. Such materials are already mobile and are frequently transported in proximity to large population centers. Further, security of hazardous materials in the transportation environment poses unique challenges as compared to security at fixed facilities. Finally, hazardous materials in transportation often bear clear identifiers to ensure their safe and appropriate handling during transportation and to facilitate identification and effective emergency response in the event of an accident or release.

A primary safety and security concern related to the rail transportation of hazardous materials is the prevention of a catastrophic release or explosion in proximity to densely populated areas, including urban areas and events or venues with large numbers of people in attendance. Also of major concern is the release or explosion of a rail car in proximity to iconic buildings, landmarks, or environmentally significant areas. Such a catastrophic event could be the result of an accident—such as the January 6, 2005 derailment and release of chlorine in Graniteville, South Carolina—or a deliberate act of terrorism. The causes of intentional and unintentional releases of hazardous material are very different; however, in either case the potential consequences of such releases are significant. Indeed, the consequences of an intentional release of hazardous material by a criminal or terrorist action are likely to be more severe than the consequences of an unintentional release because an intentional action is designed to inflict the most damage possible.

II. Current Hazardous Materials Transportation Safety and Security Requirements

Subpart I to Part 172 of the HMR requires persons who offer certain hazardous materials for transportation or transport certain hazardous materials in commerce to develop and implement security plans. Security awareness training is also required of all hazardous materials employees (hazmat employees), and in-depth security training is required of hazmat employees or persons required to develop and implement security plans.

The HMR require persons who offer for transportation or transport the following hazardous materials to develop and implement security plans:

(1) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined at 49 CFR § 173.403, in a motor vehicle, rail car, or freight container;

(2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

(3) More than one L (1.06 qt) per package of a material poisonous by inhalation, as defined at 49 CFR § 171.8, that meets the criteria for Hazard Zone A, as specified in 49 CFR §§ 173.116(a) or 173.133(a);

(4) A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class under the provisions of subpart F of this part;

(6) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR Part 73; or

(7) A quantity of hazardous material that requires placarding under the provisions of subpart F of 49 CFR Part 172.

Thus, in accordance with Subpart I of Part 172 of the HMR, rail carriers transporting any of the above materials in commerce must have developed and implemented security plans. The security plan must include an assessment of possible transportation security risks and appropriate measures to address the assessed risks. Specific measures implemented as part of the plan may vary commensurate with the level of threat at a particular time. At a minimum, the security plan must address personnel security, unauthorized access, and en route security. To address personnel security, the plan must include measures to confirm information provided by job applicants for positions involving access to and handling of the hazardous materials covered by the plan. To address unauthorized access, the plan must include measures to address the risk of unauthorized persons gaining access to materials or transport conveyances being prepared for transportation. To address en route security, the plan must include measures to address security risks during transportation, including the security of shipments stored temporarily en route to their destinations.

As indicated above, the HMR set forth general requirements for a security plan's components rather than a prescriptive list of specific items that must be included. The HMR set a performance standard providing offerors and carriers with the flexibility necessary to develop security plans addressing their individual circumstances and operational environment. Accordingly, each security plan will differ because it will be based on an offeror's or a carrier's individualized assessment of the security risks associated with the specific hazardous materials it ships or transports and its unique circumstances and operational environment.

Offerors and carriers in all modes were required to have security plans in place by September 25, 2003. New shippers and carriers must have security plans in place before they begin operations. To assist the industry in complying with the security plan requirements, PHMSA developed a security plan template to illustrate how risk management methodology could be used to identify areas in the transportation process where security procedures should be enhanced within the context of an overall risk management strategy. The security template is posted in the docket and on the PHMSA website at *http://hazmat.dot.gov/rmsef.htm.* In addition, a number of industry groups and associations have developed guidance material to assist their members in developing appropriate security plans.

With respect to delays in transportation, rail carriers are currently required to expedite the movement of hazardous materials shipments pursuant to § 174.14 of the HMR. Each shipment of hazardous materials must be forwarded ''promptly and within 48 hours (Saturdays, Sundays, and holidays excluded)'' after acceptance of the shipment by the rail carrier. If only biweekly or weekly service is performed, the carrier must forward a shipment of hazardous materials in the first available train. Additionally, carriers are prohibited from holding, subject to forwarding orders, tank cars loaded with Division 2.1 (flammable gas), Division 2.3 (poisonous gas) or Class 3 (flammable liquid) materials. The purpose of § 174.14 is to help ensure the prompt delivery of hazardous materials shipments and to minimize the time materials spend in transportation, thus minimizing the exposure of hazmat shipments to accidents, derailments, unintended releases, or tampering.

Apart from the requirements in § 174.14 to expedite the movement of hazardous materials, the HMR do not include specific routing requirements for rail hazmat shipments, e.g., to route shipments around or away from particular geographic areas. For example, in promulgating its March 2003 security regulations under Docket HM–232, PHMSA specifically required rail carriers to address en route security; however, PHMSA deliberately decided to leave the specifics of hazardous materials rail routing decisions, and other en route security matters covered by transportation security plans, to the judgment of rail carriers. Accordingly, the HM–232 security regulations preempt, among other things, any state, local, or tribal laws and regulations prescribing or restricting the routing of rail hazardous materials shipments. 49 U.S.C. 5125 and 20106. This proposed rule does not change this general approach to route-related requirements for rail hazardous materials shipments. Because the nation's largest rail carriers operate across many states, and the operating conditions in each location can vary greatly, this approach gives carriers the ability to follow a consistent, nationally-applicable Federal standard while also tailoring safety and security measures to the particular circumstances of individual locations.

The rail industry, through the Association of American Railroads (AAR), has developed a detailed protocol on recommended railroad operating practices for the transportation of hazardous materials. The AAR issued the most recent version of this document, known as Circular OT–55–I, on August 26, 2005. The Circular details railroad operating practices for: (1) Designating trains as ''key trains'' containing (i) five tank car loads or more of poison inhalation hazard (PIH) materials, (ii) 20 or more car loads or intermodal portable tank loads of a combination of PIH, flammable gas, Class 1.1 or 1.2 explosives, and environmentally sensitive chemicals, or (iii) one or more car loads of spent nuclear fuel or high level radioactive waste; (2) designating operating speed and equipment restrictions for key trains; (3) designating ''key routes'' for key trains, and setting standards for track inspection and wayside defect detectors; (4) yard operating practices for handling placarded tank cars; (5) storage, loading, unloading and handling of loaded tank cars; (6) assisting communities with emergency response training and information; (7) shipper notification procedures; and (8) the handling of time-sensitive materials. These recommended practices were originally implemented by all of the Class 1 rail carriers operating in the United States; the most recent version of the circular also includes short-line railroads as signatories.

Circular OT–55–I defines a ''key route'' as:

> Any track with a combination of 10,000 car loads or intermodal portable tank loads of hazardous materials, or a combination of 4,000 car loadings of PIH (Hazard zone A, B, C, or D), anhydrous ammonia, flammable gas, Class 1.1 or 1.2 explosives, environmentally sensitive chemicals, Spent Nuclear Fuel (SNF), and High Level Radioactive Waste (HLRW) over a period of one year.

Any route defined by a railroad as a key route should meet certain standards described in OT–55–I. Wayside defective wheel bearing detectors should be placed at a maximum of 40 miles apart, or an equivalent level of protection may be installed based on improvements in technology. Main track on key routes should be inspected by rail defect detection and track geometry inspection cars or by any equivalent level of inspection at least twice each year. Sidings on key routes should be inspected at least once a year; and main track and sidings should have periodic track inspections to identify cracks or breaks in joint bars. Further, any track used for meeting and passing key trains should be FRA Class 2 track or higher. If a meet or pass must occur on less than Class 2 track due to an emergency, one of the trains should be stopped before the other train passes. The proposals in this NPRM in part reflect the recommended practices mentioned above, which are already in wide use across the rail industry.

III. Request for Comments on the Transportation Security of TIH Materials

On August 16, 2004, PHMSA and TSA published a notice and request for comments on the need for enhanced security requirements for the rail transportation of hazardous materials posing a poison or toxic inhalation hazard (TIH materials). See 69 FR 50988. (Note that for purposes of the HMR, the terms ''poison'' and ''toxic'' are synonymous, as are the terms ''PIH materials'' and ''TIH materials.'') In the August notice, PHMSA and TSA sought comments on the feasibility of initiating specific security enhancements and the potential costs and benefits of doing so. Security measures addressed in the notice included improvements to security plans, modification of methods used to identify shipments, enhanced requirements for temporary storage, strengthened tank car integrity, and implementation of tracking and communication systems. To date, we have received over 100 comments. We considered the comments concerning the need for improvements to current security plan requirements and revisions to regulations applicable to in-transit storage in developing this NPRM. These comments are discussed in detail in the following sections.

The comments to the August notice related to hazard communication, shipment identification, strengthened tank car integrity, and shipment tracking are not addressed in this rulemaking.

Additionally, on August 9–10, 2005, FRA participated in a meeting of the AAR Hazardous Materials Bureau of Explosives (BOE) Committee. At this meeting, FRA requested input from the rail industry regarding internal methods used to track and store information about TIH, explosive, and highway route controlled quantity radioactive materials. Comments regarding the definition of a route for the purpose of rail route analysis were taken into consideration in the development of this NPRM, as reflected by the use of line segment, an industry term. Other comments received related to specific measures, which a carrier should consider in performing a route analysis. A summary of this meeting can be found in the docket for this rulemaking.

A. Security Plan Improvements

In the August notice, PHMSA and TSA stated the two agencies are interested in determining how security plans required under the HMR might be improved, particularly as they relate to TIH materials. PHMSA and TSA asked commenters to provide information concerning the process by which their security plans were developed, including any problems encountered during the drafting or implementation phase, recommended ''best practices,'' and any additional guidance or assistance as appropriate.

Commenters found the guidance provided by DOT and various industry associations to be quite useful for developing the security plans under the HMR. Commenters generally agree additional guidance material specific to the transportation of TIH materials could be helpful in enhancing the security of TIH materials; however, commenters generally oppose a requirement for the creation of separate security plans specific to TIH or other high-hazard materials, noting such materials are already covered by the HMR security plan requirements and

DOT and DHS have not shown the existing security plan requirements are inadequate. Most commenters who address this issue note that the success of DOT's current security plan requirement is its flexibility and encourage DOT and DHS to focus on performance-based criteria that are general in nature and provide flexibility to tailor transportation security plans and integrate them into overall security management. Commenters are nearly unanimous in opposition to a requirement for DOT and DHS to review and approve specific security plans, unless done on-site as part of a compliance or outreach review.

PHMSA and TSA agree with commenters who suggest compliance with the current security plan regulations could be improved with the development of additional guidance material or more specific requirements applicable to certain types of hazardous materials. As discussed in more detail below, in this NPRM, PHMSA is proposing clarifications and enhancements to the current security requirements as they apply to certain rail operations.

B. Temporary Storage

In the August notice, PHMSA and TSA discussed issues associated with the temporary storage of rail tank cars during transportation, including current regulatory requirements applicable to such storage. PHMSA and TSA requested comments concerning whether revisions to the temporary storage requirements applicable to rail cars transporting TIH materials are appropriate, including the impact such revisions could have on the costs to transport TIH materials and the impact on recipients and users (for example, towns and municipalities).

Many commenters agree the security of TIH rail shipments stored temporarily during transportation should be improved but have mixed views on how to achieve this objective. While some commenters support time limits on interim storage and prohibitions on the storage of TIH rail cars in densely populated areas, others suggest such restrictions would be infeasible because of supply chain issues, adverse economic impacts, and railroad operational and efficiency issues. One commenter notes ''since the federal government does not limit the storage of TIH materials at customer facilities, it would be illogical for the federal government to limit railroad storage of TIH materials.'' Several commenters urge PHMSA and TSA to ''use extra caution'' before prohibiting the temporary storage of TIH materials, suggesting a location in a densely populated area should not in itself be a reason to prohibit temporary storage. Rather than place limits on temporary storage, commenters suggest the security measures implemented at facilities at which such storage occurs should be based on risk assessments. Thus, for example, a facility in a densely populated area would be required to implement more stringent security requirements than a facility in a rural area. Specific measures suggested include perimeter fencing with controlled and limited access, enhanced lighting, remote monitoring, and frequent security patrols.

As discussed in more detail below, PHSMA, FRA, and TSA agree with commenters that the security of hazardous materials rail shipments stored temporarily during transportation should be improved, and PHMSA is proposing revisions in this NPRM. In addition, in its NPRM published in today's edition of the **Federal Register**, TSA is proposing additional security measures applicable to the storage of rail shipments of certain hazardous materials.

C. Shipment Tracking

The August notice indicated DOT and DHS are considering whether communication or tracking requirements should be required for rail shipments of TIH materials, such as satellite tracking of TIH rail cars and real-time monitoring of tank car or track conditions. In addition, the notice suggested DOT and DHS are considering reporting requirements in the event TIH shipments are not delivered within specified time periods.

The HMR currently do not include communication or tracking requirements for hazardous materials shipments. Offerors and transporters of TIH materials may elect to implement communication or tracking measures as part of security plans developed in accordance with subpart I of part 172 of the HMR, but such measures are not mandatory.

Commenters who addressed this issue are not convinced that tracking of rail shipments of TIH materials has a security benefit, instead suggesting the probability of a rail car being moved off the rail network is extremely remote and, further, tracking rail cars to determine if they are off course has no value from a security perspective. Commenters also express concerns about the reliability of tracking systems and the possibility that some systems could be compromised. Several commenters suggest that since the railroad industry already has the capability to track rail cars, the existing system should be supplemented, not scrapped, and any mandated tracking requirements should provide for flexibility in choosing different technologies.

PHMSA, FRA, and TSA believe that most rail carriers have the capability to report on the locations of certain hazardous materials rail cars. We believe carriers should be required to report car location upon request of the government in certain limited situations, particularly during elevated threat conditions. PHMSA, FRA, and TSA are continuing to consider whether and to what extent rail carriers should be required to gather and report car location information, including the type of information to be collected, its format, and the costs of mandating such a requirement. In its NPRM, published in today's edition of the **Federal Register**, TSA is proposing to require rail carriers to report location and shipping information for certain hazardous materials to TSA upon request.

IV. Proposals in this NPRM

Based on comments received in response to the TIH notice and our experience in monitoring industry compliance with the HMR security plan requirements, we are proposing the following revisions to the security plan provisions:

- We propose to require rail carriers transporting certain types of hazardous materials to compile information and data on the commodities transported, including the transportation routes over which these commodities are transported.
- We propose to require rail carriers transporting certain types of hazardous materials to use the data they compile on commodities they transport to analyze the safety and security risks for the transportation routes used and one possible alternative route to the one used. Rail carriers would be required to utilize these analyses to transport these materials over the safest and most secure commercially practicable routes.
- We propose to require rail carriers to specifically address the security risks associated with shipments delayed in transit or temporarily stored in transit as part of their security plans.
- We propose to require rail carriers transporting certain types of hazardous materials to notify consignees if there is a significant unplanned delay affecting the delivery of the hazardous material.
- We propose to require rail carriers to work with shippers and consignees to minimize the time a rail car containing certain types of hazardous materials is

placed on track awaiting pick-up or delivery or transfer from one carrier to another.

• We propose to require rail carriers to notify storage facilities and consignees when rail cars containing certain types of hazardous materials are delivered to a storage or consignee facility.

• We propose to require rail carriers to conduct security visual inspections at ground level of rail cars containing hazardous materials to inspect for signs of tampering or the introduction of an improvised explosive device (IED).

These proposed revisions are explained in more detail in the following sections.

DOT's hazardous materials transportation safety program provides for a high degree of safety with respect to incidents involving unintentional releases of hazardous materials occurring during transportation. However, intentional misuse of hazardous materials was rarely considered when the regulations were developed. Since 9/11, we have come to realize that hazardous materials safety and security are inseparable. Many, if not most, of the requirements designed to enhance hazardous materials transportation safety, such as strong containers and clear hazard communication, enhance the security of hazardous materials shipments as well. Congress recognized this synergy and legislated its intent that ''hazmat safety [was] to include hazmat security'' when it enacted the Homeland Security Act of 2002 authorizing the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.'' Safety and security must be considered together, particularly because a given security measure could have a potentially negative impact on overall transportation safety—routing and hazard communication are two obvious examples. Of course, the opposite can also be true—a safety policy or regulation could have a potentially negative impact on transportation security. PHMSA, FRA, and TSA are collaborating to ensure an appropriate balance between safety and security concerns.

The transport of highly hazardous materials is not limited to rail. Currently, significant amounts of highly hazardous materials are also transported by highway and vessel. The focus on rail is intended to be one phase in a multiphase effort by DOT and DHS to assess and secure the transportation of hazardous materials in all transportation modes to create an end-to-end secure supply chain. In this regard, we note the Federal Motor Carrier Safety Administration has established criteria in 49 CFR Part 397 for routing certain highly hazardous materials.

A. Applicability to Certain Types of Hazardous Materials

PHMSA, FRA, and TSA have assessed the safety and security vulnerabilities associated with the transportation of different types and classes of hazardous materials. The list of materials to which the enhanced security requirements proposed in this NPRM would apply is based on specific transportation scenarios. These scenarios depict how hazardous materials could be deliberately used to cause significant casualties and property damage or accident scenarios resulting in similar catastrophic consequences. The materials specified in this NPRM present the greatest rail transportation safety and security risks—because of the potential consequences associated with an unintentional release of these materials—and the most attractive targets for terrorists—because of the potential for these materials to be used as weapons of opportunity or weapons of mass destruction.

In this NPRM, we are proposing enhanced rail security requirements for rail transportation, with a particular focus on the following types and quantities of hazardous materials:

(1) More than 2,268 kg (5,000 lbs) in a single carload of a Division 1.1, 1.2 or 1.3 explosive;

(2) A bulk quantity of a TIH material (poisonous by inhalation, as defined in 49 CFR 171.8); or

(3) A highway-route controlled quantity of a Class 7 (radioactive) material.

As indicated above, the materials to be covered by this rulemaking represent those posing both a significant rail transportation safety and security risk. The following list provides a basic summary of the materials and critical vulnerabilities warranting inclusion in the proposed rule:

• *Division 1.1, 1.2, and 1.3 explosive materials.* These explosive materials present significant safety and security risks in transportation. A Division 1.1 explosive is one presenting a mass explosive hazard. A mass explosion is one affecting almost the entire load simultaneously. A Division 1.2 explosive has a projection hazard, which means if the material were to explode, it would project fragments outward at some distance. A Division 1.3 explosive presents a fire hazard and either a minor blast hazard or a minor projection hazard or both. If compromised in transit by detonation or as a secondary explosion to an IED, these explosives could result in substantial damage to rail infrastructure and the surrounding area.

• *TIH materials.* TIH materials are gases or liquids that are known or presumed on the basis of tests to be toxic to humans and to pose a hazard to health in the event of a release during transportation. TIH materials pose special risks during transportation because their uncontrolled release can endanger significant numbers of people. The January 6, 2005 train derailment in Graniteville, SC with subsequent release of chlorine sadly underscored this risk.

• *Highway Route Controlled Quantity Radioactive Materials (HRCQ).* Shipments of HRCQ of radioactive materials are large quantities of radioactive materials requiring special controls during transportation. Because of the quantity included in a single packaging, HRCQ shipments pose significant safety and security risks.

In addition, we are seeking comment on whether the requirements proposed in this NPRM should also apply to flammable gases, flammable liquids, or other materials that could be weaponized, as well as hazardous materials that could cause serious environmental damage if released into rivers or lakes. For example, although most ammonium nitrate and ammonium nitrate mixtures are classified as oxidizers during transportation based on the normal transportation environment, tests have shown these materials have explosive properties under certain conditions. Rail cars carrying large quantities of these materials may pose significant security risks. Commenters are asked to identify which additional materials (if any) should be subject to enhanced safety or security requirements and discuss the types of requirements appropriate to address the risks posed by an intentional or accidental release of the product.

B. Commodity Data

In this NPRM, PHMSA is proposing to require rail carriers transporting any of the materials specified to compile commodity data on a calendar year basis. Each rail carrier must identify the line segments over which these commodities are transported. As the carrier deems appropriate, line segments may be aggregated into logical groupings, such as between major interchange points. The rail carrier selected line segment(s) will be considered the route, as discussed below, used for rail routing analysis. Within each route, the commodity data must identify the route location and

total number of shipments transported over the line segment(s). The data collected must identify the specified materials by UN identification number. However, given that UN identification numbers used to identify the specified materials may also represent materials not meeting the criteria for commodity data collection, an allowance is being made to allow data collection for all Class 7 and Division 6.1 materials transported over the route. Complete data on the shipments transported and the routes utilized should improve rail carriers' ability to develop and implement specific safety and security strategies.

As proposed in this NPRM, rail carriers would be required to complete the commodity data collection within 90 days after the end of each calendar year. For example, if a rail carrier is compiling data for calendar year 2006, it must be available for use and inspection by April 1, 2007. To provide carriers with flexibility in compiling and assessing the data, we are not proposing a specified format; however the data must be available in a format that could be read and understood by DOT personnel and that clearly identifies the physical locations of the carrier's route(s) and commodities transported over each route. Physical location may be identified by beginning and ending point, locality name, station name, track milepost, or other method devised by the rail carrier which specifies the geographic location. Carriers would also be required to retain the data for two years, in either hard copy or electronic form, whichever is most efficient for the carrier.

With respect to information confidentiality and security concerns, data compiled under the proposed regulations would be considered SSI under regulations promulgated by DOT and DHS (49 CFR Parts 15 and 1520, respectively). SSI is subject to special handling rules and qualifying information is protected from public disclosure under those regulations if copies of any data are kept or maintained by DOT. See 69 FR 28066 (May 18, 2004) and 70 FR 1379 (January 7, 2005). Carriers would be required to ensure any information developed to comply with the requirements proposed in this NPRM is properly marked and handled in accordance with the SSI regulations. Further, information maintained by DOT may be shared with DHS. In such cases, SSI protections will continue to apply.

C. Route Analyses

In this NPRM, PHMSA is proposing to require rail carriers to use the data compilation described above to include in their security plans an analysis of the rail transportation routes over which the specified materials are transported. As proposed, carriers will be required to analyze the specific safety and security risks for routes identified in the commodity data collection. Route analyses will be required to be in writing and to consider, at a minimum, a number of factors specific to each individual route. A non-inclusive list of those factors is included in proposed Appendix D to Subpart I of Part 172. Consistent with the SSI restrictions set forth in 49 CFR Parts 15 and 1520, TSA and FRA will provide appropriate guidance to rail carriers on how to properly weigh and evaluate the factors necessary for performing the security part of the risk analysis, and will include threat scenarios to aid in this route analysis.

We invite comments to address how frequently route analyses should be updated and revised. This NPRM proposes to require carriers to re-examine route analyses on an annual basis. We are seeking comments on whether annual analyses are necessary and whether the analyses should be conducted more frequently or less frequently. For example, the regulations could require carriers to revise and update route analyses only when necessary to account for changes in the way a carrier operates, changes to the routes utilized to transport hazardous materials, or in response to specific threat information.

We anticipate carriers will first analyze the rail transportation route over which each specified commodity normally travels in the regular course of business. As discussed below, we are also proposing to require carriers to then identify and analyze the next most practicable alternative route, if available, over which they have authority to operate, using the same factors. We expect the alternative route analyzed will originate and terminate at the same points as the original route.

We have given careful consideration to the question of how to define a ''rail transportation route'' for the purpose of the analysis proposed in this NPRM. We propose this very basic definition: a route is a series of one or more rail line segments, as selected by the rail carrier. Between the beginning and ending points of a rail carrier's possession and responsibility for a hazardous materials shipment, it would be up to the rail carrier to define the routes to be assessed. For example, a route could begin at the geographic point where a rail carrier takes physical possession of the hazardous material from the offeror or another carrier for transportation. A route could end at the geographic point where: (1) The rail carrier relinquishes possession of the hazardous material, either by delivering the commodity to its final destination or interchanging the shipment to another carrier; or (2) the carrier's operating authority ends. Hazardous materials shipments will likely have intermediary stops and transitions—for example, a shipment may be held in a railroad yard, placed in a different train, or stored temporarily during transportation. Our aim is to have rail carriers analyze the territory and track over which these certain hazardous materials are regularly transported in the carrier's normal course of business, while providing flexibility concerning how specific routes will be defined and assessed. The final analysis, however, should provide a clear picture of the routes a rail carrier uses for the specified hazardous materials. Patterns and regular shipments should become obvious, as should non-routine hazardous materials movements, such as the one-time move of a specific shipment of military explosives or high-level nuclear waste. The parameters set out for ''key routes'' in AAR Circular OT–55–I are an excellent starting point for railroads to use in performing route analyses.

In addition to the routes normally and regularly used by rail carriers to transport these designated hazardous materials, we are proposing to require carriers to analyze and assess the feasibility of available alternative routes over which they have authority to operate. For each primary route, one commercially practicable alternative route must be identified and analyzed using the Rail Risk Analysis Factors of proposed Appendix D to Part 172. We recognize in many cases, the only alternative route in a particular area may be on another carrier's right-of-way. A rail carrier would not be obligated to analyze an alternative route over which it has no authority to operate. We also recognize, in some cases, no alternative route will be available; therefore, no such analysis would be required. This is particularly true in the case of regional or short-line railroads that are often the only rail carriers in a given geographic area. Where an alternative route over which the carrier has authority to operate does exist, the carrier must analyze that route and document its analysis, including the safety and security risks presented by the alternative route, any remediation or mitigation measures in place or that could be implemented, and the economic effects of utilizing the

alternative route. As used in this proposal, ''commercially practicable'' means that the route may be utilized by the railroad within the limits of the railroads particular operating constraints and, further, that the route is economically viable given the economics of the commodity, route, and customer relationship. The question of commercial practicability must be reasonably evaluated by each rail carrier as a part of its analysis based on the specific circumstances of the route and proposed traffic. If using a possible alternative route would significantly increase a carrier's operating costs, as well as the costs to its customers, the carrier should document these facts in its route analysis. We expect that carriers will make these decisions in good faith, using the financial management principles generally applied to their other business decisions.

In the rail operating environment, it is possible a carrier may transport the specified material over a route where the carrier has trackage rights, but does not own or have control over the track and associated infrastructure. Many of the factors in Appendix D relate to the physical characteristics of the track. In completing the route analyses required by this proposed rule, the carrier may identify specific measures to address risks outside its ability to accomplish. Because it is essential that safety and security measures be coordinated among all responsible entities, it is incumbent upon the carrier to work with the owner of the track to evaluate the vulnerabilities and identify measures to effect mitigation of the risks. If measures required by this proposed rule cannot be implemented because another entity refuses or fails to cooperate, the carrier must notify FRA. As stated in the Enforcement section of this preamble, FRA retains the authority to require use of an alternative route until such time as identified deficiencies are mitigated or corrected.

For each primary route, one alternative route must be identified and analyzed, if available as discussed above. As with the primary route analysis, we expect the end result to be a clear picture of the commercially practicable alternative route(s) available to rail carriers for the transportation of the specified hazardous materials. Alternative routing is used in the normal course of business throughout the railroad industry in order to accommodate circumstances such as derailments, accidents, damaged track, natural events (mudslides, floods), traffic bottlenecks, and heightened security due to major national events. The rail carriers' analysis of the alternative route should, in the end, clearly indicate the reasonableness, appropriateness, and feasibility, including economic feasibility, of using the alternative. We expect a complete alternative route analysis will indicate such things as any actual use of alternative route; safety and security benefits and risks of the alternative route; and commercial or economic costs and benefits of the route. Clearly, if an alternative route, after analysis, is identified to be the safest and most secure commercially practicable route, the carrier would either designate it as the primary route or identify and implement mitigating measures to improve the safety and security of the analyzed primary route. Each carrier will be required to use the commercially practicable route with the overall fewest combined safety and security risks, based on its analysis.

We recognize there may not be one single route that affords both the fewest safety and security risks. The most important part of this process is the route analysis itself and the identification of the safety and security risks on each route. The carrier may then make an informed decision, balancing all relevant factors and the best information available, regarding which route to use. For example, if a rail carrier determines one particular route is the safest and most practicable, but has a particular security risk, the carrier should then implement specific security measures to mitigate the security risk. We also recognize some security risks or threats may be long-term, while others are short-term, such as those arising from holding a major national event (*e.g.*, national political party conventions) in close proximity to the rail route. Mitigation measures could be put in place for the duration of the event; after the event is over, normal operations could resume. Again, we expect many of the railroads already have experience in addressing safety and security issues such as these, and likely have already catalogued possible actions to mitigate such risks.

In the evaluation of alternative routes, carriers may also indicate certain conditions under which alternative routes will be used. In the case of a short-term safety or security risk, such as a temporary event at a venue along the route, or a derailment, carriers may specify an alternative route and the measures to be put in place for use of that alternative route.

To assist rail carriers in performing these analyses of rail transportation routes and alternative routes, PHMSA is proposing to add a new Appendix D to Subpart 172. This appendix will lay out the minimum criteria a rail carrier must consider in analyzing each route and alternative route. The criteria listed are those we believe are most relevant in analyzing the rail routes for the hazardous materials discussed in this proposed rule. Of course, not all the criteria will be present on each route, and each route will have its own combination of factors to be considered. Again, our aim is to enable rail carriers to tailor these analyses to the particular risks and factors of their operations, and to get a clear picture of the characteristics of each route.

For the initial route analysis, we anticipate rail carriers will review the prior two-year period when considering the criteria contained in Appendix D. In subsequent years, the scope of the analyses should focus on changes from the initial analyses. For example, using the criteria in Appendix D, carriers should analyze the impact of significant changes in traffic density, new customers offering or receiving the specified hazardous materials, and significant operational changes. The scope of the analyses in subsequent years is expected to be more limited than the analyses conducted in the first year. As proposed in this NPRM, each carrier would be required to perform a system-wide analysis every five years to include a comprehensive review of all changes occurring during the intervening period. The system-wide review would include an analysis of all primary routes and a reevaluation of the corresponding practicable alternative routes.

We recognize the need for flexibility in performing risk assessments, yet we must balance it against the need for some degree of uniformity in the assessments. Uniformity is necessary when a performance standard is used. We have tried to balance these two competing interests by establishing a requirement for the assessment criteria to be used, while allowing rail carriers to choose the methodology for conducting the analysis. We believe the proposed criteria will improve the quality of risk assessments conducted per this subpart. We solicit comment on the proposal's balancing of flexibility and uniformity in both risk assessment and route selection.

Regardless of methodology selected, a rail carrier should apply certain common principles. These include the following:

- The analysis should employ the best reasonable, obtainable information from the natural, physical, and social sciences to assess risks to health, safety, and the environment;

• Characterizations of risks and of changes in the nature or magnitude of risks should be both qualitative, and quantitative to the extent possible consistent with available data;
• Characterizations of risk should be broad enough to deduce a range of activities to reduce risks;
• Statements of assumptions, their rationale, and their impact on the risk analysis should be explicit;
• The analysis should consider the full population at risk, as well as subpopulations particularly susceptible to such risks and/or more highly exposed; and
• The analysis should adopt consistent approaches to evaluating the risks posed by hazardous agents or events.

We believe institutionalizing a practical assessment program is important to supporting business activities and provides several benefits. First, and perhaps most importantly, assessment programs help ensure identification, on a continuing basis, of the movement of materials presenting the greatest risk to the public and the business community. Second, risk assessments help personnel throughout the organization better understand where to best apply limited resources to minimize risks. Further, risk assessments provide a mechanism for reaching a consensus on which risks are the greatest and what steps are appropriate for mitigating them. Finally, a formal risk assessment program provides an efficient means for communicating assessment findings and recommended actions to business unit managers as well as to senior corporate officials. The periodic nature of the assessments provides organizations a means of readily understanding reported information and comparing results over time.

The route analysis described above must identify safety and security vulnerabilities along the route to be utilized. As proposed in this NPRM, each rail carrier's security plan would be required to include measures to minimize the safety and security vulnerabilities identified through the route analyses. With respect to mitigation measures and cost, there are many measures rail carriers can take without necessarily adding to the cost of compliance. For example, carriers can work to notify local law enforcement and emergency responders of the types and approximate amounts of particular commodities typically transported through communities. Further, location changes can be made as to where rail cars containing highly hazardous materials are stored in transit. As with the security plan requirements currently required, our goal with this proposal is to permit rail carriers the flexibility to identify potential safety and security vulnerabilities and measures to address them, including the determination of which of its routes provide the overall fewest safety and security risks.

Although not a terrorist incident, the January 6, 2005, railroad accident and release of chlorine in Graniteville, SC, added to the growing concern about terrorism and prompted the development of the Freight Rail Security Program. This program is an innovative public-private partnership dedicated to assessing policies and technologies for enhancing security throughout the freight rail industry. One product of this partnership is the development of the Rail Corridor Risk Management Tool (RCRMT). The RCRMT will leverage existing technologies and accepted risk management practices where feasible, and incorporate new technologies and elements as appropriate. A second project of the Freight Rail Security Program is the Rail Corridor Hazmat Response and Recovery Tool (RCHRRT), which will integrate geographical information and risk modeling. The RCHRRT is being developed through a grant to the Railroad Research Foundation and will include participation from the rail industry. When fully developed, these tools will provide a formal methodology to assist the rail carriers in complying with the enhanced safety and security planning requirements of this proposed rulemaking.

D. Route Selection

The overarching goal of this NPRM is to ensure each route used for the transport of the specified hazardous materials is the one presenting the fewest overall safety and security risks. PHMSA is proposing a systematic process for rail carriers to: (1) Identify the routes currently in use by the rail carrier; (2) perform safety and security risk analyses of those primary routes; (3) identify and analyze commercially practicable alternative routes; and (4) make future route selections based on the results of the completed analyses. A rail carrier must evaluate its analyses and any measures put in place to mitigate identified vulnerabilities resulting in a selection of practicable routes presenting the fewest safety and security risks. The final step of this process is for the rail carrier to ensure the specified materials are moving on the safest and most secure commercially practicable routes. We expect for larger rail carriers, who have multiple routes available, the overall result of the route selection process will be a suite of routes addressing the overall safety and security risks of the materials in this rule. As discussed above, development of a suite of routes, where practicable, may provide carriers the flexibility to manage changing localized conditions, such as short-term changes in threat condition or track outage due to incidents or derailment, within their existing route selections.

PHMSA has proposed a 90-day window to compile commodity data and identify currently used routes. In the example given previously, for calendar year 2006, the commodity data would be available by April 1, 2007. Once the data are available, PHMSA recognizes it will take some time, especially in the first year of compliance, to complete the safety and security analyses of all primary and alternative routes. Moreover, the time necessary to complete the analyses will vary from carrier to carrier depending on the number of routes to be assessed and the nature of the safety and security issues identified for each route. We expect each rail carrier will build on the foundation of its existing security plan and the parameters already outlined in Circular OT–55–I. As the safety and security analyses are completed, the carrier must document its review and route selection decisions. We anticipate several possible route selection outcomes:

• The existing route presents the lowest overall safety and security risk and continues to be the selected route.
• The alternative route presents the lowest overall safety and security risks. The alternative will be selected, and transportation of the identified materials on the alternative route will begin as expeditiously as possible.
• The existing or the alternative route presents the lowest overall safety and security risk except under specific identified conditions. The lowest overall safety and security risk route will be used dependent upon the conditions. The conditions warranting route change must be clearly identified in the analyses and routing decision documentation.
• Based on the analyses, either the existing or alternative practicable route is identified as presenting the lowest overall safety and security risks; however, the rail carrier identifies measures to mitigate some of the risk and lower the overall risk of the other route. The route with the lowest overall safety and security risk should be selected and used. In documenting the route selection, the carrier should identify remediation measures to be implemented with a schedule of their

implementation and the route change upon completion.

Clearly, other outcomes are possible. Once a route has been documented as presenting the lowest overall safety and security risk, the rail carrier must implement use of that route. If a carrier completes this process in July of a given analysis year, for example, then routing changes must be implemented as soon as possible. In all cases, the analyses and any routing changes resulting from the analyses must be completed and implemented by January 1 of the following year.

E. Storage, Delays in Transit, and Notification

A difficult area to address in rail transportation is the safety and security of materials en route to their final destinations. Hazardous materials shipments may be delayed for any number of reasons: derailments, track repairs, cargo backlogs at ports, changes in security alert levels due to terror threats, or the presence of large events near key rail routes. Any or all of these may be reasons for shipments to be put on hold, stored, or delayed in transit. The resulting temporary storage in transport may encompass a wide variety of places, situations, and timeframes. Rail cars hauling hazardous materials may be placed on yard tracks with hundreds of other rail cars near densely populated urban areas, or a few cars may be placed on sidings in rural, less populated areas. Yards may not be fenced and tracks may traverse a number of public streets with at-grade crossings; thus, it is logistically very difficult to monitor each and every car containing hazardous materials at all times. Each in-transit storage scenario has its own set of individual risks and hazards.

The HMR require offerors and carriers to address the en route security of hazardous materials, including hazardous materials stored incidental to movement. Thus, rail offerors and carriers are already required to address the security of in-transit storage facilities in their security plans. To emphasize this requirement, in this NPRM we are proposing to require rail carriers of the specified hazardous materials to include in security plans measures to limit access to materials stored or delayed in transit, measures to mitigate the risk to population centers associated with materials stored or delayed in transit, and measures to be taken in the event of escalating threat levels. Further, we are proposing to require rail carriers to inform a facility at which a rail car will be stored incidental to movement when the rail car is delivered to the facility so the facility can implement appropriate security measures. We are also proposing a similar requirement for rail carriers to inform the consignee facility when the rail car is delivered. We propose to require such notification as soon as practicable but in no case later than six hours after delivery. We invite commenters to address this proposed timeframe, particularly how such a requirement should be implemented for deliveries that occur outside of normal business hours.

These procedures for notifying the interim storage facility and consignee of rail car delivery should ensure a positive transfer of responsibility and security for the car between the rail carrier and facility when the physical custody of the car changes. Carriers may want to consider what measures are currently in place for notification and how these provide confirmation of the facility's acceptance of the shipment. In addition, we are proposing to require rail carriers to work with shippers and consignees to minimize the time a rail car is stored incidental to movement to the extent practicable.

In addition, PHMSA is proposing to require the carrier to notify the consignee if there is a significant unplanned delay during transportation of one of the hazardous materials specified in this proposed rulemaking, within 48 hours of identifying the significant delay, and provide a revised delivery schedule. Our goal is to strengthen the requirements of the current ''48-hour rule'' contained in § 174.14, and to delegate more positive control and responsibility to the railroads for tracking and controlling the movement of railcars carrying hazardous materials. Such notification will also facilitate communication between the carrier in possession of the material and the consignee to ensure the hazardous materials specified in this NPRM do not inadvertently wait in transit.

A significant delay would be one that: (1) Compromises the safety or security of the hazardous material shipped; or (2) delays the shipment beyond its normal expected or planned shipping time. A ''significant delay'' must be determined on a case-by-case and hazmat-by-hazmat basis. As a general rule, any delay beyond the normal or expected shipping time for the material qualifies as a ''significant delay.'' Because most railroads already have in place systems to monitor the transportation of certain types of shipments, and procedures for notification of consignees, we do not anticipate this requirement will involve major operational changes for any of the affected carriers.

The AAR Circular OT–55–I contains operating practices the rail industry has already implemented for certain time-sensitive shipments. PHMSA's proposed requirement simply builds on those practices. In particular, the Circular addresses time-sensitive shipments, and specifies railroads are to be responsible for monitoring of shipments of such products and communicating with affected parties when the shipment may not reach its destination within the specified timeframe. Circular OT–55–I recommends delivery of time-sensitive materials should take place within 20 or 30 days, depending on the commodity.[9] Because of the variety of materials covered by this proposed rulemaking, PHMSA has not designated specific delivery timeframe guidelines for these materials.

With respect to notification to consignees in the event of a shipment delay, we have specified such notification to be made by a method acceptable to both carrier and consignee. We are aware many rail carriers have in place electronic systems where consignees may look up and track their expected rail shipments. This is an acceptable method of notification, as are e-mail, facsimile, or telephone. The important aspect of the notification is that both carrier and consignee agree upon the method.

F. Pre-Trip Security Inspections

The HMR currently require rail carriers to inspect each rail car containing hazardous materials at ground level. From a safety perspective, the inspections are intended to address required markings, labels, placards, securement of closures, and leakage. Safety-related inspections currently required under the HMR do not specifically address the possibility a terrorist could introduce a foreign object on the tank car, the most pernicious being an IED. PHMSA proposes in this NPRM to increase the scope of the safety inspection to include a security inspection of all rail cars carrying placarded loads of hazardous materials. The primary focus of the enhanced inspection is to recognize an IED, which is a device fabricated in an improvised manner incorporating explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals in its design, and generally including a

[9] The additional commodities listed in Circular OT–55–I and requiring a delivery time of 30 days are styrene monomer, stabilized and flammable liquid, n.o.s. (recycled styrene).

power supply, a switch or timer, and a detonator or initiator.

To guard against the possibility an unauthorized individual could tamper with rail cars containing hazardous materials to precipitate an incident during transportation, such as detonation or release using an IED, we are proposing to require the rail carriers' pre-trip inspections of placarded rail cars to include an inspection for signs of tampering with the rail car, including its seals and closures, and any item that does not belong, suspicious items, or IEDs. TSA will provide guidance to rail carriers to train employees on identifying IEDs and signs of tampering. Where an indication of tampering or a foreign object is found, the rail carrier must take appropriate actions to ensure the security of the rail car and its contents has not been compromised before accepting the rail car for further movement.

The existing security plan requirements in the HMR specify each carrier's plan must include measures to address unauthorized access and en route security. While not explicitly stated in the regulatory text, it is expected these sections provide guidance to carrier personnel for the actions to be taken in the event of suspected incident involving unauthorized access or a security breach. The rail industry, in coordination with the AAR, has worked closely with Federal, State and local officials to improve the security of rail transportation. However, each carrier should review its existing security plan to ensure the measures are adequate to facilitate notification of railroad police, security or management personnel, as appropriate, in the event a suspicious item is identified during inspection. As evidenced by the coordinated attacks of September 11, 2001, prompt identification of a terrorist event may be critical to responding to and potentially minimizing the impacts of the event.

G. Enforcement

As indicated above, DHS and DOT share responsibility for hazardous materials transportation security. PHMSA and FRA collaborated with TSA in developing this NRPM and will continue to work closely with TSA throughout the rulemaking process.

FRA is the agency within DOT responsible for railroad safety, and is the primary enforcer of safety and security requirements in the HMR pertaining to rail shippers and carriers. FRA inspectors routinely review security plans during site visits and may offer suggestions for improving security plans, as appropriate. If an inspector's recommendations are not implemented, FRA may compel a rail shipper or carrier to make changes to its security plan through its normal enforcement process. FRA consults with TSA concerning railroad security issues in accordance with the FRA–TSA annex to the DOT–DHS MOU on transportation security.

TSA's authority with respect to transportation security, including hazardous materials security, is comprehensive and supported with specific powers to assess threats to security; monitor the state of awareness and readiness throughout the rail sector; determine the adequacy of an owner or operator's security measures; and identify security gaps.

With respect to enforcement of the proposed security requirements in this NPRM, FRA plans to work closely with TSA to develop a coordinated enforcement strategy to include both FRA and TSA inspection personnel. If in the course of an inspection of a railroad carrier, TSA identifies evidence of non-compliance with a DOT security regulation, TSA would provide the information to FRA and PHMSA for appropriate action. In this regard, TSA would not directly enforce DOT security rules, and would not initiate safety inspections. Consistent with the PHMSA–TSA and FRA–TSA annexes to the DOT–DHS MOU, all the involved agencies will cooperate to ensure coordinated, consistent, and effective activities related to rail security issues. Thus, DHS and DOT will leverage knowledge and expertise and coordinate security assessments and inspection and compliance actions by their respective inspectors to minimize disruption to railroad carriers being inspected; maximize the utilization of inspector resources to avoid duplication of effort; ensure consistent information is provided by both parties to the rail industry on security matters and safety matters with security implications; and ensure consistent enforcement action is taken for violations of Federal laws and regulations, and that the appropriate enforcement tools are used to address security-related problems.

Generally, inspection personnel will not collect or retain security plans or the route selection documentation required by this proposed rule. However, inspection personnel may periodically perform rail carrier compliance inspections. In the event inspection personnel identify a need to collect a copy of the security plan or route review and selection documentation, all applicable laws and regulations, including the SSI regulations and Freedom of Information Act exemptions, will be reviewed to determine whether the information can be withheld from public release.

We are not proposing to implement a submission and approval process for security plans and route analyses. The review and approval of hundreds of security plans and analyses would be extremely resource-intensive and time-consuming. Inspectors will review security plans, route analyses, and route choices for compliance with applicable regulations. Upon completion of a compliance inspection, if the inspection identifies deficiencies in the route analyses, security plan, or manner in which the plan is implemented, the deficiencies will be addressed using FRA's existing enforcement procedures. Inspectors will have the discretion to issue notices of non-compliance, or to recommend assessment of civil penalties for probable violations of the regulations. Based on evidence indicating a rail carrier has not performed a reasoned good-faith analysis, carefully considering all available information including the safety and security risk analysis factors in the proposed Appendix D to Part 172, to choose the safest, most secure practicable route, the FRA Associate Administrator for Safety, in consultation with TSA, may require the railroad to use an alternate route until such time as the identified deficiencies are satisfactorily addressed. However, FRA would only require an alternate route if it concludes the carrier's analysis did not satisfy the minimum criteria for performing a safety and security risk analysis, as established by the proposed § 172.820 and Appendix D to Part 172. Moreover, we would expect to mandate route changes only for the most exigent circumstances. FRA will develop procedures for rail carriers to appeal a decision by the FRA Associate Administrator for Safety to require the use of an alternative route, including information a rail carrier should include in its appeal, the time frame for filing an appeal, and the process to be utilized by FRA in considering the appeal, including any consultations with TSA or PHMSA.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous

materials in intrastate, interstate, and foreign commerce.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget (OMB). The proposed rule is a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034). We completed a regulatory evaluation and placed it in the docket for this rulemaking.

Generally, costs associated with the provisions of this NPRM include costs for collecting and retaining data and performing the mandated route safety and security analysis. We estimate total 20-year costs to gather the data and conduct the analyses proposed in this NPRM to be about $20 million (discounted at 7%).

In addition, rail carriers and shippers may incur costs associated with rerouting shipments or mitigating safety and security vulnerabilities identified as result of their route analyses. Because the NPRM builds on the current route evaluation and routing practices already in place for most, if not all, railroads that haul the types of hazardous materials covered in the proposal, we do not expect rail carriers to incur significant costs associated with rerouting. The railroads already conduct route analyses and re-routing—in line with what this rule would require—in accordance with the Association of American Railroads (AAR) Circular OT–55–I. Moreover, the smaller carriers (regionals and short lines) are unlikely to have access to many alternative routes, and where an alternative does exist, it is not likely to be safer and more secure than the route they are currently using. If there is an alternative route the carrier determines to be safer and more secure than the one it is currently using, the carrier could well switch routes, even in the absence of a regulatory requirement, because it reduces the overall risk to its operations. Such reduction in risk offers a significant economic advantage in the long run.

Identifying and mitigating security vulnerabilities along rail routes is currently being done by the railroads. We believe that readily available ''high-tech'' and ''low-tech'' measures are being quickly implemented. The development, procurement and wide-spread installation of the more technology-driven alternatives could take several years. PHMSA's previous security rule requires the railroads to have a security plan that includes en route security. This existing regulatory requirement, coupled with the industry's generally risk-averse nature, is driving the railroads to enhance their security posture. As with routing decisions, such reduction in risk offers a significant economic advantage in the long run. Therefore, we expect that the cost of mitigation attributed solely to this proposal will not be significant. We note in this regard that safety and security measures are intertwined and often work hand in hand to complement each other; therefore, separating security costs from safety costs is not feasible. Overall transportation costs should not substantially increase because of this rule.

Estimating the security benefits of the proposed new requirements is challenging. Accident causation probabilities based on accident histories can be estimated in a way that the probability of a criminal or terrorist act cannot. The threat of an attack is virtually impossible to assess from a quantitative standpoint. It is undeniable hazardous materials in transportation are a possible target of terrorism or sabotage. The probability hazardous materials will be targeted is, at best, a guess. Similarly, the projected outcome of a terrorist attack cannot be precisely estimated. It is assumed choices will be made to maximize consequences and damages. Scenarios can be envisioned where hazardous materials could be used to inflict hundreds or even thousands of fatalities. To date, there have been no known or specific threats against freight railroads, rail cars, or tank cars, which makes all of these elements even more difficult to quantify. However, the fact an event is infrequent or has never occurred does not diminish the risk or possibility of such an event occurring.

Security plans lower risk through the identification and mitigation of vulnerabilities. Therefore, rail carriers and the public benefit from the development and implementation of security plans. However, forecasting the benefits likely to result from plan clarifications requires the exercise of judgment and necessarily includes subjective elements.

The major benefits expected to result from the provisions of this NPRM relate to enhanced safety and security of rail shipments of hazardous materials. We estimated the costs of a major accident or terrorist incident by calculating the costs of the January 2005 Graniteville, South Carolina, accident. This accident killed 9 people and injured 554 more. In addition, the accident necessitated the evacuation of more than 5,400 people. Total costs associated with the Graniteville accident are almost $126 million. The consequences of an intentional release by a criminal or terrorist action, particularly in an urban area, likely would be more severe than the Graniteville accident because an intentional act would be designed to inflict the most damage possible. These proposals are intended to reduce the safety and security risks associated with the transportation of the specified hazardous materials. If the measures proposed in this NPRM prevent just one major accident or intentional release over a twenty-year period, the resulting benefits would more than justify the potential compliance costs. We believe that they could.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Orders 13132 (''Federalism'') and 13175 (''Consultation and Coordination with Indian Tribal Governments''). This proposed rule would not have any direct effect on the States, their political subdivisions, or Indian tribes; it would not impose any compliance costs; and it would not affect the relationships between the national government and the States, political subdivisions, or Indian tribes, or the distribution of power and responsibilities among the various levels of government.

In its March 25, 2003 final rule in Docket No. HM–232, PHMSA specifically required rail carriers to address the en route security of hazardous materials during transportation. We decided that the specifics of routing rail shipments of hazardous materials, a component of en route security, should be left to the judgment of rail carriers. See 68 FR at 14513, 14516. We have concluded that, under Federal hazardous material transportation law (49 U.S.C. 5125), the Federal Rail Safety Act (49 U.S.C. 20106), and the Commerce Clause of the U.S. Constitution, PHMSA's decision to leave the routing of hazardous materials shipments to the judgment of rail carriers preempts all States, their political subdivisions, and Indian tribes from prescribing or restricting routes for rail shipments of hazardous materials. See *CSX Transportation, Inc.* v. *Williams*, 406 F.3d 667 (D.C. Cir. 2005). This proposed rule would require rail carriers to consider certain factors in selecting routes for transporting shipments of hazardous materials, but it does not change PHMSA's basic approach in HM–232 of leaving ultimate hazardous materials routing decisions to the rail carriers. Accordingly, this

proposed rule would have the same preemptive effect upon States, political subdivisions, or Indian tribes, and the consultation and funding requirements of Executive Orders 13132 and 13175 do not apply. In view of the high level of interest in the issue, we are including a statement in the proposed text of the regulation to highlight the preemptive effect of the provisions of this proposed rule.

Nonetheless, we will invite interested States, political subdivisions, and Indian tribes to submit comments on this proposed rule and consult directly with PHMSA, through invitations to organizations such as the National Governors Association, Council of State Governments, National Conference of State Legislatures, United States Conference of Mayors, National Association of Counties, National League of Cities, and National Congress of American Indians, and directly to those jurisdictions which have already expressed concerns about routes of rail shipments of hazardous materials.

D. Executive Order 13175

We analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not significantly or uniquely affect tribes and does not impose substantial and direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities.

The Small Business Administration (SBA) permits agencies to alter the SBA definitions for small businesses upon consultation with SBA and in conjunction with public comment. Pursuant to this authority, FRA published a final rule (68 FR 24891; May 9, 2003) defining a ''small entity'' as a railroad meeting the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirements are $20 million or less in annual operating revenue. This is the definition used by PHMSA to determine the potential impact of this NPRM on small entities.

Not all small railroads will be required to comply with the provisions of this NPRM. Most of the 510 small railroads transport no hazardous materials. PHMSA and FRA estimate there are about 100 small railroads—or 20% of all small railroads—that could potentially be affected by this NPRM. Cost impacts for small railroads will result primarily from the costs for data collection and analysis. PHMSA estimates the cost to each small railroad to be $2,776.70 per year over 20 years, discounted at 7%. Based on small railroads' annual operating revenues, these costs are not significant. Small railroads' annual operating revenues range from $3 million to $20 million. Thus, the costs imposed by the provisions of this NPRM amount to between 0.01% and 0.09% of a small railroad's annual operating revenue.

This NPRM will not have a noticeable impact on the competitive position of the affected small railroads or on the small entity segment of the railroad industry as a whole. The small entity segment of the railroad industry faces little in the way of intramodal competition. Small railroads generally serve as ''feeders'' to the larger railroads, collecting carloads in smaller numbers and at lower densities than would be economical for the larger railroads. They transport those cars over relatively short distances and then turn them over to the larger systems which transport them relatively long distances to their ultimate destination, or for handoff back to a smaller railroad for final delivery. Although there are situations in which their relative interests may not always coincide, the relationship between the large and small entity segments of the railroad industry is more supportive and co-dependent than competitive.

It is also extremely rare for small railroads to compete with each other. As mentioned above, small railroads generally serve smaller, lower density markets and customers. They exist, and often thrive, doing business in markets where there is not enough traffic to attract the larger carriers which are designed to handle large volumes over distance at a profit. As there is usually not enough traffic to attract service by a large carrier, there is also not enough traffic to sustain more than one smaller carrier. In combination with the huge barriers to entry in the railroad industry (need to own right-of-way, build track, purchase fleet, etc.), small railroads rarely find themselves in competition with each other. Thus, even to the extent the rule may have an economic impact, it should have no impact on the intramodal competitive position of small railroads.

Based on the foregoing discussion and the more detailed analysis in the regulatory evaluation for this NPRM, I certify that the provisions of this NPRM, if adopted, will not have a significant impact on a substantial number of small entities.

We encourage small entities potentially affected by this rulemaking to participate in the public comment process by submitting comments on this assessment or this rulemaking. Comments will be addressed in the final document.

We developed this proposed rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control No. 2137–0612, ''Hazardous Materials Security Plans'' expiring April 30, 2006. We are currently in the process of developing a request for renewal of this information collection approval for submission to OMB. We estimate an additional increase in burden as a result of this proposed rulemaking.

Section 1320.8(d), Title 5, Code of Federal Regulations requires the PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies proposed new requirements to the current information collection under OMB Control No. 2137–0612. We estimate there will be a small increase in burden resulting from the new proposed requirements regarding rail shipments of hazardous materials in this rulemaking. PHMSA will submit this revised information collection to OMB for approval based on the requirements in this proposed rule. We estimate the additional information collection burden as proposed under this rulemaking is as follows:

OMB No. 2137–0612, ''Hazardous Materials Security Plans''

First Year Annual Burden:

Total Annual Number of Respondents: 139.

Total Annual Responses: 139.

Total Annual Burden Hours: 51,469.

Total Annual Burden Cost: $3,130,859.27.

Subsequent Year Burden:

Total Annual Number of Respondents: 139.

Total Annual Responses: 139.

Total Annual Burden Hours: 13,677.

Total Annual Burden Cost: $831,971.91.

PHMSA specifically requests comments on the information collection and recordkeeping burden associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive your comments prior to the close of the comment period identified in the **DATES** section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. If these proposed requirements are adopted in a final rule with any revisions, PHMSA will resubmit any revised information collection and recordkeeping requirements to the OMB for re-approval.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative to achieve the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment.

The hazardous materials regulatory system is a risk management system that is prevention-oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous materials release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to class a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards by identifying the hazard class, packing group, and proper shipping name on shipping papers and with labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard Packing Group I material to a low hazard Packing Group III material. The quality, damage resistance, and performance standards for the packagings authorized for the hazardous materials in each packing group are appropriate for the hazards of the material transported. The current security plan requirements in Subpart I of Part 172 of the HMR are also based on a prevention-oriented risk management approach focused on identifying security risks and vulnerabilities and implementing measures to mitigate the identified risks and vulnerabilities.

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in transportation accidents. Railroads carry over 1.7 million shipments of hazardous materials annually, including millions of tons of explosive, poisonous, corrosive, flammable and radioactive materials. The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage. The ecosystems that could be affected by a hazardous materials release during transportation include air, water, soil, and ecological resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the accident scene. To address the safety and environmental risks associated with the transportation of hazardous materials by rail, rail tank cars must conform to rigorous design, manufacturing, and requalification requirements. The result is that tank cars are robust packagings, equipped with features such as shelf couplers, head shields, thermal insulation, and bottom discontinuity protection that are designed to ensure that a tank car involved in an accident will survive the accident intact.

In this NPRM, we are proposing to adopt regulations to enhance the safety and security of certain hazardous materials transported by rail. Specifically, we are proposing to require rail carriers to make routing decisions for specified shipments of hazardous materials based on an analysis of both the safety and security risks of alternative routing options. Requiring rail carriers to take safety and security issues into account when making hazardous materials routing decisions will reduce the possibility of an accidental or intentional release into the environment and consequent environmental damage. If adopted, we expect the requirements proposed in this NPRM to result in the selection by rail carriers of safer, more secure routes, the use of which would reduce the likelihood of a release of hazardous materials into the environment. Therefore, we have preliminarily determined that there are no significant environmental impacts associated with the proposals in this NPRM and that to the extent there might be any environmental impacts, they would be beneficial given the reduced likelihood of a hazardous materials release.

We invite commenters to address the possible beneficial and/or adverse environmental impacts of the proposals in this NPRM. We will consider comments received in response to this NPRM in our assessment of the environmental impacts of a final rule on this issue.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Rail carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend title 49 Chapter I, Subchapter C, as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

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

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

Subpart I—Safety and Security Plans

2. Revise the title of subpart I of part 172 to read as set forth above.

3. Add new § 172.820, to read as follows:

§ 172.820 Additional planning requirements for transportation by rail.

(a) *General.* Each rail carrier transporting in commerce one or more of the following materials must develop and implement the additional safety and security planning requirements of this section:

(1) More than 2,268 kg (5,000 lbs) in a single carload of a Division 1.1, 1.2 or 1.3 explosive;

(2) A bulk quantity of a material poisonous by inhalation, as defined in § 171.8 of this subchapter; or

(3) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this subchapter.

(b) *Commodity data.* No later than 90 days after the end of each calendar year, a rail carrier must compile commodity data, as follows:

(1) Commodity data must be collected by route, a line segment or series of line segments as aggregated by the rail carrier. Within the rail carrier selected route, the commodity data must identify the geographic location of the route and the total number of shipments by UN identification number for the materials specified in paragraph (a) of this section.

(2) A carrier may compile commodity data, by UN number, for all Class 7 and Division 6.1 materials transported instead of only the highway route controlled quantity or poison inhalation hazard materials.

(c) *Rail transportation route analysis.* For each calendar year, a rail carrier must analyze the safety and security risks for the transportation route(s), identified in the commodity data collected as required by paragraph (b) of this section. The route analysis must be in writing and include the factors contained in Appendix D to this part, as applicable. The safety and security risks present must be analyzed for the route and railroad facilities along the route.

(d) *Alternative route analysis.* For each calendar year, a rail carrier must identify the next most commercially practicable route over which it has authority to operate, if an alternative exists, as an alternative route for each of the transportation routes analyzed in accordance with paragraph (c) of this section. The carrier must perform a safety and security risk assessment of the alternative route for comparison to the route analysis prescribed in paragraph (c) of this section. The alternative route analysis must be in writing and include the criteria in Appendix D of this part. The written alternative route analysis must also consider:

(1) Safety and security risks presented by use of the alternative route;

(2) Comparison of the safety and security risks of the alternative to the primary rail transportation route;

(3) Any remediation or mitigation measures implemented on the primary or alternative route; and

(4) Potential economic effects of using the alternative route.

(e) *Route Selection.* A carrier must use the analysis performed as required by paragraphs (c) and (d) of this section to select the route to be used in moving the materials covered by paragraph (a) of this section. The carrier must consider any remediation measures implemented on a route. Using this process, the carrier must at least annually review and select the practicable route posing the least overall safety and security risk. The rail carrier must retain in writing all route review and selection decision documentation and restrict the distribution, disclosure, and availability of information contained in the route analysis to persons with a need-to-know, as described in parts 15 and 1520 of this title. This documentation should include, but is not limited to, comparative analyses, charts, graphics or rail system maps.

(f) *Completion of route analyses.* (1) The rail transportation route analysis, alternative route analysis, and route selection process required under paragraphs (c), (d), and (e) of this section must be completed no later than the end of the calendar year following the year to which the analyses apply (e.g., the analyses required for calendar year 2008 must be completed by the end of 2009).

(2) At least once every five years, the analyses and route selection determinations required under paragraphs (c), (d), and (e) of this section must include a comprehensive, system-wide review of all operational changes, infrastructure modifications, traffic adjustments, or other changes affecting the safety or security of the movements of the materials specified in paragraph (a) of this section that were implemented during the five-year period.

(3) A rail carrier need not perform a rail transportation route analysis, alternative route analysis, or route selection process for any hazardous material other than the materials specified in paragraph (a) of this section.

(g) *Limitations on actions by States, local governments, and Indian tribes.* Unless PHMSA grants a waiver of preemption under 49 U.S.C. 5125(e), a State, political subdivision of a State, or Indian tribe may not designate, limit, or prohibit the use of any rail line (other than a rail line owned by the State, political subdivision, or Indian tribe) for the transportation of hazardous material, including but not limited to the materials specified in paragraph (a) of this section.

(h) *Storage, delays in transit, and notification.* For the materials specified in paragraph (a) of this section, each rail carrier must ensure the safety and security plan it develops and implements in accordance with this subpart includes all of the following:

(1) A procedure for consulting with offerors and consignees to minimize to the extent practicable the period of time during which the material is stored incidental to movement (see § 171.8 of this subchapter).

(2) A procedure for informing the operator of the facility at which the material will be stored incidental to movement that the rail car containing the material has been delivered to the facility. Such notification should occur as soon as practicable, but in no case later than 6 hours after delivery.

(3) Measures to limit unauthorized access to the materials during storage or delays in transit.

(4) Measures to mitigate risk to population centers associated with in-transit storage.

(5) Measures to be taken in the event of an escalating threat level for materials stored in transit.

(6) Procedures for notifying the consignee in the event of a significant delay during transportation; such notification must be completed within 48 hours after the carrier has identified the delay and must include a revised delivery schedule. Notification should be made by a method acceptable to both carrier and consignee. A significant delay is one that compromises the safety or security of the hazardous material or delays the shipment beyond its normal expected or planned shipping time.

(7) A procedure to inform the consignee that the material has been delivered to its facility. Such notification should occur as soon as practicable, but in no case later than 6 hours after delivery.

(i) *Recordkeeping.* (1) Each rail carrier must maintain a copy of the information specified in paragraphs (b), (c), (d), (e), and (f) of this section or an electronic image of it, that is accessible at or through its principal place of business and must make the record available, upon request, to an authorized official of the Department of Transportation at reasonable times and locations. Records must be retained for a minimum of two years.

(2) Each rail carrier must restrict the distribution, disclosure, and availability of information collected or developed in accordance with paragraphs (b), (c), (d), (e), and (f) of this section to persons with a need-to-know, as described in parts 15 and 1520 of this title.

(j) *Compliance and enforcement.* If the carrier's route selection documentation and underlying analyses is found to be deficient, the carrier may be required to revise the analyses or make changes in route selection. If a chosen route is found not to be the safest and most secure commercially practicable route available, the FRA Associate Administrator for Safety, in consultation with TSA, may require the use of an alternative route.

3. Add new Appendix D to part 172, to read as follows:

Appendix D to Part 172—RAIL RISK ANALYSIS FACTORS

This appendix sets forth the minimum criteria that must be considered by rail carriers when performing the safety and security risk analyses required by § 172.820. The risk analysis to be performed may be quantitative, qualitative, or a combination of both. In addition to clearly identifying the hazardous material(s) and route(s) being analyzed, the analysis must provide a thorough description of the threats, identified vulnerabilities, and mitigation measures implemented to address identified vulnerabilities.

In evaluating the safety and security of hazardous materials transport, selection of the route for transportation is critical. For the purpose of rail transportation route analysis, as specified in § 172.820(c) and (d), a route may include the point where the carrier takes possession of the material and all track and railroad facilities up to the point where the material is relinquished to another entity. Railroad facilities include, but are not limited to, classification and switching yards, and sidings or other locations where storage in-transit occurs. Each rail carrier will act in good faith to communicate with its shippers, consignees, and interlining partners to ensure the safety and security of shipments during all stages of transportation.

Because of the varying operating environments and interconnected nature of the rail system, each carrier must select and document the analysis method/model used and identify the routes to be analyzed.

Factors to be considered in the performance of this safety and security risk analysis include:

1. Volume of hazardous material transported;
2. Rail traffic density;
3. Trip length for route;
4. Presence and characteristics of railroad facilities;
5. Track type, class, and maintenance schedule;
6. Track grade and curvature;
7. Presence or absence of signals and train control systems along the route (''dark'' versus signaled territory);
8. Presence or absence of wayside hazard detectors;
9. Number and types of grade crossings;
10. Single versus double track territory;
11. Frequency and location of track turnouts;
12. Proximity to iconic targets;
13. Environmentally sensitive or significant areas;
14. Population density along the route;
15. Venues along the route (stations, events, places of congregation);
16. Emergency response capability along the route;
17. Areas of high consequence along the route;
18. Presence of passenger traffic along route (shared track);
19. Speed of train operations;
20. Proximity to en-route storage or repair facilities;
21. Known threats (the Transportation Security Administration and Federal Railroad Administration will provide non-public threat scenarios for carrier use in the development of the route assessment);
22. Measures in place to address apparent safety and security risks;
23. Availability of alternative routes;
24. Past incidents;
25. Overall times in transit;
26. Training and skill level of crews; and
27. Impact on rail network traffic and congestion.

PART 174—CARRIAGE BY RAIL

4. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

5. Revise § 174.9 to read as follows:

§ 174.9 Safety and security inspection and acceptance.

(a) At each location where a hazardous material is accepted for transportation or placed in a train, the carrier must inspect each rail car containing the hazardous material, at ground level, for required markings, labels, placards, securement of closures, and leakage. These inspections may be performed in conjunction with inspections required under parts 215 and 232 of this title.

(b) For each rail car containing an amount of hazardous material requiring placarding in accordance with § 172.504 of this subchapter, the carrier must visually inspect the rail car at ground level for signs of tampering, including closures and seals, for suspicious items or items that do not belong, and for other signs that the security of the car may have been compromised, including the presence of an improvised explosive device. As used in this section, an improvised explosive device is a device fabricated in an improvised manner incorporating explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals in its design, and generally includes a power supply, a switch or timer, and a detonator or initiator. The carrier should be particularly attentive to signs that security of rail cars transporting materials covered by § 172.820 of this subchapter, rail carload quantities of ammonium nitrate or ammonium nitrate mixtures in solid form, or hazardous materials of interest based on current threat information may have been compromised.

(c) If a carrier determines that a rail car does not conform to the safety requirements of this subchapter, the carrier may not forward or transport the rail car until the deficiencies are rectified or the car is approved for movement in accordance with § 174.50.

(d) Where an indication of tampering or suspicious item is found, a carrier must take appropriate actions to ensure the security of the rail car and its contents has not been compromised before accepting the rail car for further movement. If the carrier determines the security of the rail car has been compromised, the carrier must take action, in conformance with its existing security plan (see subpart I of part 172 of this subchapter) to address the

security issues before forwarding the rail car for further movement.

Issued in Washington, DC on December 12, 2006, under the authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. E6–21518 Filed 12–20–06; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Thursday,
December 21, 2006

Part V

Department of Homeland Security

Transportation Security Administration

49 CFR Parts 1520 and 1580

Rail Transportation Security; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1520 and 1580

[Docket No. TSA–2006–26514]

RIN 1652–AA51

Rail Transportation Security

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would enhance the security of our Nation's rail transportation system. The Transportation Security Administration (TSA) proposes security requirements for freight railroad carriers; intercity, commuter, and short-haul passenger train service providers; rail transit systems; and rail operations at certain, fixed-site facilities that ship or receive specified hazardous materials by rail. This rule proposes to codify the scope of TSA's existing inspection program and to require regulated parties to allow TSA and Department of Homeland Security (DHS) officials to enter, inspect, and test property, facilities, and records relevant to rail security. This rule also proposes that regulated parties designate rail security coordinators and report significant security concerns to DHS.

TSA further proposes that freight rail carriers and certain facilities handling hazardous materials be equipped to report location and shipping information to TSA upon request and to implement chain of custody requirements to ensure a positive and secure exchange of specified hazardous materials. TSA also proposes to clarify and extend the sensitive security information (SSI) protections to cover certain information associated with rail transportation.

This proposal would allow TSA to enhance rail security by coordinating its activities with other Federal agencies, which would also avoid duplicative inspections and minimize the compliance burden on the regulated parties. This proposed rule is intended to augment existing rail transportation laws and regulations that the Department of Transportation (DOT) administers. In today's edition of the **Federal Register**, the Pipeline and Hazardous Materials Safety Administration (PHMSA) is publishing an NPRM proposing to revise the current requirements in the Hazardous Materials Regulations applicable to the safe and secure transportation of hazardous materials transported in commerce by rail.

DATES: Submit comments by February 20, 2007.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov.* You may also submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.*

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; Fax: 202–493–2251.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: *For questions related to rail security:* Lisa Pena, Transportation Sector Network Management, Freight Rail Security, TSA–28, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–4414; facsimile (571) 227–1923; e-mail *lisa.pena@dhs.gov.*

For legal questions: David H. Kasminoff, Office of Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–3583; facsimile (571) 227–1378; e-mail *david.kasminoff@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. See **ADDRESSES** above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI) [1]. TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

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 SSI 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 address listed in **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 DHS' FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

[1] Sensitive Security Information (SSI) is information obtained or developed in the 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 to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.* See also TSA's Systems of Records Notice 006, 68 FR 49503 (August 18, 2003).

You may review the comments in the public docket by visiting the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the Nassif Building, at the Department of Transportation address previously provided under **ADDRESSES**. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Availability of Rulemaking Document

You can get an electronic copy using the Internet by (1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Security Regulations web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Be sure to identify the docket number of this rulemaking.

Abbreviations and Terms Used in This Document

AEI—Automatic Equipment Identification
Amtrak—National Railroad Passenger Corporation
CBP—Bureau of Customs and Border Protection
FRA—Federal Railroad Administration
FTA—Federal Transit Administration
GPS—Global Positioning System
HMR—Hazardous Materials Regulations
HSPD—Homeland Security Presidential Directive
HTUA—High Threat Urban Area
IED—Improvised Explosive Device
MOU—Memorandum of Understanding
OA—State Safety Oversight Agency
PHMSA—Pipeline and Hazardous Materials Safety Administration
PIH—Material Poisonous by Inhalation (PIH is another term for TIH)
RFID—Radio Frequency Identification
RSC—Rail Security Coordinator
SAFETEA–LU—Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users
SD—Security Directive
SSI—Sensitive Security Information
STB—Surface Transportation Board
TIH—Toxic Inhalation Hazard (TIH is another term for PIH)
UASI—Urban Areas Security Initiative

Outline of Proposed Rulemaking

I. Background and Purpose
A. Summary of Proposed Requirements
B. Basis for the Proposed Rule
II. Statutory and Regulatory Authorities
A. TSA Authorities to Regulate Rail Security
B. Department of Transportation Regulation of Rail Security
III. TSA's Proposed Rail Security Requirements
A. Comparison of TSA's Proposed Rule with the DOT Regulatory Scheme
B. Scope and Applicability
1. Freight Railroad Carriers
2. Rail Operations at Certain Fixed-Site Facilities
3. Passenger Rail (including Rail Transit Systems)
4. Other Rail Operations
5. Specified Hazardous Materials
6. High Threat Urban Areas
C. Requirements
1. Sensitive Security Information
2. TSA Inspections
3. Designation of Rail Security Coordinators
4. Location and Shipping Information for Certain Rail Cars
5. Reporting Significant Security Concerns
a. Passenger Railroad Carriers and Rail Transit Systems
b. Freight Rail Including Rail Hazardous Materials Shippers and Rail Hazardous Materials Receivers
6. Chain of Custody and Control
IV. Section-by-Section Analysis of Proposed Rule
V. Rulemaking Analyses and Notices
A. Executive Order 12866 Assessment (Regulatory Planning and Review)
B. Regulatory Flexibility Act Assessment
C. Paperwork Reduction Act
D. International Trade Impact Assessment
E. Unfunded Mandates Reform Act Analyses
F. Executive Order 13132 (Federalism)
G. Environmental Analysis
H. Energy Impact Analysis

I. Background and Purpose

A. Summary of Proposed Requirements

TSA proposes security regulations that would cover a broad spectrum of the rail transportation sector, including freight railroad carriers, passenger railroad carriers, rail transit systems, and rail operations at certain facilities that ship or receive specified categories and quantities of hazardous materials. TSA proposes these regulations to enhance the security of rail transportation and to address potential security threats to rail transportation. TSA intends for these proposed regulations to build upon existing Department of Transportation (DOT) procedures and requirements.

TSA's proposal is also intended to augment a DOT proposal to revise the current requirements in the Hazardous Materials Regulations applicable to the safe and secure transportation of hazardous materials transported in commerce by rail. In this regard, in today's edition of the **Federal Register**, PHMSA is publishing an NPRM proposing to require railroad carriers to compile annual data on specified shipments of hazardous materials, use the data to analyze safety and security risks along rail transportation routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. PHMSA's proposal would also clarify its current security plan requirements to address en route storage, delays in transit, delivery notification, and impose additional security inspection requirements for hazardous materials shipments.

TSA's rule proposes to apply several general requirements to all freight and passenger railroad carriers, certain facilities that ship or receive specified hazardous materials by rail, and rail transit systems:

- *Rail Security Coordinator.* Covered entities must designate a rail security coordinator (RSC) and at least one alternate RSC to be available to TSA on a twenty-four hour, seven day per week basis to serve as primary contact for receipt of intelligence information and other security-related activities.
- *Reporting.* Covered entities must immediately report incidents, potential threats, and significant security concerns to TSA.
- *TSA Inspection.* Covered entities must allow TSA and DHS officials working with TSA to enter and conduct inspections, tests, and such other duties to carry out TSA's statutory responsibilities. This may include copying of records.
- *Sensitive Security Information.* This rule clarifies and extends the protection afforded to sensitive security information (SSI) in rail transportation and further identifies covered persons to include railroad carriers, certain rail operations at facilities, and rail transit systems.

The rule also proposes to apply additional requirements to freight railroad carriers and certain facilities that ship or receive specified hazardous materials by rail:

- *Location and Shipping Information.* Covered entities must provide to TSA, upon request, the location and shipping information of rail cars within their physical custody or control that contain a specified category and quantity of hazardous material. The information must be provided to TSA no later than one hour after receiving the request.

• *Chain of Custody and Control.* Covered entities must provide for a secure chain of custody and control of rail cars containing a specified quantity and type of hazardous material.

TSA proposes three categories and quantities of specified hazardous materials to which the proposed requirements in this NPRM would apply. The definitions are taken from DOT's Hazardous Materials Regulations (49 CFR Parts 171–180), as follows:

(1) A rail car containing more than 2,268 kg (5,000 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material, as defined in 49 CFR 173.50;

(2) A tank car containing a material poisonous by inhalation as defined in 49 CFR 171.8, including Division 2.3 gases poisonous by inhalation, as set forth in 49 CFR 173.115 (c) and Division 6.1 liquids meeting the defining criteria in 49 CFR 173.132(a)(1)(iii) and assigned to hazard zone A or hazard zone B in accordance with 49 CFR 173.133(a), other than residue; and

(3) A rail car containing a highway route-controlled quantity of a Class 7 (radioactive) material, as defined in 49 CFR 173.403.

Appendix B to proposed part 1580, reproduced as Table 1 below, presents a brief summary of the proposed security measures required for the different categories of rail transportation entities that this rule would govern.

TABLE 1.—TSA RAIL SECURITY NPRM SUMMARY

Proposed security measure and rule section	Freight railroad carriers NOT transporting specified hazardous materials	Freight railroad carriers transporting specified hazardous materials (1580.100(b))	Rail operations at certain facilities that ship (i.e., offer, prepare, or load for transportation) hazardous materials	Rail operations at certain facilities that receive or unload hazardous materials within HTUA	Passenger railroad carriers and rail transit systems	Certain other rail operations (private, business/office, circus, tourist, historic, excursion)
Allow TSA to inspect (1580.5)	X	X	X	X	X	X
Appoint rail security coordinator (1580.101 freight; 1580.201 passenger).	X	X	X	X	X	Only if notified in writing that security threat exists
Report significant security concerns (1580.105 freight; 1580.203 passenger).	X	X	X	X	X	X
Provide location and shipping information for rail cars containing specified hazardous materials if requested (1580.103).		X	X	X		
Chain of custody and control requirements for transport of specified hazardous materials that are or may be in HTUA (1580.107).		X	X	X		

B. Basis for the Proposed Rule

In developing this rule, TSA sought to identify and address threats to rail transportation. With respect to passenger rail, TSA recognizes that passenger railroad carriers, commuter operations, and subway systems are high consequence targets in terms of potential loss of life and economic disruption. They carry large numbers of people in a confined environment, offer the opportunity for specific populations to be targeted at particular destinations, and often have stations located below or adjacent to high profile government buildings, major office complexes, and iconic structures. Terrorist bombings since 1995 highlight the need for improved government access to, and monitoring of, transportation of passengers by rail. Terrorists have attacked the Tokyo subway system (1995); areas in and around the Moscow subway system (2000, 2001, and 2004); Madrid commuter trains (2004); the London Underground system (2005); and the train system in Mumbai (formerly known as Bombay), India (2006).

TSA also considered the threats that face freight rail transportation. Due to the open infrastructure of the rail transportation system, freight trains can be particularly vulnerable to attack. Currently, rail carriers and shippers lack positive chain of custody and control procedures for rail cars as they move through the transportation system (e.g., as entities load the rail cars at originating facilities, as carriers transport the cars over the tracks, and as entities unload the cars at receiving facilities). This can present a significant vulnerability. Whenever entities stop rail cars in transit and interchange them without appropriate security measures, their practices can create security vulnerabilities. Freight trains transporting hazardous materials are of even more concern, because an attack on those trains (e.g., through the use of improvised explosive devices (IEDs) [2]) could result in the release of hazardous materials.

TSA is taking a risk-based approach by focusing on shipments of certain hazardous materials at this time. Thus, this rulemaking is focused on establishing chain of custody and control procedures for rail cars that pose the greatest security vulnerability. While an IED attached to any rail car (such as a car transporting coal or household appliances) would obviously cause major damage to that car, and its contents upon detonation, the more likely scenario is that terrorists would target a rail car containing certain hazardous materials in order to inflict the most damage in terms of loss of life and property, and economic effect.

To determine which hazardous materials to identify in this proposed regulation, TSA looked to the hazardous materials that the Pipeline and Hazardous Materials Safety Administration (PHMSA) identified in

[2] An IED is a device fabricated in an improvised manner that incorporates in its design explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals. It generally includes a power supply, a switch or timer, and a detonator or initiator.

its HM–232 rule.[3] From the list in HM–232, TSA identified three categories[4] of hazardous materials that pose the greatest risk: materials that are poisonous by inhalation (PIH),[5] explosive, and radioactive. In this proposed rule, TSA applies specific requirements to certain carriers and facilities that deal with these materials.

PHMSA considers the phrases ''material poisonous by inhalation,'' ''poisonous inhalation hazard,'' and ''toxic inhalation hazard'' to be synonymous and interchangeable. However, PHMSA referred to such material in the HM–232 rule text exclusively by the term ''material poisonous by inhalation.'' *See* 49 CFR 172.800(a)(3). In this NPRM, TSA uses a subset of the HM–232 list as the criterion for portions of this rule, and so this rule uses the term PIH (and also ''material poisonous by inhalation'') to maintain consistency with the PHMSA HM–232 rule.

Each of these three hazardous materials presents serious risks. The release of PIH materials in a densely populated urban area would have catastrophic consequences. Such a release would endanger significant numbers of people. An example of this was seen in the January 6, 2005, rail accident in Graniteville, South Carolina. A Norfolk Southern Railway Company freight train carrying chlorine was unexpectedly diverted from the main track onto a rail spur. The train struck a standing train on the rail spur, derailing three locomotives and sixteen rail cars and rupturing a tank car carrying chlorine. Even in this sparsely populated area, the collision resulted in fatal injuries to eight citizens and one railroad employee, injuries to 630 people, and the evacuation of 5,400 local residents. Damages to equipment and track totaled more than $2.3 million. While the accident was not the result of a terrorist attack, it nonetheless illustrates the danger of transporting PIH materials and the damage that can result from a release.

Although the number of rail shipments carrying explosives and radioactive materials is relatively low, a release of these materials could cause serious and devastating harm. If terrorists detonated certain explosives[6] at critical points in the transportation cycle, they could cause significant loss of life, damage to infrastructure, and harm to the national economy. If terrorists perpetrated an attack against a rail car transporting certain radioactive materials,[7] they could endanger a significant number of people as well as disrupt the supply chain as a result of contamination.

The proposed rule will address the above-identified threats to rail transportation. The provisions in this proposed rule, including those allowing for TSA inspections and those requiring the designation of Rail Security Coordinators and the reporting of suspicious incidents, will improve TSA's ability to inspect rail operations and communicate with railroads and rail facilities. This will provide TSA and DHS with better information and monitoring capabilities concerning potential transportation security incidents involving rail travel. Also, the requirements related to hazardous materials, such as additional monitoring and protection of certain rail cars and increased availability of location and tracking information for certain rail cars, will decrease the vulnerabilities of these hazardous materials shipments to attack. Through these measures, TSA will significantly increase its domain awareness regarding rail security. TSA will continue to work with all involved entities to improve rail security.

II. Statutory and Regulatory Authorities

A. TSA Authorities To Regulate Rail Security

TSA has the primary federal role in enhancing security for all modes of transportation. Under the Aviation and Transportation Security Act (ATSA)[8] and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for ''security in all modes of transportation * * * including security responsibilities * * * over modes of transportation that are exercised by the Department of Transportation.''[9]

TSA has additional authorities as well. TSA is specifically empowered to develop policies, strategies, and plans for dealing with threats to transportation.[10] As part of its security mission, TSA is responsible for assessing intelligence and other information to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies to address such threats.[11] TSA enforces security-related regulations and requirements,[12] ensures the adequacy of security measures for the transportation of cargo,[13] oversees the implementation and ensures the adequacy of security measures at transportation facilities,[14] and carries out other appropriate duties relating to transportation security.[15] TSA has broad regulatory authority to achieve ATSA's objectives, and may issue, rescind, and revise such regulations as are necessary to carry out TSA functions.[16] TSA is also charged with serving as the primary liaison for transportation security to the intelligence and law enforcement communities.[17]

TSA's authority with respect to transportation security is comprehensive and supported with specific powers related to the development and enforcement of regulations, SDs, security plans, and other requirements. Accordingly, under this authority, TSA may assess a security risk for any mode of transportation, develop security measures for dealing with that risk, and enforce compliance with those measures.

On December 17, 2003, the President issued Homeland Security Presidential Directive 7 (HSPD–7, Critical Infrastructure Identification, Prioritization, and Protection), which ''establishes a national policy for Federal departments and agencies to identify and prioritize United States critical infrastructure and key resources and to protect them from terrorist attacks.''[18] In recognition of the lead

[3] See Section II.B. of this preamble for a detailed discussion of the HM–232 rule.

[4] TSA also identified specified quantities of those hazardous materials. See Section I.B. of this preamble or 49 CFR 1580.100(b) for a list of the quantities.

[5] PIH materials are gases or liquids that are known or presumed on the basis of tests to be so toxic to humans as to pose a hazard to health during transportation. *See* 69 FR 50988. 49 CFR 171.8, 173.115, and 173.132.

[6] Explosives in Class 1 are divided into six divisions. However, as discussed in section III.A. of this preamble, TSA proposes to apply subpart B to part 1580 only to rail cars containing more than 2,268 kg (5,000 lbs) of a Division 1.1, 1.2, or 1.3 explosive material.

[7] *See* 49 CFR 173, subpart H.

[8] Pub. L. 107–71, 115 Stat. 597 (November 19, 2001).

[9] *See* 49 U.S.C. 114(d). The TSA Assistant Secretary's current authorities under ATSA have been delegated to him by the Secretary of Homeland Security. Section 403(2) of the Homeland Security Act (HSA) of 2002, Pub. L. 107–296, 116 Stat. 2315 (2002), transferred all functions of TSA, including those of the Secretary of Transportation and the Under Secretary of Transportation of Security related to TSA, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Assistant Secretary (then referred to as the Administrator of TSA), subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including that in section 403(2) of the HSA.

[10] 49 U.S.C. 114(f)(3).

[11] 49 U.S.C. 114(f)(1)–(5); (h)(1)–(4).

[12] 49 U.S.C. 114(f)(7).

[13] 49 U.S.C. 114(f)(10).

[14] 49 U.S.C. 114(f)(11).

[15] 49 U.S.C. 114(f)(15).

[16] 49 U.S.C. 114(l)(1).

[17] 49 U.S.C. 114(f)(1) and (5).

[18] HSPD–7, Paragraph 1.

role that DHS has for transportation security, and consistent with the powers that ATSA grants to TSA, the directive provides that the roles and responsibilities of the Secretary of DHS include coordinating protection activities for ''transportation systems, including mass transit, aviation, maritime, ground/surface, and rail and pipeline systems.'' [19] In furtherance of this coordination process, HSPD–7 provides that DHS and DOT will ''collaborate on all matters relating to transportation security and transportation infrastructure protection.'' [20]

To ensure that this collaboration occurs, DHS and DOT entered into a Memorandum of Understanding (MOU) on September 28, 2004. In accordance with the September 2004 MOU, both Departments share responsibility for rail and hazardous materials transportation security. The two Departments consult and coordinate on security-related rail and hazardous materials transportation requirements to ensure consistency with overall security policy goals and objectives and to ensure that the Federal agencies do not confront the regulated industry with inconsistent security guidance or requirements. The close coordination that has led to these proposed regulations is consistent with the MOU.

On August 9, 2006, PHMSA and TSA signed an annex to the September 28, 2004 DOT–DHS Memorandum of Understanding (MOU) on Roles and Responsibilities. The purpose of the annex is to delineate clear lines of authority and responsibility and promote communication, efficiency, and non-duplication of effort through cooperation and collaboration in the area of hazardous materials transportation security based on existing legal authorities and core competencies. The annex acknowledges that DHS has lead authority and primary responsibility for security activities in all modes of transportation, and notes that TSA is the lead Federal entity for transportation security, including hazardous materials security. Similarly, on September 28, 2006, FRA and TSA signed an annex to address each agency's roles and responsibilities for rail transportation security. The FRA–TSA annex recognizes that TSA acts as the lead Federal entity for transportation security generally and rail security in particular. The annex also recognizes that FRA has authority over every area of railroad safety (including security), and that FRA enforces PHMSA's hazardous material regulations. The FRA–TSA annex includes procedures for coordinating (1) planning, inspection, training, and enforcement activities; (2) criticality and vulnerability assessments and security reviews; (3) communicating with affected stakeholders; and (4) use of personnel and resources.

TSA's proposed requirements are designed to strengthen the existing regulatory scheme. TSA developed these proposed regulations, which are consistent with DOT's regulations, through close coordination with DOT. The discussion below explains the current and proposed DOT requirements and how TSA's proposed rule would fit into the regulatory framework DOT has established.

B. Department of Transportation Regulation of Rail Security

DOT regulates and oversees rail security through three of its modal administrations: The Pipeline and Hazardous Materials Safety Administration (PHMSA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA).

The Federal hazardous materials transportation law (Federal hazmat law),[21] authorizes the Secretary of Transportation to establish regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.[22] The Secretary of Transportation has delegated this authority to PHMSA.[23] *See* 49 CFR 1.53; *see* 49 CFR parts 171–180. PHMSA has issued several rulemakings addressing rail security under this authority.

On March 25, 2003, PHMSA published a final rule, referred to as HM–232, which requires covered persons to develop and implement security plans. Covered persons include those who offer certain hazardous materials for transportation in commerce and those who transport certain hazardous materials in commerce.[24] The HM–232 final rule requires persons who offer for transportation or transport the following hazardous materials to develop and implement security plans: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in hazard zone A; (4) a shipment in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) infectious substances listed as select agents by the Centers for Disease Control and Prevention (CDC) in 42 CFR part 73; and (6) a shipment that requires placarding.[25] In effect, then, the HM–232 final rule applies the security plan requirement to a shipper or carrier of a hazardous material in an amount that requires placarding and to select agents. HM–232 requires covered persons to perform an assessment of the transportation security risks associated with the materials they handle and to implement methods for addressing those risks. At a minimum, the security plan must address personnel security, prevention of unauthorized access, en route security, and training of employees.

Other PHMSA regulations seek to reduce the risks to safety and security of leaving loaded rail cars unattended for long periods of time. Pursuant to 49 CFR 174.14 and 174.16, a carrier must forward each shipment of hazardous materials ''promptly and within 48 hours (Saturday, Sundays, and holidays excluded)'' after the carrier accepts the shipment at the originating point or the carrier receives the shipment at any yard, transfer station, or interchange point. Where there is only biweekly or weekly service, the carrier must forward a shipment of hazardous materials in the first available train. Additionally, carriers are prohibited from holding, subject to forwarding orders, tank cars

[19] HSPD–7, Paragraph 15.

[20] HSPD–7, Paragraph 22(h).

[21] 49 U.S.C. 5101 et seq., as amended by sec. 1711 of the Homeland Security Act of 2002, (Pub. L. 107–296, Nov. 25, 2002) and Title VII of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005).

[22] A hazardous material is defined as a substance or material, or a group or class of material, (including an explosive; radioactive material; infectious substance; flammable or combustible liquid, solid, or gas; toxic, oxidizing, or corrosive material; and compressed gas) when transported in a particular amount or form that the Secretary of Transportation determines may pose an unreasonable risk to health and safety or property. *See* 49 U.S.C. 5102(2) and 5103(a).

[23] PHMSA is the Federal agency charged with protecting the Nation from the risks to life, health, property, and the environment inherent in the commercial transportation of hazardous materials by all modes of transportation, including pipelines.

[24] 68 FR 14510. *See* 49 CFR 172.800, 172.802, and 172.804. PHMSA amended HM–232 with HM–240 (DOT Docket No. PHMSA–2005–22208, 70 FR 73156 (December 5, 2005)). HM–240 revised terminology, definitions, and requirements for consistency with the Hazardous Materials Safety and Security Reauthorization Act of 2005, Title VII of Pub. L. 109–59, 119 Stat. 1144 (August 10, 2005).

[25] Under the Hazardous Materials Regulations, placards are required for hazardous materials that pose significant transportation risks. Placards use colors, symbols, numbers and text. This is part of DOT's system of hazard communication. The system notifies emergency responders and those who must handle the packages in the course of their employment how to handle the items in transportation and in the event of an accident.

loaded with Division 2.1 (flammable gas), Division 2.3 (poisonous gas) or Class 3 (flammable liquid) materials.

PHMSA, in consultation with the Federal Railroad Administration (FRA) and TSA, has recently proposed to revise the current requirements in the hazardous materials regulations (HMR) applicable to the safe and secure transportation of hazardous materials transported in commerce by freight rail (Route Analysis NPRM). Among other things, PHMSA is proposing to require freight railroad carriers to compile annual data on specified shipments of hazardous materials; use the data to analyze safety and security risks along rail transportation routes where those materials are transported; assess alternative routing options; and make routing decisions based on those assessments.

FRA, the agency within DOT responsible for railroad safety, administers the Federal railroad safety laws, which provide FRA with authority over ''every area of railroad safety.'' [26] 49 U.S.C. 20103(a). The agency has issued a wide range of safety regulations. In addition, FRA enforces PHMSA's hazardous materials regulations, including the HM–232 provisions requiring security plans. *See* 49 CFR 1.49.

The FTA provides financial assistance to support a variety of locally planned, constructed, and operated public transportation systems throughout the United States. Under 49 CFR part 659, FTA manages State Safety Oversight for Rail Fixed Guideway Systems.[27] The regulation requires states to oversee the safety and security of rail fixed guideway systems [28] through designated Oversight Agencies (OAs).[29] The OAs must require the transit agencies to develop and implement written system safety program plans and system security plans [30] and to conduct annual reviews of their plans.[31] Additionally, the OAs must require transit agencies to develop and document a process for the performance of on-going internal safety and security reviews in their system safety program plans.[32] Finally, the OA must require each rail transit system under its responsibility to notify the OA within two hours of an accident or other incident meeting specified parameters, including loss of life, injuries requiring immediate medical attention, property damage to rail transit vehicles or facilities of $25,000 or more, evacuation due to life safety, collision at a grade crossing, a main line derailment, or a collision between rail transit vehicles.[33]

III. TSA's Proposed Rail Security Requirements

TSA has designed this rule so that it would build on DOT's existing regulatory scheme. This rule would augment existing and proposed PHMSA requirements, address security vulnerabilities in the freight rail regulatory scheme, and complement the DOT regulatory scheme regarding passenger rail and mass transit.

A. Comparison of TSA's Proposed Rule With the DOT Regulatory Scheme

First, TSA's NPRM would expand the scope of pre-shipment inspections of rail cars containing hazardous materials. Existing PHMSA regulations require freight railroad carriers to perform a safety inspection at the ground level of each rail car containing hazardous materials.[34] The proposed PHMSA Route Analysis rule would require carriers to also inspect for signs of tampering with rail cars (including closures and seals) during the pre-shipment inspection (*e.g.,* look for IEDs, suspicious items, or any other items that do not belong).[35]

TSA's NPRM would expand these inspections even further. Existing and proposed DOT regulations include pre-shipment inspections for railroad carriers; however, they do not require security-specific inspections for rail hazardous materials shippers. TSA's proposal would require certain rail hazardous materials shippers to physically inspect a rail car from a security perspective (including closures and seals) before transferring custody of a rail car to a freight railroad carrier. Shippers would have to inspect for signs of tampering; for any other signs that the security of the car may have been compromised; and for suspicious items that do not belong, including the presence of an IED.

Second, TSA's NPRM would address other security vulnerabilities that currently exist in the freight rail regulatory scheme. Current regulations do not include chain of custody requirements and, therefore, current regulations do not address security vulnerabilities for hazmat cars in transit or at interchanges. To address this issue, TSA proposes chain of custody requirements, including requirements for monitored and protected transfer locations, and documented transfers. In addition, current regulations do not contain requirements for rail car location reporting and, therefore, do not address the Federal Government's need for prompt, critical information if it becomes necessary to reroute, stop, or otherwise protect shipments and populations to address specific security threats or incidents. To address this issue, TSA proposes rail car location and information reporting requirements.

Third, this NPRM would complement the existing DOT regulatory scheme for passenger and rail mass transit. This NPRM would enhance oversight of rail fixed guideway systems. FTA's regulations, at 49 CFR part 659, direct rail transit agencies and OAs to conduct security reviews. FTA does not oversee these reviews. This proposed rule would augment these requirements. TSA inspectors would provide the FTA and responsible State agencies with a field presence, which has not existed previously, to monitor and assess

[26] The term ''Federal railroad safety laws'' means the provisions of law generally at 49 U.S.C. subtitle V, part A or 49 U.S.C. chapter 51 or 57 and the rules, regulations, orders, and standards issued under any of those provisions. *See* Pub. L. 103–272 (1994).

[27] In 1991, Congress required, for the first time, that FTA establish a program providing for the State-conducted oversight of the safety and security of rail systems not regulated by FRA. *See* Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102–240, Sec. 3029, 49 U.S.C. 5330. FTA published its final rule adopting a new part 659, Rail Fixed Guideway Systems; State Safety Oversight, on December 27, 1995 (60 FR 67034); the final rule went into effect on January 1996. FTA published a revision of the final rule on April 29, 2005 (70 FR 22562) to add clarifying sections, further specify what the State must require to monitor safety and security on non-FRA rail systems, and incorporate into the body of the regulation material previously incorporated by reference.

[28] FTA defines a rail fixed guideway system in 49 CFR 659.5 to mean any light, heavy, rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that: (1) Is not regulated by FRA; and (2) Is included in FTA's calculation of fixed guideway route miles or receives funding under FTA's formula program for urbanized areas (49 U.S.C. 5336); or (3) Has submitted documentation to FTA indicating its intent to be included in FTA's calculation of fixed guideway route miles to receive funding under FTA's formula program for urbanized areas (49 U.S.C. 5336).

[29] *See* 49 CFR 659.1.

[30] *See* 49 CFR 659.17 and 659.21. For a list of the required elements for each plan, *see* 49 CFR 659.19 and 659.23.

[31] *See* 49 CFR 659.25.

[32] *See* 49 CFR 659.27.

[33] *See* 49 CFR 659.33.

[34] Pursuant to 49 CFR 174.9, a carrier must inspect at ground level for required markings, labels, placards, securement of closures, and leakage. A ''ground level'' inspection is an inspection performed with the railroad employee inspecting the rail car while standing level with the car, without the employee climbing on top of the car.

[35] PHMSA intends for these requirements to address those situations where unauthorized individuals attempt to cause a security incident by tampering with rail cars (*e.g.,* introducing an IED to a car to detonate an explosion or to cause a hazardous materials release).

compliance with security requirements.[36]

TSA's NPRM would also complement the existing DOT regulatory scheme for passenger and rail mass transit by allowing TSA inspections, requiring the designation and use of RSCs, and requiring the reporting of threats and significant security concerns. TSA's proposed requirements would enhance the agency's ability to maximize its domain awareness and recognize possible national trends involving security issues. As a complement to FRA's exercise of its safety authority over covered passenger rail operations involving ''every area of railroad safety'' (*see* 49 U.S.C. 20103(a)), and FTA's oversight of rail fixed guideway systems (*see* 49 U.S.C. 5330 and 49 CFR part 659), TSA would assess threats to security, monitor the state of awareness and readiness throughout the passenger rail and rail mass transit sectors, determine the adequacy of an owner or operator's security measures, and identify security gaps.

B. Scope and Applicability

Consistent with ATSA's broad authorities and with the fact that terrorists may target any part of the rail transportation system, this NPRM would impose requirements on all types of rail operations, including freight railroad carriers; intercity, commuter, and short-haul railroad passenger train service; and rail transit systems. The rule would also apply to rail hazardous materials shippers that offer, prepare, or load for transportation in commerce by rail one or more of the specified categories and quantities of hazardous materials. Also, the rule would apply to rail hazardous materials receivers that receive or unload the specified hazardous materials by rail in a High Threat Urban Area (HTUA).[37] In addition, the rule would cover the operation of private rail cars that are on or connected to the general railroad system of transportation and tourist, scenic, historic, and excursion operations, whether on or off the general railroad system of transportation.

With respect to freight railroad carriers and rail hazardous materials facilities, an important issue relating to the scope of the rule is which activities are transportation-related and, therefore, within TSA's jurisdiction. This section of the preamble discusses the scope of the applicability of the proposed rule to freight railroad operators, rail hazardous materials shippers, rail hazardous materials receivers, and passenger railroad carriers. It also identifies activities that are transportation-related and, therefore, within the scope of the proposed rule. TSA defines the term ''transportation,'' as related to security purposes, more broadly than PHMSA defines the term, as related to safety purposes.

1. Freight Railroad Carriers

This NPRM proposes requirements that apply to all freight railroad carriers, except for those carriers whose entire operations are confined to an industrial installation. The proposed rule would not apply to, for example, a plant railroad carrier in a steel mill that serves only the needs of the plant itself and does not go beyond the plant's boundaries. Of course, even where a railroad carrier operates outside the general system of transportation, other railroad carriers that are part of that general system may enter the first railroad carrier's property. For example, a major railroad carrier may enter a chemical or auto plant via an industrial lead to pick up or set out rail cars. In such cases, the railroad carrier that is part of the general system would remain part of the general system while inside the installation, and TSA's proposed regulations would continue to cover all of its activities. Moreover, although TSA would not directly regulate the transportation operations of the railroad carrier located inside the installation that take place solely for the carrier's own corporate purpose, TSA would assert its security authority over all security matters involving that point of connection, to the extent the general system railroad carrier is engaging in transportation activities with the installation railroad carrier at a point of connection to the general system.

The applicability of the proposed freight railroad carrier requirements vary depending on whether the carrier transports specified categories and quantities of hazardous materials and whether these materials are or may be located in HTUAs. The regulation would, however, require all freight railroad carriers (regardless of whether they transport any hazardous materials), as well as freight railroad carriers hosting passenger operations,[38] to allow TSA inspections, have an RSC, and report significant security concerns.

TSA's statutory authority over the security of freight rail transportation is co-extensive with FRA's authority over freight railroad safety; accordingly, TSA is proposing to make subject to this rule all freight railroad carriers that are subject to the jurisdiction of FRA. With respect to freight railroads, FRA's statutory jurisdiction extends to all entities that can be construed as railroads by virtue of their providing non-highway ground transportation over rails or electromagnetic guideways, and will extend to future railroads using other technologies not yet in use. *See* 49 U.S.C. 20102. Moreover, by delegation from the Secretary of Transportation, FRA has authority to enforce the Federal hazmat laws, especially with regard to rail transportation of hazardous materials, and has both regulatory and enforcement authority under the Federal railroad safety laws. *See* 49 CFR 1.49.[39]

2. Rail Operations at Certain Fixed-Site Facilities

The requirements of this NPRM will apply to rail hazardous materials shippers and receivers. Specifically, TSA proposes that shippers and receivers be subject to TSA inspection, have RSCs, report significant security concerns, provide location and shipping information for specified hazardous materials, and provide a secure chain of custody and control for specified hazardous materials. For purposes of this NPRM, TSA uses the following definitions: Rail hazardous materials shippers are facilities that are connected to the general railroad system of transportation and offer, prepare, or load for transportation by rail one or more of the specified categories and quantities of the hazardous materials listed in § 1580.100(b) of the NPRM. Rail hazardous materials receivers are facilities that are connected to the general railroad system of transportation and that receive or unload from transportation by rail one or more of the specified categories and quantities of the hazardous materials listed in § 1580.100(b) of the NPRM. Both definitions exclude facilities that the Federal government operates.

TSA's statutory authority under ATSA extends to rail hazardous materials shippers and receivers. In addition to the authorities described in

[36] Moreover, since TSA's inspection authority over rail transit systems is not limited to rail fixed guideway systems receiving or seeking to receive funds under FTA's formula program for urbanized areas and is therefore broader than the scope of coverage of FTA's regulation (49 CFR part 659), TSA may be able to share information on assessments of the security of rail transit systems not currently subject to OA security reviews.

[37] The applicability of certain provisions of this proposed rule depends on which hazardous materials are involved and whether the materials are located in HTUAs. For a discussion of these issues, see sections III.A.5. and III.A.6. of the preamble.

[38] The term ''hosting'' refers to the situation where a passenger operation receives trackage rights to operate over track that another freight or passenger railroad carrier owns or operates.

[39] *See* 49 CFR part 209, Appendix A for FRA's detailed jurisdiction policy statement.

Section II.A. of this preamble, TSA carries out such other duties and exercises such other powers relating to transportation security, as the Assistant Secretary considers appropriate, to the extent authorized by law.[40] More specifically, TSA is empowered to ensure the adequacy of security measures for the transportation of cargo.[41] ATSA does not limit TSA's authority to protecting the security of cargo only while it is on a particular conveyance, but rather extends it to the entire transportation system, including facilities.

This proposed rule covers only those hazardous materials facilities that: (1) Are connected to the general rail system of transportation, and (2) offer, prepare, load, receive, and/or unload for or from transportation by rail, specified hazardous materials. Hazardous materials shippers load rail cars that freight railroad carriers pick up for transport. The rail cars may travel anywhere in the general transportation system, including in and near high population areas, critical infrastructure, and other critical areas. Sometimes loaded rail cars will remain for some time at the shipper's facility awaiting pickup from the carrier. Whether being loaded at facilities or awaiting pickup at facilities, these rail cars could endanger surrounding areas. Under ATSA, TSA has authority to ensure the adequacy of security measures at the transportation-related areas of these facilities. This includes authority to inspect those areas used for transportation security activities. This would include, for example, control rooms or offices where security activities are initiated or monitored.

TSA used a risk-based approach in determining the rail hazardous materials facilities to which this rulemaking would apply. The highest risk exists from the rail transport of the specified hazardous materials when those rail cars are in or near an HTUA. TSA decided to use the HTUA listing to define those areas for which this rulemaking would provide additional security measures. A rail car departing any rail hazardous materials facility could enter an HTUA. TSA notes that, as to rail hazardous materials facilities receiving or unloading hazardous materials, the highest risk is at those facilities that are located within an HTUA. Therefore, TSA proposes that the regulation cover all rail hazardous materials facilities that receive or unload, within an HTUA, one or more of the specified hazardous materials.[42]

3. Passenger Rail (including Rail Transit Systems)

TSA's authority is not limited to FRA's jurisdiction over passenger rail and, therefore, includes rail transit systems. TSA's authority is also not circumscribed by FTA's jurisdiction. Therefore, the proposed rule would apply to all passenger railroad carriers within FRA's statutory jurisdiction (including tourist, scenic, historic, and excursion operations), and all rail transit systems (including light rail, heavy rail, rapid transit, monorail, inclined planes, funiculars, cable cars, trolleys, and automated guideways) within FTA's statutory jurisdiction, and other passenger rail systems.

TSA proposes to apply this rule to all railroad carriers that operate passenger train service, provide commuter or other short-haul passenger train service in a metropolitan or suburban area, or host the operations of such passenger train service. Under the provisions of the proposed rule, TSA would regulate as a passenger railroad carrier any public authority that indirectly provided passenger train service by contracting out the actual operation to another railroad carrier or independent contractor. Although the public authority would ultimately be responsible for designating and using an RSC, allowing TSA to conduct inspections or tests, and reporting significant security concerns, the railroad carrier or other independent contractor that operates the authority's passenger rail service would be required to fulfill all applicable responsibilities with respect to rail transportation security planning, including implementation.

The proposed rule would cover freight railroad carriers that host the operations of passenger train service over its lines, but that neither provide nor operate passenger train service itself. The proposal would also cover passenger railroad carriers that, in addition to operating or providing their own passenger train service, host the operations of other passenger railroad operations. TSA recognizes that under the proposed rule, the host freight and passenger railroad carriers would already be subject to the provisions of the rule (*e.g.,* subject to TSA inspection, required to have rail security coordinators, and required to report significant security concerns) independent of their additional role as hosts to passenger train service. Nevertheless, based upon the unique operational relationship between the host railroad carrier and the passenger operation, as well as the specific nature of a particular security situation, one of the railroad carriers may be better suited to assume primary compliance responsibility under the proposed rule. TSA expects that a railroad carrier that operates passenger train service over the line of a host railroad carrier would review all of the RSC and security concern reporting requirements of the host railroad carrier and that both the host carrier and the passenger operation would coordinate their respective roles in fulfilling these requirements. Accordingly, if there were a significant security concern involving a hosted passenger operation, TSA would accept one jointly-submitted report from both carriers, rather than separate reports from each carrier.

TSA recognizes that host railroad carriers already bear certain significant safety and security responsibilities. For example, pursuant to FRA emergency preparedness regulations, host railroad carriers must have procedures for making emergency responder notifications, be capable of rendering assistance to the involved passenger railroad carriers during emergency situations, and address any physical and operating characteristics of their rail lines that may affect the safety of these railroad operations (such as evacuating passengers from a train stalled in a tunnel or on an elevated structure). *See* 49 CFR part 239.

TSA's proposal to cover rail transit systems would build upon DOT's existing regulatory scheme. A rail transit system is generally subject to the jurisdiction of FTA, FRA, or both; the determining factor for jurisdiction is whether the transit system is connected to the general railroad system of transportation. For rail transit systems that are not connected to the general system, the applicable DOT requirements include FTA's State Safety Oversight for Rail Fixed Guideway Systems regulations.[43] For transit systems that are connected to the general railroad system, FRA may exercise jurisdiction (*see* 49 CFR part 209, Appendix A for a detailed

[40] 49 U.S.C. 114(f)(15).

[41] 49 U.S.C. 114(f)(10).

[42] Note that PHMSA's regulations do not apply after the delivering carrier departs the facility. *See* 49 CFR 171.1(c)(3) and 171.8 TSA's proposal to cover the transportation-related areas of the rail hazardous materials facilities that receive or unload the subject rail cars in the HTUA would extend beyond that time.

[43] *See* discussion in Section III.C. of this preamble.

discussion).[44] For those rapid transit systems that are connected to the general system in such a way to warrant exercise of FRA's jurisdiction, only those portions of the rapid transit system that are connected to the general system will generally be subject to FRA's rules. For those rapid transit systems that are not sufficiently connected to the general railroad system to warrant FRA's exercise of jurisdiction, FTA's rules will apply.

TSA's authority over rail transit systems is not limited to rail fixed guideway systems receiving or seeking to receive funds under FTA's grant program, and is therefore broader than the scope of coverage of FTA's regulation (49 CFR part 659). Accordingly, TSA's authority extends to all rail transit systems regardless of whether the system is subject to regulation by FTA, FRA, or neither agency.

4. Other Rail Operations

Some of the requirements in this NPRM would apply to tourist, scenic, historic, and excursion passenger rail systems. Specifically, these types of operations would be subject to inspection by TSA and DHS officials and would be required to report significant security concerns. *See* proposed 49 CFR 1580.5 and 1580.203. In addition, these operations would be subject to the NPRM's requirement to designate and use an RSC if TSA notifies the operation in writing that a security threat exists concerning that operation. *See* proposed 49 CFR 1580.201. TSA is including this requirement, because tourist, scenic, historic, and excursion operations are potential terrorist targets, and so there may be some situations where TSA wishes to inspect these operations to assess their security.

With two exceptions, FRA exercises jurisdiction over tourist, scenic, and excursion railroad operations whether or not they are conducted on the general railroad system. The exceptions are: (1) Operations of less than 24-inch gage, which, historically, have never been considered railroads under the Federal railroad safety laws; and (2) operations that are off the general railroad system of transportation and ''insular.'' [45] *See* Appendix A to 49 CFR part 209. A tourist operation is not part of the general system when the operation is conducted on track used exclusively for tourist operation purposes. If a tourist operation conducted off the general system is insular, FRA does not exercise jurisdiction over it, and none of FRA's rules apply. If a tourist operation conducted off the general system is not insular, FRA exercises jurisdiction over the operation, and some of FRA's rules (*i.e.*, those that specifically apply beyond the general system to such operations) will apply.[46]

TSA also proposes that the operators of private cars, including business or office cars and circus trains that are on or connected to the general railroad system of transportation, allow TSA to inspect and be required to report significant security concerns. TSA believes that a private car operation that hauls passengers should perform a basic level of security preparedness planning consistent with the planning of other passenger train operations. TSA recognizes the fact that private rail cars do not haul as many passengers as these other operations and, therefore, these rail cars constitute a less attractive target for terrorists. Moreover, TSA recognizes that host railroads, such as National Railroad Passenger Corporation (Amtrak) and commuter railroads, often haul private cars, and these hosts would already be required to have RSCs, who can serve as a point of contact with TSA while the host is hauling the private cars.

Finally, TSA seeks comment on whether there are financial, operational, or other factors that are unique to the operation of tourist, scenic, historic, and excursion passenger rail systems or the operation of private rail cars and if so, what those factors are.

5. Specified Hazardous Materials

Certain provisions of this proposed rulemaking (*i.e.*, the ones allowing TSA inspections, requiring the designation of RSCs, and requiring reporting of significant security concerns) apply to freight railroad carriers regardless of whether they transport hazardous materials. However, some provisions of the NPRM (i.e., the ones requiring entities to provide location and shipping information and to provide a secure chain of custody and control) apply only to the rail hazardous materials shippers and receivers and freight railroad carriers that handle specified categories and quantities of hazardous materials. Generally, the specified chemicals are those that are ''poisonous by inhalation,'' certain explosives, and radioactive materials. Proposed section 1580.100(b), lists these materials and applicable quantities:

(1) A rail car containing more than 2,268 kg (5,000 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material, as defined in 49 CFR 173.50.

(2) A tank car containing a material poisonous by inhalation as defined in 49 CFR 171.8, including Division 2.3 gases poisonous by inhalation, as set forth in 49 CFR 173.115(c) and Division 6.1 liquids meeting the defining criteria in 49 CFR 173.132(a)(1)(iii) and assigned to hazard zone A or hazard zone B in accordance with 49 CFR 173.133(a), other than residue; and

(3) A rail car containing a highway route-controlled quantity of a Class 7 (radioactive) material, as defined in 49 CFR 173.403.

DOT's Hazardous Materials Regulations define the term ''material poisonous by inhalation'' in 49 CFR 171.8. Materials poisonous by inhalation, also called poison inhalation hazard (PIH) materials, are gases or volatile liquids that are toxic to humans when inhaled. Specific classification criteria for PIH gases are in 49 CFR 173.115(c) and 173.116(a); classification criteria for PIH liquids are in 49 CFR 173.132(a)(1)(iii) and 173.133(a).

PHMSA defines ''radioactive material'' to mean a material containing radionuclides where both the activity concentration and the total activity in the consignment exceed the values specified in the table in 49 CFR 173.436 or values derived according to the instructions in 49 CFR 173.433. *See* 49 CFR 173.403. A highway route controlled quantity refers to a quantity in a single package that exceeds one of the following amounts: 3,000 times the A1 value of the radionuclides, as specified in 49 CFR 173.435 for special form Class 7 (radioactive) material; 3,000 times the A2 value of the radionuclides, as specified in 49 CFR 173.435 for normal form Class 7 (radioactive) material; or 1,000 TBq (27,000 Ci), whichever is least.

Under the HMR, an ''explosive'' refers to ''any substance or article, including a device, which is designed to function by

[44] FTA's rules on rail fixed guideway systems do not apply to any rapid transit systems or portions thereof subject to FRA's rules.

[45] Insularity is an issue only with regard to tourist operations over trackage outside of the general system used exclusively for such operations. FRA considers a tourist operation to be insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser would be affected by the operations. A tourist operation will not be considered insular if one or more of the following exists on its line: (1) A public highway-rail crossing that is in use; (2) An at-grade rail crossing that is in use; (3) A bridge over a public road or waters used for commercial navigation; or (4) A common corridor with a railroad, *i.e.,* its operations are within 30 feet of those of any railroad.

[46] For example, FRA's rules on accident reporting, steam locomotives, and grade crossing signals apply to these non-insular tourist operations (*see* 49 CFR 225.3, 230.2 and 234.3), as do all of FRA's procedural rules (49 CFR parts 209, 211, and 216) and the Federal railroad safety statutes themselves.

explosion (*i.e.*, an extremely rapid release of gas and heat) or which, by chemical reaction within itself, is able to function in a similar manner even if not designed to function by explosion, unless the substance or article is otherwise classed under the [HMR].'' *See* 49 CFR 173.50. The term includes a pyrotechnic substance or article, unless the substance or article is otherwise classed under the HMR. Explosives in Class 1 are divided into six divisions. However, based upon the relative explosive hazards of the explosives in these divisions, TSA proposes to apply subpart B of part 1580 to explosives in rail cars containing more than 2,268 kg (5,000 lbs) only in Divisions 1.1., 1.2, and 1.3. Division 1.1 consists of explosives that have a mass explosion hazard. A mass explosion is one which affects almost the entire load instantaneously. Division 1.2 consists of explosives that have a projection hazard but not a mass explosion hazard. Division 1.3 consists of explosives that have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard. *See* 49 CFR 173.50.

TSA, PHMSA, and FRA have assessed the security vulnerabilities associated with the transportation of different types and classes of hazardous materials. In this NPRM, TSA has applied enhanced security requirements to the specified hazardous materials based on specific transportation scenarios. These scenarios depict how individuals could deliberately use hazardous materials to cause significant casualties and property damage. The materials and the quantities specified in proposed § 1580.100(b) present a significant rail transportation security risk and an attractive target for terrorists because of the potential for them to use these materials as weapons of mass effect. TSA continues to evaluate the security risks associated with the transportation of hazardous materials and may propose additional regulations including regulations pertaining to other materials or quantities of materials in the future.

The proposed rule excludes tank cars containing only residual amounts of the hazardous material. From a security perspective, it appears that the consequences of the release of residual PIH materials would be significantly less than the consequences of an incident involving a loaded tank car. TSA seeks comment on whether it should apply the requirements in this NPRM to fewer or additional hazardous materials or should extend the requirements to include tank cars containing residue. TSA also seeks comment on whether there are other hazardous materials that could cause significant loss of life, transportation system disruption, or economic disruption and whether TSA should apply the requirements of this NPRM to those other materials. TSA will continue to evaluate whether it should expand or reduce the list of hazardous materials and whether it should make tank cars containing residue subject to the rule.

6. High Threat Urban Areas (HTUAs)

The proposed requirements for reporting shipping and location information and for providing a secure chain of custody are applicable to the transportation of specified hazardous material that is or may be in an HTUA. TSA is using the term HTUA and its definition to describe and delineate those geographic areas that warrant special consideration with respect to transportation security. In this NPRM, TSA derived its lists of HTUAs from the Urban Areas Security Initiative (UASI) program. TSA includes a list of HTUA in Appendix A to this NPRM. As well, the list is available on the DHS Web site: *http://www.dhs.gov/dhspublic//interweb/assetlibrary/FY06_UASI_Eligibility_List.pdf.*

First implemented in 2003, UASI is a risk-based methodology that is consistent with DHS's national risk management efforts for homeland security. DHS identified UASI areas as HTUAs if they had populations greater than 100,000 and had reported threat data during the past fiscal year. Currently, DHS has identified 46 HTUAs based on risk assessments considering three variables: (1) Threat, or the likelihood of a type of attack that might be attempted; (2) vulnerability, or the likelihood that an attacker would succeed; and (3) consequence, or the impact of an attack occurring. Each HTUA consists of a city limit or combined adjacent city limits, plus a 10-mile buffer zone extending from the city border(s). Appendix A to this proposed rule contains the 46 Urban Areas that were eligible to apply for the FY 2006 UASI Program. TSA proposes to use the FY 2006 list of Urban Areas for this rule. TSA has evaluated the security issues for rail transportation of specific hazardous material and believes that the results of the FY 2006 UASI risk model are an appropriate methodology for this rulemaking. As proposed, if DHS makes any changes in subsequent years to the FY 2006 list, those changes will not affect the TSA list in Appendix A unless TSA subsequently amends the list.

DHS evaluated these HTUAs for two separate, but complementary, types of risk: asset-based risk and geographically-based risk. Considered together, these two calculations provide an estimate of total terrorism risk. This is accomplished using a common risk model that is internally consistent across all homeland security grant allocations. Under this model, asset-based risk is a function of the combined risks of terrorism to potential targets within a geographic area. In comparison, geographically-based risk is derived from certain prevailing attributes or characteristics intrinsic to a geographical area, such as a border, that may contribute to its risk of terrorism.

In May 2005, DHS held a meeting with stakeholders to solicit input and feedback on the risk formula. Attendees included key representatives from 12 States and urban areas, as well as representatives from national and international associations of police, emergency managers, city chiefs, and fire chiefs. The current risk model reflects the recommendations of the stakeholders who attended the May 2005 meeting. Additional information about the risk methodology is available at the following Web site: *http://www.ojp.usdoj.gov/odp/docs/FY_2006_UASI_Program_Explanation_Paper_011805.doc.*

TSA is currently conducting vulnerability assessments of the transportation of PIH materials through the UASI HTUAs. Through these assessments, TSA has identified operational practices and conditions that may compromise transportation security. TSA has addressed some of the major practices and conditions in this rulemaking, including the lack of positive and secure exchange of custody and control of rail cars containing hazardous materials and the lack of secure storage of these materials at transportation facilities.

TSA is soliciting comment on the adoption of the DHS HTUAs for this proposed rule, and seeks comment on appropriate criteria to use to determine those areas where freight railroad carriers and rail hazardous materials shippers and receivers should be subject to additional security requirements. If TSA decides in the final rule to use HTUAs as the basis for imposing additional security requirements, TSA will continue studying the patterns of rail transportation across the nation and may revise the list of HTUAs established by DHS for FY 2006, as appropriate.

C. Requirements

1. Sensitive Security Information (SSI)

Section 114(s) of title 49 of the United States Code requires TSA to promulgate

regulations governing the protection of sensitive security information (SSI). SSI includes information that would be detrimental to transportation security if publicly disclosed. TSA's SSI regulation, 49 CFR part 1520, establishes certain requirements for the recognition, identification, handling, and dissemination of SSI, including restrictions on disclosure and civil penalties for violations of those restrictions.

Although 49 CFR part 1520 primarily covers aviation and maritime security-related information, vulnerability assessments and threat information related to all modes of transportation are considered SSI under 49 CFR 1520.5(b)(5) and 1520.5(b)(7) and must be protected and handled in accordance with 49 CFR part 1520. However, because certain other information created in connection with this proposed rule would be detrimental to transportation security if publicly disclosed, TSA is proposing to amend 49 CFR part 1520 to more directly protect information related to the rail sector. This rulemaking would add railroad carriers, rail hazardous materials shippers, rail hazardous materials receivers, and rail transit systems as covered persons under part 1520 and explicitly require them to restrict the distribution, disclosure, and availability of SSI to persons with a need to know, and refer all requests for SSI by other persons to TSA or the applicable component or agency within DOT or DHS.

The NPRM would amend part 1520 to clarify that any review, audit, or other examination of the security of a railroad, railroad carrier, rail facility, rail hazardous materials shipper, rail hazardous materials receiver, rail transit system, or rail transit facility that is directed, created, held, funded, or approved by DOT or DHS, or that will be provided to DOT or DHS in support of a Federal security program, is SSI. The NPRM would also amend part 1520 to cover certain details of security inspections or investigations involving rail transportation security; specific details of rail transportation security measures; security training materials for persons carrying out rail transportation security measures required or recommended by DHS or DOT; lists of identifying information of personnel having unescorted access to a rail secure area; and lists identifying critical rail infrastructure assets. TSA seeks comment on whether it should protect as SSI under part 1520 any other information that may be created under this rule.

2. TSA Inspections

TSA is proposing that all entities covered by this proposed regulation allow TSA to inspect their facilities without advance notice. TSA will conduct inspections in a reasonable manner consistent with TSA guidance for its inspectors. In enacting ATSA, Congress recognized the importance of security for all forms of transportation and related infrastructure and, in establishing TSA, conferred upon it responsibility for security in all modes of transportation. The United States rail network is a vital link in the Nation's transportation system and is critical to the economy, national defense, and public health. Amtrak, the Alaska Railroad Corporation, commuter railroads, and rail transit systems provide passenger rail service to millions of passengers yearly. Approximately 40 percent of all intercity freight goes by rail, including 64 percent of the coal that electric utilities use to produce power.

Maintaining a safe and secure rail transportation system is essential. TSA must be able to inspect at any time in order to carry out its security-related statutory and regulatory authorities, including the following authorities in 49 U.S.C. 114(f):

(2) assess threats to transportation;

(7) enforce security-related regulations and requirements;

(9) inspect, maintain, and test security facilities, equipment, and systems;

(10) ensure the adequacy of security measures for the transportation of cargo;

(11) oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities; and

(15) carry out such other duties, and exercise such other powers, relating to transportation security as the Assistant Secretary considers appropriate, to the extent authorized by law.

As noted above, under this proposal, TSA's inspection authority also covers rail hazardous materials facilities that offer, prepare, or load for transportation by rail certain specified categories and quantities of hazardous materials, as well as facilities that receive or unload these materials from transportation by rail in a HTUA. In this regard, TSA's authority over transportation security explicitly covers the transportation of cargo.[47] The law does not limit TSA to protecting the security of cargo only while it is on a particular vehicle of transportation, but extends to the entire transportation system. The statute references TSA's responsibility to protect security facilities and transportation facilities.[48] Thus, to the extent that a hazardous materials site covered by the applicability section of this proposed regulation has specific facilities for transportation, such as loading areas, TSA's authority to inspect these facilities is explicit.

More importantly, because the transportation system may be compromised by the introduction of an IED or other destructive instrument, the authority for transportation security necessarily includes authority to inspect, as necessary, the facilities that offer, prepare, load, receive, or unload certain hazardous materials that travel in rail transportation, if that packaging might be vulnerable to compromise. Limiting TSA's authority to inspect the security of cargo only after it is being transported would negate TSA's ability to protect the transportation system effectively. Accordingly, TSA's authority extends to rail hazardous materials facility points of entry of cargo going into the transportation system.

3. Designation of Rail Security Coordinators (RSCs)

Except as noted below, in §§ 1580.101 and 1580.201, TSA is proposing to require each railroad carrier, rail hazardous materials shipper, rail hazardous materials receiver, and rail transit system covered within the scope of part 1580 (*see* proposed § 1580.1), at the corporate level, to designate and use an RSC to serve as the point of contact with TSA on security matters and communications with TSA concerning the railroad carrier, rail hazardous materials shipper, rail hazardous materials receiver, or rail transit system's security initiatives. The RSC and any alternate RSC(s) should be officials with overall responsibility, management, and/or oversight of security operations and/or police operations. The RSC may therefore have responsibility for several rail hazardous materials facilities covered by the proposed rule which are owned and operated by one corporation. TSA would require either the RSC, or an alternate RSC, to be available to TSA on a 24 hour a day basis. In addition, TSA would require the RSC, or an alternate RSC, to provide current contact information to TSA and to coordinate security practices and procedures with appropriate law enforcement and emergency response agencies. As part of TSA's coordinated approach to rail security, TSA would provide the names

[47] 49 U.S.C. 114(f)(10) empowers the Assistant Secretary of Homeland Security for TSA to ''ensure the adequacy of security measures for the transportation of cargo.''

[48] 49 U.S.C. 114(f)(9) and 114(f)(11).

and contact information of the RSCs to DOT and its modal administrations for use in their investigative, inspection, and compliance activities.

When appropriate to carry out a regulatory requirement, including the provisions of an SD, the RSC would also be responsible for working with other entities to coordinate implementation of security measures. Those other entities involved in the security of the rail operation might include freight railroad carriers hosting passenger operations, owners of rail stations used by passenger operations, law enforcement agencies, and emergency response agencies. TSA understands that many railroads operate through a very large number of local and State jurisdictions, and it would be impracticable for the railroad to meet with every one. This NPRM would not require the RSC to do so. TSA expects that the railroad would reach out to those most likely to need to respond to a security incident.

At a minimum, TSA anticipates that the railroad carriers, rail hazardous materials shippers, rail hazardous materials receivers, and rail transit systems would be able to quickly and accurately assess a security situation and then notify the appropriate law enforcement and emergency response agencies. In addition, TSA expects that the coordination effort would include the following elements: the offering of information to the appropriate agencies (as applicable) on the locations of railroad carrier facilities, rail hazardous materials shipper and receiver facilities, and rail transit facilities; access to railroad carrier, rail hazardous materials shipper, rail hazardous materials receiver, and rail transit agency equipment; and communications interface. Where a railroad carrier, rail hazardous materials shipper, rail hazardous materials receiver, or rail transit system requested TSA's assistance or notified TSA that its RSC was having difficulty coordinating security practices or procedures, TSA would intervene, as appropriate, to assist.

To the maximum extent feasible, TSA anticipates that railroad carriers, rail hazardous materials shippers, rail hazardous materials receivers, and rail transit systems would not need to establish a new company or corporate division or infrastructure to carry out the responsibilities of the RSC and would not need to hire new employees to serve exclusively as RSCs. Rather, TSA expects that the proposal would result in only an incremental increase in the job duties of existing employees who have related functions. Moreover, in many instances, the related job functions involve compliance with existing Federal requirements.

TSA anticipates that certain rail hazardous materials shippers and receivers, particularly the smaller ones, would employ the services of the individual who serves as the manager of safety, health, and environment. This individual traditionally oversees regulatory compliance with the requirements of Federal agencies such as the Occupational Safety and Health Administration and the Environmental Protection Agency. Other rail hazardous materials shippers and receivers, particularly the larger companies, may employ an individual to serve exclusively in the role of the RSC. In the case of rail hazardous materials facilities that are also subject to the maritime security regime required by the Maritime Transportation Security Act of 2002, as codified in 46 U.S.C. Chapter 701, the individual who serves as the Federal Maritime Security Coordinator or the Facility Security Officer may also fulfill the duties of the RSC. *See* 33 CFR parts 101–106.

TSA anticipates that Class I and larger Class II railroad carriers [49] would likely employ the services of the chief of the railroad police. Smaller railroad carriers would likely select the operating officer responsible for safety compliance and liaison with FRA. In this regard, FRA requires freight and passenger railroad carriers to telephonically report to the National Response Center certain types of accidents/incidents, such as the death of a rail passenger or railroad carrier employee, a train accident that results in serious injury to two or more train crewmembers or passengers requiring their admission to a hospital, or a train accident resulting in a preliminary damage estimate of $150,000 to railroad and non-railroad property. See 49 CFR 225.9. PHMSA regulations require immediate reports by the person in physical possession of the hazardous materials to the National Response Center of certain types of hazardous materials incidents, such as the death or serious injury of a person as a direct result of a hazardous material or fire, breakage, spillage, or suspected radioactive contamination occurring that involves a radioactive material. *See* 49 CFR 171.15. In addition, under 49 CFR 659.33, a rail transit agency must notify the OA within two hours of certain incidents involving a rail transit vehicle or occurring on rail transit property.

TSA has crafted this RSC proposal as a performance standard, and TSA expects that each railroad carrier, rail hazardous materials shipper, rail hazardous materials receiver, and rail transit system will provide its RSC with the information necessary to perform its job duties. The proposal does not include a training requirement. However, TSA seeks comment on whether the final rule or another rulemaking should include such a requirement. In this regard, TSA seeks comment on what training methods railroad carriers, rail hazardous materials facilities, and rail transit facilities could use to meet this requirement. For example, should TSA require specific training as it does in aviation for aircraft operator Ground Security Coordinators? *See* 49 CFR 1544.233. Should TSA require training once or mandate it on a recurrent basis? Should TSA develop specific guidance or a curriculum for such a training program?

Under the proposed rule, the requirement to designate and use an RSC does not apply to the operation of private rail cars, including business/office cars and circus trains, or to tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation, unless TSA notifies the owner or operator in writing that a security threat exists concerning that operation. Such notifications, and lists of specific private rail car owners and operators that TSA has required to appoint an RSC, would be protected as SSI threat information under § 1520.5(b)(7).

In reaching the decision to exclude the above types of operations, TSA considered their relative security risk, which TSA treated as a function of three variables: *threat,* or the likelihood of a type of attack that might be attempted; *vulnerability,* or the likelihood that an attacker would succeed; and *consequence,* or the impact of an attack occurring. While TSA believes that a

[49] For purposes of accounting and reporting, the Surface Transportation Board (STB) groups freight railroad carriers into the following three classes:

Class I: Carriers having annual carrier operating revenues of $250 million or more after applying the railroad revenue deflator formula.

Class II: Carriers having annual carrier operating revenues of less than $250 million but in excess of $250 million after applying the railroad revenue of deflator formula.

Class III: Carriers having annual carrier operating revenues of $250 million or less after applying the railroad revenue deflator formula.

See 49 CFR 1201, Subpart A. The railroad revenue deflator formula is based on the Railroad Freight Price Index developed by the Bureau of Labor Statistics. The formula is as follows:

Current Year's Revenues x (1991 Average Index/Current Year's Average Index).

The STB is an economic regulatory agency that Congress charged with the fundamental missions of resolving railroad rate and service disputes and reviewing proposed railroad mergers. *See* ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (December 31, 1995).

private car operation should be held to the same basic level of security preparedness planning as other passenger train operations, TSA intends to take into account the financial burden that TSA would impose if it required private car owners and operators to conform to the requirements of proposed §§ 1580.101 and 1580.201. Moreover, TSA recognizes that host railroads such as Amtrak and commuter railroads often haul private cars, and these hosts often impose their own security requirements on the operation of the private cars. Pursuant to proposed § 1580.201, TSA would already require host railroads to have an RSC to serve as the primary contact for intelligence information and security-related activities and communications with TSA; the private car passengers would benefit from this requirement even if private rail car owners and operators did not designate their own RSCs. In addition, in the case of non-revenue passengers, including employees and guests of railroad carriers who travel in business and office cars and passengers traveling on circus trains, the railroad carriers would provide for their safety and security in accordance with existing operating procedures and protocols relating to normal freight train operations.

With respect to tourist, scenic, historic, and excursion operations, TSA analyzed the security risk and also considered the financial, operational, and other factors unique to such railroad carriers. At this time, TSA concludes that these operations do not need to appoint RSCs, unless TSA notifies them to do so.

4. Location and Shipping Information for Certain Rail Cars

This rule proposes that freight railroad carriers transporting the specified categories and quantities of hazardous materials and certain rail hazardous materials shippers and receivers must provide information to TSA, upon request, on the location of rail cars. This requirement grew out of an August 16, 2004 notice and request for comments that PHMSA and TSA issued. The notice, entitled ''Hazardous Materials: Enhancing Rail Transportation Security for Toxic Inhalation Hazard Material,'' addressed the need for enhanced security requirements for the rail transportation of hazardous materials posing a PIH hazard. *See* 69 FR 50988. The purpose of the location reporting requirement is not to track a rail tank car to ascertain if it is off course, but rather to determine how close it may be to a target city or other potential target. Based upon the intelligence information received, TSA may wish to know, for example, how many rail tank cars carrying a particular TIH material are headed toward, or currently located within 10 miles of, a specified potential target.

The August 2004 Notice indicated that DOT and DHS were considering whether they should require communication or tracking requirements, such as satellite tracking of rail cars and real-time monitoring of tank car or track conditions for rail shipments of PIH materials. In addition, the Notice suggested that DOT and DHS were considering reporting requirements in the event that PIH shipments are not delivered within specified time periods.

Currently, there are no regulations that include communication, location, or tracking requirements for hazardous materials shipments by rail. While offerors and transporters of PIH materials may elect to implement communication, location, or tracking measures as part of the security plans they develop in accordance with subpart I of part 172 of the HMR, such measures are not mandatory.

Some commenters to the August 2004 Notice questioned whether the tracking of rail shipments of PIH materials has a security benefit. They suggested that the probability that a rail car will be moved off the rail network is extremely remote and, further, that tracking rail cars to determine if they are off course has no value from a security perspective. Although some commenters expressed concerns about the reliability of tracking systems and the ease with which some systems could be compromised, several commenters suggested that since the railroad industry already has the capability to track rail cars, the existing system should be supplemented, not replaced, and any mandated tracking requirements should provide for flexibility in choosing different technologies.

DHS believes that information concerning the location of certain hazardous materials should be readily available to industry and the Federal Government, particularly during elevated threat situations. Such information would be critical to decisions concerning possible rerouting, stopping, or otherwise protecting shipments and populations to address specific security threats or incidents. Freight railroad carriers currently have the capability to locate a rail car's last reported location using the Automatic Equipment Identification (AEI) tag and reader system,[50] as well as current location using two-way radio or cellular telephone. Rail hazardous materials facilities already maintain sufficient information concerning the contents and location of hazardous materials under their physical custody and control, whether for proprietary reasons or to comply with DOT hazardous materials regulations, and can provide the information to the Federal Government in an expeditious manner.

Based upon TSA's consideration of the security vulnerabilities associated with the transportation of different types and classes of hazardous materials, the proposed rule would add location and shipping information requirements, focusing upon the three types and quantities of hazardous materials that TSA has concluded pose a significant transportation security risk.

This rule would require covered freight railroad carriers, rail hazardous materials shippers, and rail hazardous materials receivers to report the location and shipping information of these rail cars when TSA requests such information.[51] Certain PIH location and shipping information is already protected as SSI under a 49 CFR 1520.5(b)(16) determination by TSA. TSA will evaluate the location and shipping information provided under this rule on a case-by-case basis, and may determine that such information is SSI under 49 CFR 1520.5(b)(16). TSA is seeking comment on whether TSA should amend § 1520.5(b) to routinely cover such information as SSI. Data elements to be included in these rail car reports include the rail car's identification, lading, location, and transportation status. As noted above, TSA anticipates that this information is readily available from existing car location management and waybill databases.

The proposed rule would establish a performance standard that requires the regulated entity to be able to provide the requested information in the timeframe specified, without mandating a particular technology or system protocol for obtaining it. Accordingly, as discussed further in the Section-by-Section Analysis for § 1580.103 below, while certain larger freight railroad carriers would choose to meet the requirement by using AEI Tags, smaller carriers that rarely haul rail cars

[50] AEI tags are discussed in the Section-by Section Analysis of proposed 49 CFR 1580.103.

[51] TSA's proposed requirement that carriers, shippers, and receivers submit car location and shipping information to TSA for rail security purposes would be in addition to any Bureau of Customs and Border Protection (CBP) information submission requirements.

containing the specified hazardous materials may elect to obtain the requested location and shipping information merely by calling the train crew on a two-way radio or cellular telephone. Rail hazardous materials facilities, depending on the number of rail cars currently containing one or more of the listed hazardous materials, may employ a sophisticated computer program (as appropriate) or simply assign an employee to physically count the rail cars containing the product and gather the requested information for each rail car. If the carrier, shipper, or receiver provides the location and shipping information to TSA within one hour of receiving the request and does so using one of the five approved methods, the carrier or facility would be in full compliance with the proposed regulation.

TSA recognizes that the ability of the freight railroad industry to track billions of dollars of equipment and cargo is crucial for good customer service and efficient rail operations, and seeks comment from rail tank car manufacturers, rail tank car owners, freight railroad carriers, and the insurance industry on the feasibility and potential future uses of Global Positioning Systems [52] (GPS) to track rail cars. TSA requests information on the anticipated economic impact on rail car owners and freight railroad carriers in terms of the costs of manufacture, installation, maintenance, and service of GPS tracking systems and devices. In addition, TSA seeks information on the anticipated security benefits that would result from equipping rail tank cars with technologies that incorporate chemical sensors and open hatch detection into GPS-based location and messaging systems to immediately notify concerned parties of potential leaks or unauthorized access of the rail car. TSA also requests comment on the business use considerations, including the anticipated benefits for fleet management, protection of business proprietary data, and whether freight railroad carriers using GPS tracking systems would likely receive insurance premium reductions.

5. Reporting Significant Security Concerns

The threats to transportation security present a new paradigm for intelligence collection, analysis, and application. For most of its history, the United States has focused its intelligence resources on the military and political establishments of foreign states. In the aftermath of the September 11, 2001 attacks, the focus areas for intelligence collection activities have expanded markedly.

Detecting terrorist activities entails piecing together seemingly unrelated or minor observations, encounters, and incidents and analyzing information from other sources to identify indications of planning and preparation for an attack. The terrorist threat and the rail mode's vulnerability have unfortunately been well demonstrated by multiple attacks throughout the world. In this environment, reports from railroad carriers, rail hazardous materials shippers and receivers, and rail transit systems are essential to the detection of indications of terrorist planning and preparation activities. Seemingly disconnected or disparate reports of suspicious or unusual activities, if timely and effectively analyzed in the context of broader information derived from the intelligence community, may provide the insight necessary to prevent a terrorist attack.

Essential to achieving this objective is the enhancement and expansion of the means to detect indicators of terrorist surveillance, planning, and preparation activities and to identify suspicious persons at and near rail cars, stations, terminals, facilities, and other infrastructure. A critical component of this effort is timely reporting of incidents and other matters of security concern.

TSA would require all entities covered by this NPRM to report significant security concerns to TSA. Significant security concerns encompass incidents, suspicious activities, and threat information including, but not limited to the following incidents: interference with the train crew; bomb threats—both specific and non-specific; reports or discovery of suspicious items which result in the disruption of operations; suspicious activity occurring onboard a train that results in a disruption of operations; discharge, discovery, or seizure of a firearm or other deadly weapon on a train or in a station or terminal; information relating to the possible surveillance of a train or rail facility; correspondence received by the railroad carrier or rail transit system operator indicating a potential threat to rail transportation; disruption of train operations, including derailments and accidents, the cause of which appears suspicious or the result of suspected criminal activity; and any major breaches of security at a rail facility. These requirements will ensure that systems are put in place that will increase domain awareness and allow TSA to be aware of possible national trends. These requirements would not supersede existing requirements to report incidents to State or local first responders or other authorities.

a. *Passenger Railroad Carriers and Rail Transit Systems.* To inform and enable detailed, cross-functional analysis of developing threats, proposed § 1580.203 would require the passenger railroad carrier and rail transit system to immediately report potential threats and significant security concerns to TSA. TSA recognizes that rail transit agencies operate under an existing regulatory requirement to report certain types of incidents to State OAs. Pursuant to 49 CFR 659.33, the rail transit agency must notify the OA within two hours of an incident involving a rail transit vehicle or occurring on rail transit property where, among other parameters, a fatality results, injuries require medical attention for two or more persons away from the scene, or property damage equals or exceeds $25,000. These matters may also prompt the reporting requirement under this proposed rule.

Any limited overlap of information that this reporting requirement would create would be neither an unnecessary duplication of effort nor a burdensome requirement. Proposed § 1580.203 covers a much broader scope of security concerns than the existing reporting requirements at 49 CFR 659.33 or pursuant to FTA grant programs. The distinction reflects the different focus of TSA and the State OAs. State OAs seek to track and record significant incidents, whether malicious or accidental, that result in loss of life, multiple significant injuries, or substantial property damage. The purpose is to create a historical record for later assessment of whether corrective action should be taken. TSA seeks to obtain a stream of information for analysis purposes. With broader collection of information, the Transportation Security Intelligence Service and DHS Office of Intelligence and Analysis will be better able to identify trends or patterns that may indicate terrorist planning and preparation activities. The proposed requirement for the reporting of potential threats and significant security concerns would provide essential material for this vital effort.

Additionally, rail transit agencies may have reporting requirements deriving from grant programs that FTA administers. These programs may require rail transit agencies to provide accounting and statistical reports on a variety of matters to the National Transit Database on a specified basis, such as monthly. Again, any partial overlap of information covered in the two reporting requirements would not result in an unnecessary duplication of effort

[52] A Global Positioning System is a satellite-based system that can pinpoint any position on earth—any time and in any weather—and then use receivers to process the satellite signals to determine a location.

or a burdensome requirement. Through the National Transit Database, FTA seeks to maintain a comprehensive profile of public transportation systems in the United States. FTA gathers information on the full spectrum of activities involved in transit operations, including accounting matters, passenger volume, distances covered, safety records, and criminal activity. Proposed § 1580.203 would require a much more focused report intended to generate an information stream essential to identify trends or patterns that may indicate terrorist activity including surveillance, planning, and preparation. The resulting data, analyzed in the context of transportation and homeland security intelligence products and of material generated by the broader intelligence community, would provide the foundation for focused detection, deterrence, and prevention activities.

Proposed § 1580.203 would apply to tourist, scenic, historic, and excursion operations as well as other passenger rail operations. In deciding whether to apply this provision to these passenger railroad operators, TSA considered the protocols, such as immediately reporting a concern or incident to appropriate law enforcement authorities, that any prudent owner or operator of a tourist, scenic, historic, or excursion railroad should follow if faced with a security threat or concern. The proposed reporting requirement merely adds DHS as an additional recipient of this information. TSA seeks comments from these passenger railroad carriers and their associations to determine if there are financial, operational, or other factors that may be unique to such passenger railroad operations that justify modifying or eliminating the proposed reporting requirement applicable to these operations.

b. *Freight Rail Including Rail Hazardous Materials Shippers and Rail Hazardous Materials Receivers.* Proposed § 1580.105 would require freight railroad carriers and covered rail hazardous materials shippers and receivers to immediately report potential threats and significant security concerns to TSA. In the face of unpredictable and rapidly changing threats to rail carriers and facilities, detection, prevention, and deterrence depend upon strong intelligence focused on the terrorist as well as the means for carrying out the threat.

Proposed § 1580.105 covers a much broader scope of security concerns than other existing reporting requirements, such as the FRA requirement in 49 CFR 225.9 that railroad carriers report certain types of accidents/incidents telephonically to the National Response Center.[53] The distinction reflects the different focus of TSA and FRA. FRA seeks to track and record significant incidents, whether malicious or accidental, that result in loss of life, multiple significant injuries, or substantial property damage. The purpose is to create a historical record for later assessment of whether corrective action should be taken. In contrast, TSA seeks to obtain a stream of information that it can analyze to identify trends or patterns that may indicate terrorist planning and preparation activities. The broader collection of information will better enable the Transportation Security Intelligence Service and DHS Office of Intelligence and Analysis to identify trends or patterns that may indicate terrorist planning and preparation activities. The proposed requirement for immediate reporting of potential threats and significant security concerns would provide essential material for this vital effort.

6. Chain of Custody and Control

This NPRM proposes that certain freight railroad carriers, rail hazardous materials shippers, and rail hazardous materials receivers eliminate practices that leave hazardous materials unattended, thereby creating the potential for significant transportation security incidents. TSA's analysis indicates that there is a security vulnerability to HTUAs from freight railroad carriers leaving unattended rail cars, and in some cases entire trains, carrying one or more of the specified hazardous materials, for eventual pickup by another railroad carrier or by the consignee rail hazardous materials receiver. There is also a security vulnerability when rail hazardous materials shippers load rail cars with hazardous materials and leave the cars unattended, for pickup by the railroad carrier. Often these cars are left unattended in a non-secure area and thus may be vulnerable to tampering. These situations create opportunities for individuals to compromise the security of rail cars transporting PIH, explosive, or radioactive material, such as through the introduction of an IED.

As discussed above, the highest risk occurs when a rail car is in or near an area of high population density. In applying a risk-based approach, TSA is proposing that the chain of custody requirements apply to railroad carriers when they conduct a transfer within an HTUA, or when they conduct a transfer with rail cars that may subsequently enter an HTUA. Finally, railroad carriers would apply these measures when delivering a car to a rail hazardous materials receiver within an HTUA. In this way, the rail car would be protected during transportation from someone attaching an IED or otherwise compromising the car when it could be used to endanger the HTUA.

TSA is applying its risk-based approach for rail hazardous materials shippers and receivers as well. Rail hazardous materials facilities that offer, prepare, or load the specified hazardous materials typically receive residue cars from railroad carriers. TSA is not proposing to apply the enhanced custody and control procedures to residue cars at this time, although TSA is requesting comment on whether the rule should do so. *See* section III.A. of this preamble. The proposed rule would require hazardous materials shippers to apply the enhanced custody and control procedures starting at the time they load the car. At this point, the facility can be reasonably assured that the car has not been compromised. After this point, the facility would have to protect the car from unauthorized access and apply the other measures in proposed § 1580.107, to provide assurance that the car will not present a risk when it is transported. These provisions would apply to rail hazardous materials shippers that offer, prepare, or load the specified hazardous materials, regardless of whether the facility is in an HTUA. Once the car leaves the facility, it would be difficult or impossible to determine whether the car would pass through an HTUA before reaching its destination, and so all of these cars must be protected.

TSA would require rail hazardous materials facilities within HTUAs that receive or unload cars with the specified hazardous materials to apply the enhanced chain of custody and control measures from the time they accept the car from the railroad carrier until the time they unload the car. This continues the protection of HTUAs from rail cars containing the specified hazardous materials.

The requirements of proposed § 1580.107 are further described in the Section-by-Section Analysis, below.

[53] The FRA reporting requirement set forth in 49 CFR 225.9 is discussed in greater detail in section III.B. above. As also noted in section III.B., PHMSA requires immediate reports to the National Response Center of certain types of hazardous materials incidents. *See* 49 CFR 171.15.

IV. Section-By-Section Analysis of Proposed Rule

Part 1520—Protection of Sensitive Security Information

Section 1520.3 Terms Used in This Part

This rule proposes to amend 49 CFR 1520.3 by adding a number of new definitions. TSA is adding these definitions to the SSI regulation to clarify terms that appear in proposed part 1580. This includes ''rail hazardous materials shipper,'' ''rail hazardous materials receiver,'' ''rail facility,'' ''rail secure area,'' ''rail transit facility,'' ''rail transit system or rail fixed guideway system,'' ''railroad,'' and ''railroad carrier.'' In addition to explaining the meaning of these terms by referencing proposed 49 CFR 1580.3 and the United States Code (USC) (as applicable), the definitions make clear that they apply in the context of rail transportation.

The rule would also clarify the scope of the definition of ''vulnerability assessment'' to specifically include rail security assessments. The proposed revision would expressly include the examination of a railroad, railroad carrier, rail facility, rail hazardous materials facility, rail transit system, or rail transit facility.

TSA would add these six additional categories of rail security entities and facilities to the definition of ''vulnerability assessment'' to clarify that all types of rail-related vulnerability assessments constitute SSI. TSA seeks comment on whether this proposal is appropriate in its coverage of which vulnerability assessments warrant SSI treatment. TSA may revise this definition based upon comments received.

Section 1520.5 Sensitive Security Information

TSA proposes to modify the language in 49 CFR 1520.5(b)(6)(i) related to inspections and investigations of alleged regulatory violations. The proposal would expand the current provision so that it applies in the context of all forms of rail transportation, including freight and passenger railroad carriers, rail hazardous materials shippers, rail hazardous materials receivers, and rail transit systems.

Section 1520.5(b)(8) of the current SSI regulation defines details of aviation or maritime security measures as SSI, whether applied directly by the Federal government or another person. The proposed revision to 49 CFR 1520.5(b)(8) would expand this provision to cover specific details of transportation security measures applied in rail transportation, whether applied directly by the Federal Government or another person.

Section 1520.5(b)(10) of the current SSI regulation states that training materials created or obtained to train persons who carry out aviation or maritime security measures required or recommended by DHS or DOT are SSI. The proposed revision to 49 CFR 1520.5(b)(10) would expand this provision to cover training materials for persons who carry out rail transportation security measures. These types of materials contain descriptions of security measures or countermeasures that a terrorist or other criminal could use to determine how to defeat security procedures.

Section 1520.5(b)(11) of the current SSI regulation is intended to safeguard lists of information about the identities of individuals who hold certain positions with aviation or maritime security responsibilities. The proposed revision to 49 CFR 1520.5(b)(11)(i)(A) would expand this provision to safeguard lists of information about the identities of individuals having unescorted access to a rail secure area at a rail hazardous materials shipper or receiver. Terrorists or other criminals might attempt to target these types of individuals in order to obtain unauthorized access to a rail secure area. Accordingly, lists of information that identify these individuals as having unescorted access to a rail secure area must be protected as SSI.

Section 1520.5(b)(12) of the current SSI regulation designates as SSI certain lists of critical aviation or maritime infrastructure assets prepared by Federal, State, or local government agencies. Specifically, the current provision covers any list identifying systems, facilities, or other assets, whether physical or virtual, so vital to the transportation system that the incapacity or destruction of such assets would have a debilitating impact on transportation security. The proposed revision to 49 CFR 1520.5(b)(12) would expand this provision to safeguard lists of critical infrastructure assets information concerning the rail transportation system, including rail hazardous materials shipper and receiver facilities. The expanded definition, however, would continue to cover this information as SSI only if the list is either prepared by DHS or DOT or is prepared by a State or local government agency and is submitted to DHS or DOT.

Section 1520.7 Covered Persons

Persons covered under 49 CFR 1520.7 of the current SSI regulation include: airport operators; aircraft operators; foreign air carriers; indirect air carriers; persons who received SSI as part of a legal enforcement action; persons for whom a vulnerability assessment had been directed, created, held, funded, or approved by DHS or DOT; and persons employed by, contracted to, or acting for any of the persons listed above.

The proposed revision to 49 CFR 1520.7 would expand the coverage of the SSI regulation by adding a new paragraph (n) to address railroad carriers, rail hazardous materials shippers, rail hazardous materials receivers, and rail transit systems subject to the requirements of proposed part 1580. In this regard, TSA notes that the scope of proposed part 1580 addresses: (1) Freight and other non-passenger railroad carriers operating rolling equipment; (2) rail hazardous materials shippers (as that term is defined in proposed 49 CFR 1580.3); (3) rail hazardous materials receivers (as that term is defined in proposed 49 CFR 1580.3); (4) railroad carriers that operate or provide intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), including public authorities operating passenger train service; (5) passenger or freight railroad carriers hosting the operation of passenger train service; (6) tourist, scenic, historic, and excursion rail operators, whether operating on or off the general railroad system of transportation; (7) private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation; and (8) rail transit systems, including heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems. However, these entities and rail operations would have access to SSI only to the extent that they have a ''need to know'' the information under § 1520.11.

Part 1580—Rail Transportation Security

Subpart A—General

Section 1580.1 Scope

TSA proposes that parts of this rule apply to all types of rail operations, including freight railroad carriers; intercity, commuter, and short-haul railroad passenger train service; and rail mass transit systems. Further, in addition to applying to all freight railroad carriers, the proposal also includes additional requirements for railroad carriers that transport hazardous materials. The NPRM would also apply to rail operations at certain

fixed-site transportation facilities, including (1) rail hazardous materials shippers that offer, prepare, or load for transportation in commerce by rail one or more of the specified hazardous materials and (2) rail hazardous materials receivers located within an HTUA that receives or unloads from transportation in commerce by rail one or more of the specified hazardous materials. The NPRM also covers the operation of private rail cars on or connected to the general railroad system of transportation and tourist, scenic, historic, and excursion operations, whether on or off the general railroad system of transportation.

Section 1580.3 Terms Used In This Part

This section contains a set of definitions to introduce the regulations. TSA intends these definitions to clarify the meaning of important terms as they are used in the proposed rule. Some of the definitions involve new or fundamental concepts, which require further discussion.

The term ''general railroad system of transportation'' is derived from FRA's ''Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws,'' which appears in Appendix A to 49 CFR part 209, as in effect on October 1, 2005. FRA uses the term to describe the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas.

The term ''heavy rail transit'' means service provided by self-propelled electric railcars, typically drawing power from a third rail, operating in separate rights-of-way in multiple cars; also referred to as subways, metros, or regional rail. The term ''light rail transit'' means service provided by self-propelled electric railcars, typically drawing power from an overhead wire, operating in either exclusive or non-exclusive rights-of-way in single or multiple cars and with shorter distance trips and frequent stops; also referred to as streetcars, trolleys, and trams. ''Rail transit system'' or ''Rail Fixed Guideway System'' means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway. Two examples of a ''rail fixed guideway system,'' consistent with FTA's use of the term in 49 CFR part 659, are heavy rail transit and light rail transit. However, TSA is using the term more broadly than FTA uses it in part 659. Specifically, TSA's authority over ''rail fixed guideway systems,'' or rail transit systems, is not linked to whether the system is regulated by FRA and is not limited to systems that receive or seek to receive funds under FTA's grant program. Accordingly, as the terms ''heavy rail transit'' and ''light rail transit'' are used in proposed part 1580, TSA's authority extends to all rail transit systems regardless of whether the system is subject to regulation by FTA or FRA or neither agency.

The term ''rail hazardous materials receiver'' means any facility that has a physical connection to the general railroad system of transportation and receives in transportation by rail or unloads from transportation by rail one or more of the categories and quantities of hazardous materials set forth in 49 CFR 1580.100(b), but does not include a facility owned or operated by a department, agency, or instrumentality of the Federal Government. For a facility to fall within the definition of a ''rail hazardous materials receiver,'' there must be a physical connection to the general railroad system of transportation, such as track used by a railroad carrier to enter the facility to drop off rail cars.

The term ''rail hazardous materials shipper'' means any facility that has a physical connection to the general railroad system of transportation and offers, prepares, or loads for transportation by rail one or more of the categories and quantities of hazardous materials set forth in 49 CFR 1580.100(b), but does not include a facility owned or operated by a department, agency, or instrumentality of the Federal Government. The term includes companies that load or otherwise prepare tank cars for rail transportation in commerce. For a facility to fall within the definition of a ''rail hazardous materials shipper,'' there must be a physical connection to the general railroad system of transportation, such as track used by a railroad carrier to enter the facility to pick up rail cars. A facility is not a ''rail hazardous materials shipper'' if it only unloads or receives one or more of the categories and quantities of hazardous materials set forth in 49 CFR 1580.100(b).

The term ''rail secure area'' means a secure location(s) identified by an owner or operator of a rail hazardous materials shipper or rail hazardous materials receiver where security-related pre-transportation or transportation functions are performed or rail cars containing the categories and quantities of hazardous materials set forth in 49 CFR 1580.100(b) are prepared, loaded, stored, and/or unloaded. The standards for a secure area are the same for all rail hazardous materials shippers and receivers regardless of whether the facility is offering or receiving the hazardous material. Secure areas must have physical security measures in place, which could include fencing, lighting, or monitoring by a signaling system (such as a video system, sensing equipment, or mechanical equipment). If the owner or operator employs a signaling system, an employee or authorized representative of the owner or operator must be located either in the immediate area of the rail car or at a remote location within the facility (such as a control room) in order to observe the system.

The terms ''transportation or transport'' mean, in the context of freight rail, the movement of property, including loading, unloading, and storage. In the context of passenger rail, the terms mean the movement of people, boarding, and disembarking incident to that movement. As noted earlier, TSA has broad authority under ATSA to regulate the security of all modes of transportation, including rail transportation. In this regard, TSA's statutory authority is not limited by PHMSA's determination as to which functions are pre-transportation or transportation functions for purposes of the applicability of the hazardous materials laws and regulations (*see* 49 CFR 171.8). Under its broad authority, when TSA develops policies, strategies, and plans to address threats to transportation, it must consider the security of the entire transportation system. Because of the vulnerability of the transportation system to the introduction of an IED or other destructive instrument, TSA's security authority extends beyond freight railroad carriers (regardless of whether they transport hazardous materials) and also includes rail hazardous materials shippers before they offer the rail cars—while the rail cars are being stored incidental to movement and during preparation and loading—and rail hazardous materials facilities after delivery, during unloading, and while the rail cars are being stored. In addition, TSA's security authority over passenger railroad carriers and rail transit systems is no less extensive than FRA's statutory authority over railroad safety matters or FTA's authority over State-conducted oversight of the safety and security of rail fixed guideway systems.

Section 1580.5 Inspection Authority

Pursuant to 49 U.S.C. 114, TSA has authority to inspect for compliance with applicable statutory and regulatory requirements. This proposed rule

notifies the public of TSA's broad statutory authority to inspect and codifies the scope of TSA's existing inspection program as it relates to rail security.

Sections 1580.5(a) and (b) state that railroad carriers, covered rail hazardous materials shippers or receivers, and transit systems must allow TSA and DHS officials working with TSA (such as representatives from DHS's Office of Infrastructure Protection) to make inspections or tests at any time or place to carry out its statutory or regulatory authorities. Proposed 49 CFR 1580.5(b) would require the carrier, shipper, receiver, or transit system to allow any authorized TSA and DHS officials to enter and be present within any area or conveyance without access media or identification media issued or approved by a railroad carrier, rail hazardous materials shipper, rail hazardous materials receiver, or transit system owner or operator, in order to inspect or test compliance, or perform other such duties as TSA may direct. This section would also set forth affirmative duties on railroad carriers, rail hazardous materials shippers, rail hazardous materials receivers, and transit system owners and operators to cooperate with and allow the inspections and tests and the copying of records, irrespective of the media on which they are stored. As to the location of the inspections, TSA must be able to inspect at every location where TSA is carrying out activities under ATSA.

In addition to inspecting for compliance with specific regulations, TSA can conduct general security assessments. TSA's authority with respect to transportation security is comprehensive and supported with specific powers to assess threats to transportation security; monitor the state of awareness and readiness throughout the rail sector; determine the adequacy of an owner or operator's transportation-related security measures; and identify security gaps. TSA, for example, could inspect and evaluate for emerging or potential security threats based on intelligence indicators to determine whether the owner or operator's strategies and security measures are likely to deter these threats. If TSA identifies security deficiencies, TSA could initiate appropriate action to enhance rail security such as counseling the railroad carrier, rail hazardous materials shipper, rail hazardous materials receiver, or rail transit system owner or operator; coordinating with other Federal, State, or local agencies to correct the deficiency; or conducting rulemakings to require enhanced security measures.

If TSA, in the course of an inspection identifies evidence of non-compliance with a DOT regulation, TSA would provide the information to the appropriate DOT modal administration for action.[54] In this regard, TSA would not directly enforce DOT security rules and would not initiate safety inspections.

An inherent part of TSA and DHS officials' performing security assessments and inspecting for regulatory (including SD) compliance is obtaining copies of records. It is necessary, so that TSA can preserve the records for further review and, on occasion, use the records as evidence. TSA does not anticipate encountering difficulty on this issue, but is including explicit language in the proposed rule, clarifying that TSA has the authority to obtain and review copies of records, in order to avoid any confusion or misunderstanding.

TSA is aware that it must conduct its inspection activity in a reasonable manner, considering all of the relevant circumstances surrounding the rail operation. However, covered entities must provide TSA with access to inspect at any time, without notice, because unexpected urgent situations may arise. To the extent practicable, TSA will make arrangements for records reviews ahead of time and will schedule the inspections for normal business hours, to ensure that appropriate owner/operator personnel are available to assist and that the inspection does not interfere or cause undue disruption. Nevertheless, TSA will have to conduct some inspections and tests unannounced, to determine whether the owner or operator is in compliance when it does not know that TSA may be inspecting. Further, in the case of passenger rail (for example), TSA may sometimes inspect and test during peak traffic periods to ensure that owners and operators are in compliance with the security requirements, even during the busiest times. These peak periods would be those times when the largest portion of the traveling public is being protected by the security measures. Finally, specific threats, heightened periods of alert, or other emergency situations may necessitate that TSA engage in inspection and test activities outside of normal business operating hours.

Proposed 49 CFR 1580.5(b) refers to copying of records, not just documents. Records may be kept in a number of formats, such as paper, microfilm, and electronic. All of these formats fall within the scope of proposed § 1580.5(b).

Regarding TSA and DHS officials working with TSA, TSA intends to use properly trained personnel to conduct inspections. These individuals would receive training on safety procedures to follow while aboard a conveyance or inside a terminal or facility, in addition to training on technical security requirements. Individuals performing these inspections would carry Federal government credentials identifying themselves as having official authority to inspect, and any covered entity wishing to authenticate the identity of an individual purporting to represent TSA would be able to contact appropriate TSA officials at TSA's headquarters and field locations. TSA maintains an operations center that stakeholders may contact on a 24 hour a day 7 days a week basis if they have concerns.

Proposed 49 CFR 1580.5(c) requires persons regulated under this rule to allow TSA representatives, and DHS officials working with TSA, the flexibility to gain access to any conveyance, facility, terminal, or infrastructure asset without holding access or identification media issued by the owner or operator, when the officials need to conduct a security assessment, compliance inspection, or test. The act of obtaining such media would provide personnel at the inspection or test location with an opportunity to identify and recognize TSA and DHS officials, thereby reducing or negating the value of the visit. As noted above, at times, TSA/DHS may find it necessary to make unannounced, anonymous visits to an area or conveyance, but would do so under very controlled conditions using personnel who are trained both in security and in railroad, hazardous materials facility, and transit workplace safety protocols.

Subpart B-Freight Rail Including Freight Railroad Carriers, Rail Hazardous Materials Shippers, Rail Hazardous Materials Receivers, and Private Cars

Section 1580.100 Applicability

TSA proposes to apply this subpart to all freight railroad carriers and to apply additional requirements to railroad

[54] Since FRA enforces the Federal hazardous materials transportation law as it pertains to the shipment or transportation of hazardous materials by rail (49 U.S.C. 5101 *et seq.*, as amended by section 1711 of the Homeland Security Act of 2002, (Pub. L. 107–296, Nov. 25, 2002) and Title VII of the 2005 Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), (Pub. L. 109–59, Aug. 10, 2005)), if TSA determined that a railroad carrier or rail hazardous materials shipper had failed to develop and implement a security plan required by 49 CFR 172.800, TSA would inform FRA of the non-compliance.

carriers that transport specified hazardous materials. The subpart would also apply to rail hazardous materials facilities that offer, prepare, or load for transportation in commerce by rail one or more of the enumerated categories and quantities of hazardous materials specified in 49 CFR 1580.100(b) and certain rail hazardous materials facilities located within an HTUA that receive in transportation by rail or unload from transportation by rail one or more of the enumerated categories and quantities of hazardous materials specified in 49 CFR 1580.100(b). In addition, this subpart would also cover the operation of private rail cars on or connected to the general railroad system of transportation.

Section 1580.101 Rail Security Coordinator

It is important that TSA have a point of contact with the operator for the exchange of vital security information. The proposed rule requires that each covered freight railroad carrier, rail hazardous materials shipper, and rail hazardous materials receiver have one RSC and one or more alternate RSCs. This would allow different people to be on call at different times, but would necessitate that at least one individual be available to TSA on a 24 hour a day 7 day a week basis. TSA anticipates that the freight railroad carriers generally will designate at the corporate level a lead RSC for the entire railroad operation and select other individuals who will assist in carrying out the job duties. In the case of rail hazardous materials shippers and receivers, TSA recognizes that the large companies may have many facilities that would be subject to this rule and would expect that the companies would designate one RSC at the corporate level and would choose other corporate employees to help implement the requirements of this rule at the covered facilities.

The proposal would permit an individual serving as an RSC to perform other duties in addition to those that TSA requires. That individual need not serve full-time as the RSC. TSA anticipates that this will particularly be the case for smaller freight railroads or rail hazardous materials facilities. Regardless of who is serving as the RSC on a given day, however, the carrier or facility would remain responsible if any official to whom the RSC security functions are delegated fails to perform them properly.

Section 1580.103 Location and Shipping Information for Certain Rail Cars

TSA proposes to require the following entities to provide TSA, upon request, with the location and other shipping information of rail cars containing the hazardous materials specified in 49 CFR 1580.100(b): (1) Freight railroad carriers transporting the specified hazardous materials; (2) rail hazardous materials shippers offering, preparing, or loading for transportation in commerce by rail the specified hazardous materials; and (3) rail hazardous materials facilities receiving in commerce by rail or unloading from transportation by rail the specified hazardous materials. As discussed below, TSA believes that carriers, shippers, and receivers have the capability of using existing systems and technologies to report on the locations and shipping information of certain high profile hazardous materials. TSA anticipates that reporting requests will be rare and often coincide with elevated threat situations or in response to a security incident.

Paragraph (b) states that each affected freight railroad carrier, rail hazardous materials shipper, and rail hazardous materials receiver must develop procedures to determine the location and shipping information required under paragraph (c) of this section for rail cars under their physical custody and control containing the specified hazardous materials. The procedures must enable the carrier or facility to provide the information to TSA within one hour of receiving the request. Because TSA's proposal is a performance-based system, TSA does not require carriers or facilities to use any specific technology to acquire the location of rail cars. However, TSA anticipates that covered entities will meet the standard by using existing technology, including radio frequency identification (RFID) tags,[55] network computer systems, and telecommunication systems such as cellular telephones. TSA also expects that certain freight rail carriers and rail hazardous materials facilities will adapt procedures currently used to comply with shipping paper retention requirements under DOT's hazardous materials regulations.[56]

With respect to freight railroad carriers to which this rule would apply, TSA notes that the industry may provide the Federal Government with the required location and shipping information using AEI tags.[57] The railroad industry uses a rail car and locomotive tracking system that employs AEI tags on most freight cars and locomotives in the United States and Canada. Freight railroad carriers use AEI information for confirming train consists and are beginning to use the AEI information to identify specific rail cars that have been flagged by wayside equipment defect detectors. AEI tagging is the current industry standard for rail cars.

Tracking and other types of communications systems enable freight railroad carriers to monitor a shipment while en route to its destination and to identify various service irregularities. Some types of tracking systems employ GPS or GPS-type positioning information and coded or text messaging transmitted over a terrestrial communications system. The railroad industry and FRA are cooperating on the development of Positive Train Control (PTC) systems. PTC systems include digital data link communications networks, positioning systems, on-board computers with digitized maps and in-cab displays, throttle-brake interfaces on locomotives, wayside interface units, and control center computers and displays. PTC systems can track the precise location of all trains and the individual cars that make up the train and will be capable of remote intervention with train operations. DHS is currently evaluating the feasibility, costs, and benefits of proposals to develop certain communication and tracking capabilities for rail hazardous materials shipments. As discussed in section III.C.4. above, TSA is seeking comments on the feasibility of the freight rail industry using GPS tracking systems to determine the location of rail tank cars, including information on the anticipated costs and benefits of employing GPS technology for this purpose.

[55] RFID tags are small electronic devices designed to contain information that can be retrieved at a distance using a specialized reader. They are known in the industry as AEI tags.

[56] In pertinent part, the Federal hazmat law and regulations require rail shippers of hazardous materials to retain a copy of the shipping paper for a period of 2 years after the shipping paper is provided to a freight rail carrier and carriers to retain a copy of a shipping paper for a period of 1 year after the date the shipping paper is received from the shipper. *See* 49 U.S.C. 5110; 49 CFR 172.201(e) and 174.24.

[57] An AEI tag system uses a series of track side readers that record the movement of rail cars as they pass by the reader. The readers then upload the car information to the railroad carrier's central data processing center, and the railroad carrier transmits this information to an industry-sponsored central databank. This central databank in turn supplies the car location information to other railroad carriers, rail car owners, and rail hazardous materials facilities.

Under paragraph (b), TSA would limit the potential scope of the requested location and shipping information to rail cars ''within the physical custody and control'' of the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver; actual ownership of the rail car or the track on which the rail car is located is not relevant to determining which entity must provide the information to TSA. Accordingly, TSA would ask freight railroad carriers to provide information only for cars that have been accepted for, or are already in transportation; the term ''accepted'' means that the carrier has physically taken possession of a hazardous material for purposes of transporting it. TSA would ask rail hazardous materials facilities to report on rail cars physically located on their property that a railroad carrier has not offered or accepted for transportation.

Paragraph (c) of this section enumerates the minimum amount of information that the freight railroad carrier, the rail hazardous materials shipper, and the rail hazardous materials receiver must be able to provide to TSA upon request. This information consists of the rail car's location, railroad milepost, and track designation (such as main track, secondary track, or division and subdivision); the time the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver determined the rail car's location; the rail car's routing; a list of the total number of rail cars containing the designated hazardous material, broken down by proper shipping name, hazard class or division number, and identification number; each rail car's initial and number; and transportation status.

In the case of freight railroad carriers, TSA would ordinarily request the rail car's location broken down by city, county, and State as well as the railroad carrier's designated milepost location. By contrast, in the case of hazardous material facilities, since TSA would already have the facility's address, TSA would likely focus its request on discerning the total number of rail cars located at that facility and the types of hazardous materials contained in those rail cars. When TSA requests a freight railroad carrier to provide a rail car's routing information, TSA intends to ask for information on the entire route, including point of origination, destination, and interchange points with other freight railroad carriers.

For each rail car containing one or more of the hazardous materials listed in proposed 49 CFR 1580.100(b), TSA would require the car report to contain the proper shipping name, hazard class or division, and UN identification number assigned to the material in accordance with the Hazardous Materials Table in 49 CFR 172.101 (DOT's HMRs), as well as the rail car's unique identifying initial and number. ''Transportation status'' refers to whether the car is being prepared for transportation, in transportation, or out of transportation. By reviewing this location and shipping information and available intelligence information, TSA will be able to determine whether it needs to implement or order additional security measures to address a particular threat or threat assessment.

The proposed rule provides freight railroad carriers, rail hazardous materials shippers, or rail hazardous materials receivers with a maximum of one hour to report the location and shipping information for the specified rail car(s) to TSA or DHS officials. TSA recognizes that the potential magnitude of the information request, as well as unique operational considerations of the railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver, may justify additional time to respond. Accordingly, this proposal permits the carrier, shipper, or receiver to seek additional time to respond to a specific request. TSA/DHS will evaluate each request on a case-by-case basis.

While the proposed rule text provides a one-hour timeframe, TSA also requests comment on an alternative time proposal. Instead of a maximum of one hour, the alternative proposal would set the maximum time period for providing information at five (5) minutes or thirty (30) minutes, depending on the nature of the request. Freight railroad carriers, rail hazardous materials shippers, and rail hazardous materials receivers would have a maximum of five (5) minutes from the time of a TSA request to provide the location and shipping information for a specific rail car containing the specified categories and quantities of hazardous materials. Freight railroad carriers, rail hazardous materials shippers, and rail hazardous materials receivers would have a maximum of thirty (30) minutes from the time of a TSA request to provide the location and shipping information for all rail cars under its physical custody and control that contain one or more of the specified categories and quantities of hazardous materials.

We note that in an emergency, such as a specific threat against a particular train or a general threat involving the metropolitan area through which the train is operating, it may be critical for TSA to have this information very quickly to address threats to persons and property. The more quickly we can receive this information, the more quickly we can direct that protective measure be implemented. We believe that existing and emerging technology can be used to achieve these timeframes. We request comments on how these shorter timeframes could be achieved, including the cost of compliance, and we are considering adopting these shorter time frames in the final rule.

The proposal also requires that freight railroad carriers, rail hazardous materials shippers, and rail hazardous materials receivers submit the data in a specific format but allows a choice of five different reporting options (unless another reporting method is approved in writing by TSA). TSA proposes to establish the one hour reporting timeframe and permit only a limited number of commonly used information reporting formats based upon the importance of timely information that TSA can quickly understand under exigent circumstances. However, TSA remains open to the possibility of being less prescriptive in the final rule. TSA seeks comment on what reporting timeframe would be reasonable. TSA also seeks comment on what reporting formats would allow carriers, shippers, and receivers to provide the information to the Federal Government in a user friendly, efficient, and cost effective manner yet consistent with the security need to receive and analyze the information quickly and accurately.

Section 1580.105 Reporting Significant Security Concerns

This rule proposes to require freight railroad carriers, rail hazardous materials shippers that offer, prepare, or load for transportation in commerce by rail one or more of the categories and quantities of hazardous materials set forth in proposed 49 CFR 1580.100(b), and rail hazardous materials receivers that receive in commerce by rail or unload one or more of the categories and quantities of hazardous materials set forth in proposed 49 CFR 1580.100(b) to immediately report potential threats or significant security concerns encompassing incidents, suspicious activities, and threat information. Incidents, activities, and information include, but are not limited to:

(1) Interference with the engineer, conductor, or other crewmember of a freight railroad train, such as an attempt to gain entry to the locomotive cab.

(2) Bomb threats, whether specific as to target, location, and timing, or non-specific.

(3) Reports or discovery of suspicious items that result in the disruption of rail

operations, such as evacuation of a conveyance or facility or the temporary halting of rail service due to the discovery of a large package inside a freight train locomotive. This disruption could also occur at a rail hazardous materials facility, which discovers a suspicious item within a rail secure area and delays the departure of a freight railroad carrier. Any individual may make the report or discovery; it need not come from an employee or authorized representative of the freight railroad carrier or rail hazardous materials facility.

(4) Suspicious activity occurring onboard a freight train or inside the facility of a freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver that results in a disruption of rail or facility operations, such as evacuation of a conveyance or facility or the temporary halting of rail service due to the discovery of a suspected IED. Again, this disruption could also occur at a rail hazardous materials facility that discovers a suspicious individual trespassing within a rail secure area and delays the departure of a freight railroad carrier.

(5) Suspicious activity observed at or around freight rail cars, facilities, or infrastructure used in the operation of the freight railroad, rail hazardous materials shipper, or rail hazardous materials receiver, whether observed by employees or authorized representatives of the railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver, or other individuals.

(6) Discharge, discovery, or seizure of a firearm or other deadly weapon on a freight train, in a station, terminal, storage facility or yard, rail secure area, or other location used in the operation of the freight railroad, rail hazardous materials shipper, or rail hazardous materials receiver, regardless of whether an individual legally possesses the firearm or deadly weapon.

(7) Indications of tampering with freight rail cars, whether located inside or outside the confines of a rail hazardous materials facility including signs that the security of the car may have been compromised or that an IED may be present.

(8) Information relating to the possible surveillance of a freight railroad train or facility, storage yard, rail hazardous materials shipper or receiver facility, or other location used in the operation of the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver, regardless of whether the source of the information is an employee or authorized representative of the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver, or other individual.

(9) Correspondence received by the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver indicating a potential threat to freight rail transportation or the rail hazardous materials facility.

(10) Other incidents involving breaches of the security of the freight railroad carrier or rail hazardous materials shipper or receiver's operations or facilities that could reasonably represent potential threats or significant security concerns.

The proposal would require freight railroad carriers and covered rail hazardous materials shippers and receivers to report the above types of concerns and threats to DHS/TSA in a manner that TSA prescribes. TSA seeks comment on the available methods of transmitting this information to TSA (such as electronically, telephonically), including anticipated costs of compliance. With respect to each concern or threat, the freight railroad carrier or covered rail hazardous materials shipper or receiver would have to report the following information, to the extent it was available and applicable, to DHS/TSA:

(1) Name of the reporting entity and contact information for communication by telephone and e-mail.

(2) The affected freight train, station, terminal, rail hazardous materials facility, or other rail facility or infrastructure.

(3) Identifying information on the affected freight train, including train line and route.

(4) The origination and route termination locations for the affected freight train.

(5) Current location of the affected freight train, with as much specificity as circumstances and available information permits.

(6) Description of the threat, incident, or activity affecting the freight train or rail facility or rail hazardous materials shipper or receiver.

(7) Names and other available biographical data of individuals purported to be involved in the threat, incident, or activity.

(8) Source of the threat information.

Possible sources of the information might include: a Federal (with the exception of DHS/TSA), State, or local government agency; a foreign government, to the extent there is no legal prohibition on the reporting of such information; an employee or authorized representative of the freight railroad carrier, rail hazardous materials shipper; or rail hazardous materials receiver; another freight railroad carrier, rail hazardous materials shipper or receiver, passenger railroad carrier, or rail transit system; or a private individual.

Section 1580.107 Chain of Custody and Control Requirements

In this section, TSA proposes to require a secure chain of physical custody for rail cars containing one or more of the categories and quantities of hazardous materials set forth in proposed 49 CFR 1580.100(b). This section would impose analogous requirements on freight railroad carriers, rail hazardous materials shippers, and rail hazardous materials receivers.

In paragraph (a), TSA proposes that a rail hazardous materials shipper, regardless of whether it is physically located within an HTUA listed in Appendix A to part 1580, must satisfy the following requirements before it can transfer physical custody of a rail car containing the specified hazardous materials to a freight railroad carrier. First, the rail hazardous materials shipper must perform a physical security inspection of the rail car to ensure that no one has tampered with it or other compromised its security, including inspecting for IEDs and other items that do not belong. Second, the rail hazardous materials shipper must store or keep the rail car in an area with physical security measures in place during pre-transportation functions, including loading and temporary storage, until the freight railroad carrier assumes physical custody of the car. The physical security measures include such things as fencing, lighting, or video surveillance. Third, the rail hazardous materials shipper must document the transfer of custody to the freight railroad carrier, either in writing or electronically.

In paragraph (b), TSA proposes that a freight railroad carrier, regardless of whether the carrier is physically accepting the rail car at a rail hazardous materials shipper facility located outside or within an HTUA, must satisfy two requirements. First, the carrier must document the transfer of custody, either in writing or electronically. Second, the carrier must perform the security inspection that DOT is proposing to require under a new paragraph to 49 CFR 174.9.

In paragraph (c), TSA proposes requirements for certain rail car transfers occurring within an HTUA listed in Appendix A to part 1580. Specifically, TSA would require each delivering freight railroad carrier transferring physical custody of rail cars carrying one or more of the materials

listed in proposed 49 CFR 1580.100(b) to a receiving freight railroad carrier to ensure that the receiving carrier takes physical possession of the rail car before the delivering carrier leaves the interchange point. Both the delivering and receiving freight railroad carriers would be responsible for compliance under this paragraph for adopting and implementing procedures to ensure that the rail car is attended at all times during the physical transfer of custody. The procedures would include performance of the security inspection that DOT is proposing to require in 49 CFR 174.9. In addition, both freight railroad carriers must document the transfer of custody, either in writing or electronically. Paragraph (d) would apply the same requirements of paragraph (c) whenever a freight railroad carrier transfers or receives a rail car containing one or more of these materials if the rail car may subsequently enter an HTUA.

For purposes of paragraphs (c) and (d), the requirement ''to ensure that the rail car is not left unattended at any time during the physical transfer of custody'' means that the delivering and receiving freight railroad carriers would ensure that an employee or authorized representative of either of the railroad carriers attend to that rail car by being physically present and having an unobstructed view of the rail car prior to the delivering railroad carrier leaving the interchange point. While TSA expects that the attending employee would be the train conductor or a security guard, TSA is not specifying that any particular category of individuals needs to perform this job function and is not specifying that a freight carrier would have to use a hazmat employee (as the term is used in 49 CFR 171.8) to perform this job function. Moreover, to allow freight railroad carriers a maximum degree of flexibility in adopting and implementing procedures to meet the car attendance performance standard, this section does not specify a maximum number of rail cars permitted per attending employee (or authorized representative) or define how close that individual must be to the rail car while attending it. However, for purposes of compliance with this section, the freight railroad carriers must work together to implement procedures to ensure that individuals attend the rail car until the physical transfer of custody is complete. The requirement that an employee or authorized representative attend rail cars would be met where personnel are provided by or on behalf of a department, agency, or instrumentality of the Federal Government to monitor or provide security for the rail car.

Paragraphs (c) and (d) would also require the receiving freight railroad carrier to perform a security inspection, which, as noted above, DOT is proposing in its NPRM. DOT's HMR currently require freight railroad carriers to conduct a safety inspection of each car containing hazardous materials at ground level. *See* 49 CFR 174.9. However, safety-related inspections do not specifically address the possibility that a terrorist could introduce a foreign object on the tank car or the rail car chassis, the most pernicious being an IED. In the rulemaking that PHMSA is developing concurrent to TSA's NPRM, PHMSA is proposing to increase the scope of the safety inspection to include a security inspection component for all rail cars carrying placarded loads of hazardous materials. The primary focus of the enhanced inspection would be to recognize an IED.

To guard against the possibility that an unauthorized individual could tamper with rail cars containing hazardous materials to precipitate an incident during transportation, such as detonation or release using an IED, PHMSA is proposing to require that freight railroad carriers' pre-trip inspections of placarded rail cars include an inspection for signs of tampering with the rail car, including its seals and closures, and any item that does not belong, suspicious items, or IEDs. TSA will provide guidance to freight railroad carriers to train their employees on identifying IEDs and signs of tampering. Where a freight railroad carrier finds a foreign object or indication of tampering, the freight railroad carrier would be required to take appropriate actions to ensure that the security of the rail car and its contents have not been compromised before accepting the rail car for further movement. If PHSMA's NPRM proposal to add a security inspection requirement to 49 CFR 174.9 is in effect as a regulation at the time TSA's NPRM becomes a final rule, paragraphs (c) and (d) of this section would require the freight railroad carrier's rail car attendance procedures to provide for a security inspection, in accordance with DOT's HMR.

In paragraph (d), TSA requires the delivering and receiving freight railroad carriers involved in an interchange outside an HTUA of a rail car containing one or more of the quantities and categories of hazard materials set forth in 49 CFR 1580.100(b) to adopt and implement procedures to ensure that the rail car is attended during the physical transfer of custody for rail cars if the rail car ''may subsequently enter an HTUA.'' The reason TSA is applying the chain of custody requirements to these interchanges outside the HTUA is to address the possibility that a terrorist would choose an unpopulated or isolated location on a railroad line to compromise the security of an unattended rail car, such as by attaching an IED to it. The rail car could then travel into an HTUA and a terrorist could detonate it, thereby using the car as a weapon of mass effect to cause significant casualties and property damage.

TSA intends that freight railroad carriers make the determination as to whether paragraph (d) is applicable based upon the route information reasonably available to them at the time the delivering railroad carrier transfers the rail car to the receiving railroad carrier. In this regard, TSA recognizes that, after a rail car has been interchanged, a change in route may become necessary resulting from a cause unknown and unforeseeable to either freight railroad carrier at the time of the interchange, such as a rockslide that blocks trackage located outside the HTUA. Accordingly, since the randomness and unpredictability of such a unique event occurring makes it unlikely that the rail car could be exploited by a terrorist, TSA would allow the unattended rail car to enter an HTUA without penalty to either freight railroad carrier. Of course, if the freight railroad carriers know in advance before the interchange that, for whatever reason, the rail car must be re-routed through an HTUA, this limited exception to the chain of custody requirements in paragraph (d) of this section would be inapplicable.

TSA is not proposing that carriers or facilities submit the transfer of custody documentation to TSA. TSA would only want the document if it requests it. Each freight railroad carrier, rail hazardous materials shipper, and rail hazardous materials receiver required to create this documentation must maintain a copy of the specified information or an electronic image thereof, and must make the record available, upon request, to TSA. TSA proposes in paragraph (h) of this section that the documentation be maintained for at least 60 calendar days.

TSA also is seeking comment on an alternative to the chain of custody requirements in proposed in paragraphs (c) and (d) for transfers between railroad carriers that occur outside of an HTUA. This alternative would not require freight railroad carriers to attend rail cars while the rail cars are being transferred. Under this alternative, TSA would only permit such unattended

transfers to occur if they take place in a low risk location, such as at an appropriate distance away from such locations as schools, hospitals, and nursing homes. The receiving railroad carrier would be required to conduct a security inspection of the rail car as provided in proposed paragraph (d) of this NPRM. In addition, both the transferring and the receiving railroad carrier would be required to document the physical transfer of custody as in proposed (c) and (d). TSA seeks comment on whether the potential security threat from this alternative warrants the inclusion of requirements to attend the car as now is in proposed paragraphs (c) and (d). TSA also invites comments on the appropriate criteria that TSA should use to define the term ''low risk location,'' including comments on appropriate geographical distances and/or boundaries to define these locations.

In paragraph (e), TSA is proposing that freight railroad carriers delivering rail cars containing one or more of the quantities and categories of hazardous materials set forth in 49 CFR 1580.100(b) to a rail hazardous materials receiver located within an HTUA must ensure that an employee or authorized representative of the receiver is physically present to accept receipt of the car, unless the car is delivered to a secure area of the facility. Alternatively, the freight railroad carrier may use its own employees or authorized representatives to attend the rail car until the rail hazardous materials receiver accepts physical custody and control of the car. The freight railroad carrier must not depart the rail hazardous materials receiver until it has released the car to a hazardous materials facility employee or authorized representative or has secured the car in a secure area.

The standards for a rail secure area are the same for rail hazardous materials facilities regardless of whether the rail hazardous materials facility is receiving or offering the hazardous material. A ''rail secure area'' is defined in proposed 49 CFR 1580.3 as the portion of the ''rail hazardous materials facility where security-related pre-transportation or transportation functions are performed or rail cars containing the categories and quantities of hazardous materials set forth in proposed 49 CFR 1580.100(b) are prepared, loaded, stored, and/or unloaded.'' As stated in proposed paragraph (i) of this section, secure areas must have physical security measures in place to prevent unauthorized access to rail cars that contain the specified categories and quantities of hazardous materials. These measures could include fencing, lighting, or monitoring by a signaling system (such as a video system, sensing equipment, or mechanical equipment) that is observed by an employee or authorized representative of the rail hazardous materials shipper or receiver who is located either in the immediate area of the rail car or at a remote location within the facility such as a control room.

Paragraph (f) applies only to rail hazardous materials facilities located within an HTUA that receive from a freight railroad carrier or unload rail cars containing one or more of the quantities and categories of hazard materials set forth in proposed 49 CFR 1580.100(b). Consistent with the requirements placed upon freight railroad carriers by paragraph (e), the rail hazardous materials receiver must maintain positive control of the rail car during the physical transfer of custody, which involves not leaving the car unattended and placing the car in a secure area. The requirements for rail hazardous materials facilities that, in addition to receiving or unloading one or more of the hazardous materials referenced in paragraph (f), also offer, prepare, or load these materials for transportation by freight railroad carriers are set forth in paragraph (a) of this section. In accordance with paragraph (f), during unloading and temporary placement of the rail car, a rail hazardous materials receiver located within an HTUA must keep the rail car in a secure area with physical security measures in place, such as fencing, lighting, or video surveillance.

Paragraph (g) provides an exception to the security requirements contained in paragraph (a) for rail hazardous materials receivers located an HTUA, that in the normal course of their business do not offer, prepare, or load rail cars containing the categories and quantities of hazardous material set forth in proposed 49 CFR 1580.100(b) for transportation by rail. Rail hazardous materials facilities located outside an HTUA that routinely receive shipments of the specified categories and quantities of hazardous material, that receive and subsequently reject and return a rail car containing the hazardous material to the originating offeror or shipper are not, by virtue of rejecting and returning a shipment, required to meet the security requirements of paragraph (a). TSA is providing this exception, because the randomness and unpredictability of such an event makes it unlikely that a terrorist could exploit the rail car and use it as a weapon of mass effect. However, the freight railroad carrier receiving the rejected rail car would still be subject to the requirements of this section.

Paragraph (j) allows any rail hazardous materials receiver located within an HTUA to apply for a waiver from some or all of the chain of custody requirements if the receiver believes, based upon the operational characteristics and geographical location of its facility, that the potential security threat of its facility is insufficient to warrant application of the chain of custody requirements in paragraph (f). In considering whether to grant a waiver, TSA would analyze factors that relate to the potential security threat. The factors include: (1) The quantities and types of all hazardous materials that the rail hazardous materials receiver typically receives or unloads; (2) the receiver's geographical location in relationship to populated areas, which includes both daytime office building populations and populations in residential neighborhoods; (3) the receiver facility's immediate proximity to entities that may be attractive targets, such as other businesses (including other hazardous materials facilities), residential homes and apartment buildings, elementary schools, hospitals, nursing homes, assisted living facilities, and sports stadiums; (4) any information regarding threats to the facility; and (5) any other circumstances unique to that receiver's activities that would demonstrate that these activities present a low security risk. For instance, if a requester were to present an analysis showing that, due to the topography of the area, a release of the hazardous material would be unlikely to cause a significant danger to persons in the area, TSA would consider that information as a factor in considering whether to grant or deny the waiver. After reviewing a rail hazardous materials receiver's application for a waiver, and consulting as necessary and appropriate with other Federal, State, and local governmental agencies, TSA would send a written decision to the receiver.

Section 1580.109 Preemptive Effect

Section 20106 of title 49 of the U.S.C. provides that all regulations prescribed by the Secretary of Homeland Security related to railroad security matters preempt any State law, regulation, or order covering the same subject matter. A State may, however, adopt or continue an additional or more stringent regulation when that provision is: (1) Necessary to eliminate or reduce an essentially local security hazard; (2) not incompatible with a Federal law, regulation, or order; and (3) does not

unreasonably burden interstate commerce. *Id.*

Proposed § 1580.109 informs the public of the preemptive effect of proposed 49 CFR 1580.107 regarding chain of custody and control requirements for rail cars containing the categories and quantities of hazardous materials set forth in proposed 49 CFR 1580.100(b). In the past, TSA has not included regulatory text about preemptive effect in its regulations. The absence of such a provision in a Federal regulation does not necessarily indicate that TSA does not intend to preempt State or local regulations. However, TSA has included such a provision in this proposed rule, so that its position regarding preemptive effect is clear.

Consistent with 49 U.S.C. 20106, TSA proposes to preempt any State or local laws regarding security measures during the physical transfer of custody and control of a rail car containing hazardous materials. We believe that such security measures must be subject to uniform national standards. This preemption would apply to all ''hazardous materials'' as defined in 49 CFR 171.8. It would be impractical and burdensome to the secure chain of physical custody and control process to require the regulated parties to develop multiple sets of procedures to comply with varying State and local requirements. TSA is aware that, if this final rule did not preempt State or local regulations regarding the chain of custody requirements in proposed § 1580.107, a freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver may need to comply with different requirements in different jurisdictions. This could require a substantial resource commitment, because it could necessitate instructing the individuals involved in carrying out chain of custody requirements in accordance with a multitude of different operating rules and practices, which could raise significant safety and security concerns. Carriers could also be required to vary the size and training qualifications of the train crew based upon the varying laws in each jurisdiction. Because rail transportation of hazardous materials frequently involves transportation across jurisdictions and because of the resources necessary to comply with potential and varying chain of custody requirements, TSA believes that subjecting carriers to additional state regulations in this area would likely place an unreasonable burden on interstate commerce. TSA seeks to avoid this result.

Although national uniformity, to the extent practicable, of laws, regulations, and orders related to rail security is vitally important, TSA recognizes a need for emergency preparedness at the State and local level. Accordingly, TSA does not intend to preempt inspection activities conducted in furtherance of State and local laws or preempt requirements to appointment a RSC, or report significant security concerns.

As noted above, TSA does not intend to preempt the States from requiring freight railroad carriers, rail hazardous materials shippers, and rail hazardous materials receivers to designate a point of contact who the State could reach immediately concerning security or other emergency matters. In this regard, TSA does not intend to prevent the States from requiring the regulated parties to designate an individual as a point of contact in addition to the person(s) they select to serve as the corporate level RSC under proposed 49 CFR 1580.101. Since TSA recognizes the important security role of local law enforcement agencies, TSA also does not intend to preempt the States from requiring freight railroad carriers, rail hazardous materials shippers, and rail hazardous materials receivers to report potential threats and significant security concerns to the States in addition to these entities complying with TSA's reporting requirements. If an emergency situation develops, TSA expects that the first priority of the freight railroad carriers, rail hazardous materials shippers, and rail hazardous materials receivers would be to call 911 and follow the directions of the police and other first responders to the scene.

TSA seeks comment on the scope of the subject matter that this proposed rule would or would not preempt under 49 U.S.C. 20106.

Subpart C—Passenger Rail Including Passenger Railroad Carriers, Rail Transit Systems, Tourist, Scenic, Historic, and Excursion Operators, and Private Cars

Section 1580.200 Applicability

TSA proposes that this subpart apply to all types of passenger rail operations, including intercity, commuter, and short-haul railroad passenger train service, and rail mass transit systems. The subpart would also cover the operation of private rail cars on or connected to the general railroad system of transportation, and tourist, scenic, historic, and excursion operations, whether on or off the general railroad system of transportation.

Section 1580.201 Rail Security Coordinator

The proposed rule requires that each passenger railroad carrier and each rail transit system covered within the scope of part 1580 must have one or more RSCs. Owners and operators of private rail cars, including business/office cars, circus trains, tourist, scenic, historic, or excursion operations would only be required to designate an RSC if TSA specifically notified them in writing that a security threat exists concerning that operation.

As discussed in section III.B. above, the proposed rule would allow different people to be on call at different times, but would necessitate that at least one individual be available to TSA on a 24 hours, 7 days a week basis. TSA anticipates that the passenger railroad carriers and rail transit systems will generally designate a lead RSC at the corporate level for the entire rail operation and also select other individuals to assist in carrying out the job duties.

The proposal would also permit an individual serving as an RSC to perform other duties in addition to those that TSA requires; that individual need not serve full-time as the RSC. Particularly in the case of smaller passenger railroad or rail transit system operations, TSA anticipates that serving as the RSC will not be an individual's permanent full-time job. Regardless of who is serving in the role of the RSC on a given day, the passenger railroad carrier or rail transit system would remain responsible if any official to whom the RSC security functions are delegated fails to perform them properly.

The proposal applicable to passenger railroads and rail transit systems described in § 1580.201 would subsume the existing requirement in TSA's rail SDs that passenger rail operators designate and use a primary and alternate Security Coordinator and provide current name and contact information to TSA via email. However, this proposal would not change the requirements in the rail SDs that the Security Coordinator:

- Review with sufficient frequency, as practicable and appropriate, all security-related functions to ensure they are effective and consistent with all applicable rail passenger security measures, including the SDs.
- Upon learning of any instance of non-compliance with TSA-required security measures, immediately initiate corrective action.

Section 1580.203 Reporting Significant Security Concerns

Passenger railroad carriers and rail transit systems would be required to immediately report potential threats or significant security concerns encompassing incidents, suspicious activities, and threat information including, but not limited to:

(1) Interference with the crew of the passenger train or rail transit vehicle, such as by attempting to gain entry to the locomotive cab or crew compartment.

(2) Bomb threats, whether specific as to target, location, and timing, or non-specific.

(3) Reports or discovery of suspicious items that result in the disruption of passenger rail operations, such as evacuation of a conveyance or facility or the temporary halting of rail service.

(4) Suspicious activity occurring onboard a passenger train or rail transit vehicle or inside the facility of a passenger railroad carrier or rail transit system that results in a disruption of rail operations, such as evacuation of a conveyance or facility or the temporary halting of rail service due to the discovery of a suspected IED.

(5) Suspicious activity observed at or around passenger rail cars or rail transit vehicles, facilities, or infrastructure used in the operation of the passenger railroad or rail transit system, whether observed by employees or authorized representatives of the railroad carrier or rail transit system or other individuals.

(6) Discharge, discovery, or seizure of a firearm or other deadly weapon on a passenger train or rail transit vehicle or in a station, terminal, storage facility or yard, or other location used in the operation of the passenger railroad or rail transit system, regardless of whether an individual legally possesses the firearm or deadly weapon.

(7) Indications of tampering with passenger rail cars or rail transit vehicles, including signs that the security of the car or vehicle may have been compromised or an IED may be present.

(8) Information relating to the possible surveillance of a passenger train or rail transit vehicle or facility, storage yard, or other location used in the operation of the passenger railroad carrier or rail transit system, regardless of whether the source of the information is an employee or authorized representative of the passenger railroad carrier or rail transit system or other individual.

(9) Correspondence received by the passenger railroad carrier or rail transit system indicating a potential threat to passenger or freight rail transportation.

(10) Other incidents involving breaches of the security of the passenger railroad carrier or the rail transit system operations or facilities that could reasonably represent potential threats or significant security concerns.

The proposal would require passenger railroad carriers and rail transit systems to report the above types of concerns and threats to DHS/TSA in a manner that TSA prescribes. The final rule will provide details of the reporting process. With respect to each concern or threat, the passenger railroad carrier or rail transit system would have to report the following information, to the extent it was available and applicable, to DHS/TSA:

(1) Name of the reporting entity and contact information for communication by telephone and e-mail.

(2) Affected station, terminal, or other facility.

(3) Identifying information on the affected passenger train or rail transit vehicle, including the train number, train line, and route.

(4) The origination and route termination locations for the affected passenger train or rail transit vehicle.

(5) Current location of the affected passenger train or rail transit vehicle, with as much specificity as circumstances and available information permits.

(6) Description of the threat, incident, or activity affecting the passenger train or rail transit vehicle or facility.

(7) Names and other available biographical data of individuals purported to be involved in the threat, incident or activity.

(8) Source of the threat information.

Possible sources of the information might include: a Federal (with the exception of DHS/TSA), State, or local government agency; a foreign government, to the extent there is no legal prohibition on the reporting of such information; an employee or authorized representative of the passenger railroad carrier or rail transit system; another passenger railroad carrier or rail transit system or freight railroad carrier; or a private individual.

The requirements of the proposed rule do not supersede FTA's State Safety Oversight rules found at 49 CFR part 659. Some duplication of reporting may occur, as entities may have to report incidents to an OA under 49 CFR 659.33 and DHS under 49 CFR 1580.203 of the proposed rule. A suspected terrorist incident resulting in loss of life, injuries requiring medical attention, extensive property damage, and/or evacuation of rail transit system facilities would be subject to the proposed rule and to FTA's State Safety Oversight requirements for accident reporting. Significantly though, the purposes of the reports differ dramatically. TSA needs information immediately on potential threat, suspicious activities, and security incidents for the purposes of comprehensive intelligence analysis, threat assessment, and allocation of security resources. The report to the OAs meets a more general need for situational awareness, particularly pertaining to safety conditions. In any event, the required reporting under the proposed rule and the reporting under 49 CFR 659.33 do not overlap extensively. Additionally, it is not unusual in the transportation sector generally and the passenger rail and rail transit mode in particular for carriers and systems to report matters to Federal and State regulatory entities. However, TSA invites comments on the matter.

V. Rulemaking Analyses and Notices

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 (E.O. 12866), Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) 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. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 OMB A–4 Accounting Statement is located in the full regulatory evaluation.

In conducting these analyses, TSA determined:

(1) This rulemaking would not constitute an economically ''significant regulatory action'' as defined in the Executive Order.

(2) This rulemaking would have a yet to be determined impact on small businesses. We have conducted an Initial Regulatory Flexibility Analysis (IRFA) for comment.

(3) This rulemaking would not constitute a barrier to international trade.

(4) This rulemaking would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

These analyses, available in the public docket, are summarized below. 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. We invite comments on all aspects of the economic analysis. We will attempt to evaluate 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. 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 ensure the issue is addressed by the most appropriate agency experts.

A. Executive Order 12866 Assessment (Regulatory Planning and Review)

Impact Summary

The proposed rule would address threats and vulnerabilities in the rail transportation sector. This summary provides a synopsis of the costs and benefits of the proposed rule.

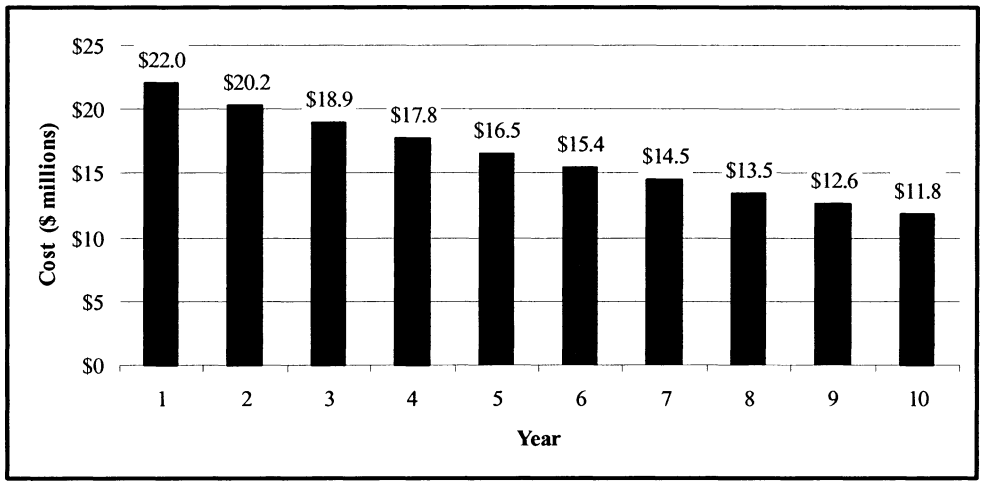
Benefits of the Proposed Rule

The proposed rule would enhance the security of rail transportation by: (1) Giving TSA and DHS the authority to conduct inspections in order to assess and mitigate threats to security; (2) providing TSA and DHS with a regulatory mechanism to locate rail cars containing certain hazardous materials; (3) mandating that rail hazardous materials facilities that ship or receive these materials conduct routine inspections of shipments; (4) creating a secure chain of custody requirement for the transfer of rail cars containing these materials; and (5) requiring certain rail hazardous materials shipper and receiver facilities to store rail cars containing these hazardous materials in areas with physical security controls.

Costs of the Proposed Rule

The costs of the proposed rule would result primarily from the requirements for: (1) Rail carriers and rail hazardous materials shippers and receivers to establish secure chains of custody for hazardous materials covered by the NPRM; and (2) railroad carriers, rail hazardous materials shippers, and rail hazardous materials receivers to provide TSA and DHS with various pieces of information. TSA concluded that the total cost of the proposed rule, discounted at 7 percent, would range from $152.8 million to $173.9 million. *See* Figure 1 for the primary 10 year cost estimate, which equals $163.3 when discounted at 7 percent. A detailed discussion of how TSA calculated this estimate and the range of estimates discussed above is available on the docket. The agency seeks comments on all cost estimates.

Figure 1: Total Cost of the Proposed Rule, Discounted 7 Percent



B. Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity.

This proposed rule would have a yet to be determined impact on small entities, as defined by the RFA. TSA, therefore, has prepared an Initial Regulatory Flexibility Analysis, which is available on the docket. TSA requests comments on this analysis.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

This proposed rule contains new information collection activities subject to the PRA. Accordingly, TSA has submitted the following information requirements to OMB for its review.

Title: Rail Transportation Security.

Summary: This proposal would require: (1) Freight and passenger railroad carriers, rail transit systems, certain rail hazardous materials shipper and receiver facilities, tourist, scenic, historic, and excursion rail operations (whether operating on or off the general railroad system of transportation), and

private rail car operations (on or connected to the general railroad system of transportation) to allow TSA and DHS officials working with TSA to enter and be present within any area or within any conveyance to conduct inspections, tests, or to perform such other duties as TSA directs, including copying of records; (2) freight railroad carriers, certain rail hazardous materials shipper and receiver facilities, passenger railroad carriers, and rail mass transit systems to designate a rail security coordinator and at least one alternate rail security coordinator to be available to TSA on a 24 hours, 7 days a week basis to serve as primary contact for receipt of intelligence information and other security-related activities; (3) freight and passenger railroad carriers, certain rail hazardous materials shippers and receivers, passenger railroad carriers, rail mass transit systems, tourist, scenic, historic, and excursion rail operations (whether operating on or off the general railroad system of transportation), and private rail car operations (on or connected to the general railroad system of transportation) to immediately report potential threats and significant security concerns to DHS; (4) freight railroad carriers and certain rail hazardous materials shippers and receivers to provide for a secure chain of custody and control of rail cars containing a specified quantity and type of hazardous material; and (5) SSI protection to be extended to certain rail security information, with corresponding responsibilities of rail entities as covered persons under the SSI regulation.

Use of: This proposal would support the information needs of TSA to enhance security in the following modes of transportation: freight rail, including freight railroad carriers, rail hazardous materials facilities which offer, load, prepare, receive and/or unload certain types and quantities of hazardous materials, and private cars; passenger rail, including passenger railroad carriers such as intercity and commuter passenger rail operations, rail transit systems, tourist, scenic, historic, and excursion rail operations (whether operating on or off the general railroad system of transportation), and private rail car operations (on or connected to the general railroad system of transportation).

Respondents (including number of): The likely respondents to this proposed information requirement are an estimated 1,791 freight and passenger railroad carriers, rail transit systems, and rail hazardous materials shippers and receivers.

Frequency: TSA estimates each of the 949 freight and passenger railroad carrier, rail transit systems, and rail hazardous materials shippers and receivers will respond once to submit RSC information to TSA. Additionally, TSA estimates that each freight railroad carrier will respond anywhere from 1 to 36 times per year depending on the amount of PIH materials the carrier transports. This includes all requirements on freight railroad carriers in this proposal. TSA estimates that each passenger rail and rail transit entity will respond between 0 and 1,460 times per year. TSA estimates that each rail hazardous materials shipper and receiver facility will respond from 0 to 2 times per year. Thus, the annual frequency of information requirements is between 49,762 to 99,862.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden in the range of $3,420,655 to $6,576,955. Larger reporting burdens are anticipated for passenger rail systems due to higher estimates of suspicious incident reports.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirements by February 20, 2007. Direct the comments to the address listed in the **ADDRESSES** section of this document, and fax a copy of them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806. A comment to OMB is most effective if OMB receives it within 30 days of publication. TSA will publish the OMB control number for this information collection in the **Federal Register** after OMB approves it.

As protection provided by the PRA, as amended, 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.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

E. Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

F. Executive Order 13132, Federalism

TSA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, entitled ''Federalism,'' issued August 4, 1999. Executive Order 13132 requires TSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''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.''

TSA proposes that this rule would preempt certain State, local, and tribal requirements, including any such requirements prescribing or restricting

security measures during the physical transfer of custody and control of a rail car containing hazardous materials. This is consistent with applicable statutes and with sound policy. Congress has enacted comprehensive Federal railroad laws (49 U.S.C. 20101 *et. seq.*), which mandate that ''[l]aws, regulations and orders related to railroad safety and laws, regulations, and orders related to railroad security [] be nationally uniform to the extent practicable.'' *See* 49 U.S.C. 20106. To achieve national uniformity, the Federal railroad laws ''expressly preempt[] state authority to adopt safety rules, save for two exceptions.'' *See Union Pacific Railroad Co.* v. *California Public Utilities Comm'n,* 346 F.3d 851, 858 (9th Cir. 2003); *see also* 49 U.S.C. 20106. A state may enact or continue in force a law related to railroad safety or security ''until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement.'' 49 U.S.C. 20106. ''Even after such a federal regulation issues, a State may adopt a more stringent law when 'necessary to eliminate or reduce an essentially local safety or security hazard' if it 'is not incompatible' with the federal regulation and 'does not unreasonably burden interstate commerce.' '' *CSX Transportation, Inc.* v. *Williams,* 406 F.3d at 670–71; 49 U.S.C. 20106.

A primary security concern related to the rail transportation of hazardous materials is the prevention of a catastrophic release or explosion in proximity to densely populated areas, including urban areas and events or venues with large numbers of people in attendance. Also of major concern is the release or explosion of a rail car in proximity to iconic buildings, landmarks, or environmentally significant areas. These are national concerns that require a uniform national regulatory approach that does not require regulated parties to implement different measures in different jurisdictions across the nation. TSA is therefore proposing a nationally-uniform regulatory provision requiring chain of custody procedures. This would avoid the burden on interstate commerce that would result if multiple States and localities established their own chain of custody requirements.

Although proposed § 1580.107 would preempt State and local requirements addressing the same matters, TSA does not believe that the proposed custody and control requirements of this rulemaking would have an immediate substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule would not require any actions by States or localities. In addition, only one state has enacted a measure addressing chain of custody and control requirements for the rail transportation of hazardous materials.[58] Thus, it appears that the proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment at this time. TSA invites comments from States and localities on whether promulgation of a final rule with the preemptive effects provided in proposed § 1580.109 would have substantial direct effects on States and localities. Additionally, TSA plans to consult with the States and/or their representatives during the public comment period concerning this proposed rule.

G. Environmental Analysis

TSA has reviewed this action under Department of Homeland Security (DHS) Management Directive 5100.1, Environmental Planning Program (effective April 19, 2006), which guides TSA compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have determined that this proposal is covered by the following categorical exclusions (CATEX) listed in the DHS regulation, to wit: Number A3(a) (administrative and regulatory activities involving the promulgation of rules and the development of policies); paragraph A4 (information gathering and data analysis); paragraph A7(d) (conducting audits, surveys and data collection of a minimally intrusive nature, to include vulnerability, risk and structural integrity assessments of infrastructures); paragraph B3 (proposed activities and operations to be conducted in existing structures that are compatible with ongoing functions); and paragraph B11 (routine monitoring and surveillance activities that support homeland security, such as patrols, investigations and intelligence gathering).

Additionally, we have determined that this proposal meets the three conditions required for a CATEX to apply, as described in paragraph 3.2 (Conditions and Extraordinary Circumstances). The rule establishes new security requirements for rail transportation, to include: Requiring freight and passenger railroad carriers, rail transit systems, certain rail hazardous materials shipper and receiver facilities, tourist, scenic, historic, and excursion rail operations (whether operating on or off the general railroad system of transportation), and private rail car operations (on or connected to the general railroad system of transportation) to give TSA officials and DHS officials working with TSA access to carry out security-related duties; requiring freight and passenger railroad carriers, certain rail hazardous materials shipper and receiver facilities, and rail transit systems to appoint and use rail security coordinators as TSA points of contact; requiring freight railroad carriers and certain rail hazardous materials shipper and receiver facilities to track and report the location of specified rail cars upon request; requiring improved security measures to protect certain railroad shipments; and extending the protection of the SSI program to rail transportation information.

H. Energy Impact Analysis

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA. We also have analyzed this proposed rule under E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 18, 2001). 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.

List of Subjects

49 CFR Part 1520

Air carriers, Aircraft, Airports, Maritime carriers, Rail hazardous materials receivers, Rail hazardous materials shippers, Rail transit systems, Railroad carriers, Railroad safety, Railroads, Reporting and recordkeeping requirements, Security measures, Vessels.

49 CFR Part 1580

Hazardous materials transportation, Mass transportation, Rail hazardous materials receivers, Rail hazardous

[58] California adopted the ''Local Community Rail Security Act of 2006'' on October 1, 2006.

materials shippers, Rail transit systems, Railroad carriers, Railroad safety, Railroads, Reporting and recordkeeping requirements, Security measures.

The Proposed Rule

For the reasons set forth in the preamble, the Transportation Security Administration proposes to amend Chapter XII, of Title 49, Code of Federal Regulations, as follows:

Title 49—Transportation

Chapter XII—Transportation Security Administration, Department of Homeland Security

PART 1520—PROTECTION OF SENSITIVE SECURITY INFORMATION

1. The authority citation for part 1520 continues to read as follows:

Authority: 46 U.S.C. 70102–70106, 70117; 49 U.S.C. 114, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

2. In § 1520.3, add definitions of ''Rail hazardous materials receiver,'' ''Rail hazardous materials shipper,'' ''Rail facility,'' ''Rail secure area,'' ''Rail transit facility,'' ''Rail transit system,'' ''Railroad,'' and ''Railroad carrier,'' amend the definition of ''Vulnerability assessment'' to read as follows, and insert in alphabetical order:

§ 1520.3 Terms used in this part.

* * * * *

Rail facility means ''rail facility'' as defined in 49 CFR 1580.

Rail hazardous materials receiver means ''rail hazardous materials receiver'' as defined in 49 CFR 1580.3.

Rail hazardous materials shipper means ''rail hazardous materials shipper'' as defined in 49 CFR 1580.3.

Rail secure area means ''rail secure area'' as defined in 49 CFR 1580.3.

Rail transit facility means ''rail transit facility'' as defined in 49 CFR 1580.3.

Rail transit system or *Rail Fixed Guideway System* means ''rail transit system'' or ''Rail Fixed Guideway System'' as defined in 49 CFR 1580.3.

Railroad means ''railroad'' as defined in 49 U.S.C. 20102(1).

Railroad carrier means ''railroad carrier'' as defined in 49 U.S.C. 20102(2).

Vulnerability assessment means any review, audit, or other examination of the security of a transportation infrastructure asset; airport; maritime facility; port area; vessel; aircraft; railroad; railroad carrier, rail facility; train; rail hazardous materials shipper or receiver facility; rail transit system; rail transit facility; commercial motor vehicle; or pipeline; or a transportation-related automated system or network, whether during the conception, planning, design, construction, operation, or decommissioning phase. A vulnerability assessment may include proposed, recommended, or directed actions or countermeasures to address security concerns.

* * * * *

3. In § 1520.5(b), revise paragraphs (b)(6)(i), (8) introductory text, (10), (11)(i)(A), and (12) introductory text to read as follows:

§ 1520.5 Sensitive security information.

* * * * *

(b) * * *

(6) * * *

(i) Details of any security inspection or investigation of an alleged violation of aviation, maritime, or rail transportation security requirements of Federal law that could reveal a security vulnerability, including the identity of the Federal special agent or other Federal employee who conducted the inspection or audit.

* * * * *

(8) *Security measures.* Specific details of aviation, maritime, or rail transportation security measures, both operational and technical, whether applied directly by the Federal Government or another person, including—

* * * * *

(10) *Security training materials.* Records created or obtained for the purpose of training persons employed by, contracted with, or acting for the Federal Government or another person to carry out aviation, maritime, or rail transportation security measures required or recommended by DHS or DOT.

(11) * * *

(i) * * *

(A) Having unescorted access to a secure area of an airport, a rail secure area, or a secure or restricted area of a maritime facility, port area, or vessel;

(12) *Critical aviation, maritime, or rail infrastructure asset information.* Any list identifying systems or assets, whether physical or virtual, so vital to the aviation, maritime, or rail transportation system (including rail hazardous materials shippers and rail hazardous materials receivers) that the incapacity or destruction of such assets would have a debilitating impact on transportation security, if the list is—

* * * * *

4. In § 1520.7, add new paragraph (n) to read as follows:

§ 1520.7 Covered persons.

* * * * *

(n) Each railroad carrier, rail hazardous materials shipper, rail hazardous materials receiver, and rail transit system subject to the requirements of part 1580 of this chapter.

5. Add part 1580 to read as follows:

PART 1580—RAIL TRANSPORTATION SECURITY

Subpart A—General

Sec.
1580.1 Scope.
1580.3 Terms used in this part.
1580.5 Inspection authority.

Subpart B—Freight Rail Including Freight Railroad Carriers, Rail Hazardous Materials Shippers, Rail Hazardous Materials Receivers, and Private Cars

1580.100 Applicability.
1580.101 Rail security coordinator.
1580.103 Location and shipping information for certain rail cars.
1580.105 Reporting significant security concerns.
1580.107 Chain of custody and control requirements.
1580.109 Preemptive effect.

Subpart C—Passenger Rail Including Passenger Railroad Carriers, Rail Transit Systems, Tourist, Scenic, Historic and Excursion Operators, and Private Cars

1580.200 Applicability.
1580.201 Rail security coordinator.
1580.203 Reporting significant security concerns.

Appendix A to Part 1580—High Threat Urban Areas

Appendix B to Part 1580—Summary of the Applicability of Part 1580

Authority: 49 U.S.C. 114.

Subpart A—General

§ 1580.1 Scope.

Except as provided in paragraph (i) of this section, this part includes requirements for the following persons. Appendix B of this part summarizes the general requirements for each person, and the specific sections in this part provide detailed requirements.

(a) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(b) Each rail hazardous materials shipper that offers, prepares, or loads for transportation in commerce by rail one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) of this part.

(c) Each rail hazardous materials receiver, located within a High Threat Urban Area that receives in commerce by rail or unloads one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) of this part.

(d) Each passenger railroad carrier, including a carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service.

(e) Each passenger or freight railroad carrier hosting an operation described in paragraph (d) of this section.

(f) Each tourist, scenic, historic, and excursion rail operator, whether operating on or off the general railroad system of transportation.

(g) Operation of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(h) Each rail transit systems, including heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems.

(i) This part does not apply to a freight railroad carrier that operates rolling equipment only on track inside an installation which is not part of the general railroad system of transportation.

§ 1580.3 Terms used in this part.

For purposes of this part:

Commuter passenger train service means ''train, commuter'' as defined in 49 CFR 238.5, and includes a railroad operation that ordinarily uses diesel or electric powered locomotives and railroad passenger cars to serve an urban area, its suburbs, and more distant outlying communities in the greater metropolitan area.

General railroad system of transportation means the network of standard gage track over which goods may be transported throughout the Nation and passengers may travel between cities and within metropolitan and suburban areas. (49 CFR part 209, Appendix A).

Hazardous material means ''hazardous material'' as defined in 49 CFR 171.8.

Heavy rail transit means service provided by self-propelled electric railcars, typically drawing power from a third rail, operating in separate rights-of-way in multiple cars; also referred to as subways, metros, or regional rail.

High Threat Urban Area (HTUA) means an area comprising one or more cities and surrounding areas including a 10 mile buffer zone, as listed in Appendix A of this part.

Improvised explosive device means a device fabricated in an improvised manner that incorporates explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals in its design, and generally includes a power supply, a switch or timer, and a detonator or initiator.

Intercity passenger train service means both ''train, long-distance intercity passenger'' and ''train, short-distance intercity passenger'' as defined in 49 CFR 238.5.

Light rail transit means service provided by self-propelled electric railcars, typically drawing power from an overhead wire, operating in either exclusive or non-exclusive rights-of-way in single or multiple cars and with shorter distance trips and frequent stops; also referred to as streetcars, trolleys, and trams.

Offers or *offeror* means:

(1) Any person who does either or both of the following:

(i) Performs, or is responsible for performing, any pre-transportation function for transportation of the hazardous material in commerce.

(ii) Tenders or makes the hazardous material available to a carrier for transportation in commerce.

(2) A carrier is not an offeror when it performs a function required as a condition of acceptance of a hazardous material for transportation in commerce (such as reviewing shipping papers, examining packages to ensure that they are in conformance with the hazardous materials regulations, or preparing shipping documentation for its own use) or when it transfers a hazardous material to another carrier for continued transportation in commerce without performing a pre-transportation function. (49 CFR 171.8)

Passenger car means rail rolling equipment intended to provide transportation for members of the general public and includes a self-propelled car designed to carry passengers, baggage, mail, or express. This term includes a passenger coach, cab car, and a Multiple Unit (MU) locomotive. In the context of articulated equipment, ''passenger car'' means that segment of the rail rolling equipment located between two trucks. This term does not include a private car. (49 CFR 238.5)

Passenger train means a train that transports or is available to transport members of the general public. (49 CFR 238.5)

Private car means rail rolling equipment that is used only for excursion, recreational, or private transportation purposes. A private car is not a passenger car. (49 CFR 238.5)

Rail facility means a location at which rail cargo or infrastructure assets are stored, cargo is transferred between conveyances and/or modes of transportation, where transportation command and control operations are performed, or maintenance operations are performed. The term also includes, but is not limited to, passenger stations and terminals, rail yards, crew management centers, dispatching centers, transportation terminals and stations, fueling centers, and telecommunication centers.

Rail hazardous materials receiver means any fixed-site facility that has a physical connection to the general railroad system of transportation and receives or unloads from transportation in commerce by rail one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) of this part, but does not include a facility owned or operated by a department, agency, or instrumentality of the Federal Government.

Rail hazardous materials shipper means any fixed-site facility that has a physical connection to the general railroad system of transportation and offers, prepares, or loads for transportation by rail one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) of this part, but does not include a facility owned or operated by a department, agency, or instrumentality of the Federal Government.

Rail secure area means a secure location(s) identified by a rail hazardous materials shipper or rail hazardous materials receiver where security-related pre-transportation or transportation functions are performed or rail cars containing the categories and quantities of hazardous materials set forth in § 1580.100(b) are prepared, loaded, stored, and/or unloaded.

Rail transit facility means rail transit stations, terminals, and locations at which rail transit infrastructure assets are stored, command and control operations are performed, or maintenance is performed. The term also includes rail yards, crew management centers, dispatching centers, transportation terminals and stations, fueling centers, and telecommunication centers.

Rail transit system or ''Rail Fixed Guideway System'' means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, cable car, trolley, or automated guideway.

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including: Commuter or other short-haul railroad passenger

service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation. (49 U.S.C. 20102(1))

Railroad carrier means a person providing railroad transportation. (49 U.S.C. 20102(2))

Residue means the hazardous material remaining in a packaging, including a tank car, after its contents have been unloaded to the maximum extent practicable and before the packaging is either refilled or cleaned of hazardous material and purged to remove any hazardous vapors. (49 CFR 171.8)

Tourist, scenic, historic, or excursion operation means a railroad operation that carries passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose. Train movements of new passenger equipment for demonstration purposes are not tourist, scenic, historic, or excursion operations. (49 CFR 238.5)

Transportation or transport means the movement of property including loading, unloading, and storage. Transportation or transport also includes the movement of people, boarding, and disembarking incident to that movement.

§ 1580.5 Inspection authority.

(a) This section applies to the following:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper as defined in § 1580.3.

(3) Each rail hazardous materials receiver located within an HTUA.

(4) Each passenger railroad carrier, including a carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service.

(5) Each passenger or freight railroad carrier hosting an operation described in paragraph (a)(4) of this section.

(6) Each tourist, scenic, historic, and excursion rail operator, whether operating on or off the general railroad system of transportation.

(7) Operation of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(8) Each rail transit system.

(b) The persons described in paragraph (a) of this section must allow TSA and other authorized DHS officials, at any time and in a reasonable manner, without advance notice, to enter, inspect, and test property, facilities, equipment, operations, and to view, inspect, and copy records, as necessary to carry out TSA's security-related statutory or regulatory authorities, including its authority to—

(1) Assess threats to transportation;

(2) Enforce security-related regulations, directives, and requirements;

(3) Inspect, maintain, and test security facilities, equipment, and systems;

(4) Ensure the adequacy of security measures for the transportation of passengers and freight, including hazardous materials;

(5) Oversee the implementation, and ensure the adequacy, of security measures at rail yards, stations, terminals, transportation-related areas of rail hazardous materials shipper and receiver facilities, crew management centers, dispatch centers, telecommunication centers, and other transportation facilities and infrastructure;

(6) Review security plans; and

(7) Carry out such other duties, and exercise such other powers, relating to transportation security as the Assistant Secretary of Homeland Security for the TSA considers appropriate, to the extent authorized by law.

(c) TSA and DHS officials working with TSA, may enter, without advance notice, and be present within any area or within any conveyance without access media or identification media issued or approved by a railroad carrier, transit system owner or operator, rail hazardous materials shipper, or rail hazardous materials receiver in order to inspect or test compliance, or perform other such duties as TSA may direct.

Subpart B—Freight Rail Including Freight Railroad Carriers, Rail Hazardous Materials Shippers, Rail Hazardous Materials Receivers, and Private Cars

§ 1580.100 Applicability.

(a) *Applicability*. The requirements of this subpart apply to:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper as defined in section 1580.3.

(3) Each rail hazardous materials receiver located with an HTUA.

(4) Each freight railroad carrier hosting a passenger operation described in § 1580.1(d) of this part.

(5) Operation of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(b) *Hazardous materials*. The requirements of this subpart apply to:

(1) A rail car containing more than 2,268 kg (5,000 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material, as defined in 49 CFR 173.50;

(2) A tank car containing a material poisonous by inhalation as defined in 49 CFR 171.8, including Division 2.3 gases poisonous by inhalation, as set forth in 49 CFR 173.115(c) and Division 6.1 liquids meeting the defining criteria in 49 CFR 173.132(a)(1)(iii) and assigned to hazard zone A or hazard zone B in accordance with 49 CFR 173.133(a), other than residue; and

(3) A rail car containing a highway route-controlled quantity of a Class 7 (radioactive) material, as defined in 49 CFR 173.403.

§ 1580.101 Rail security coordinator.

(a) *Applicability*. This section applies to:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper as defined in § 1580.3.

(3) Each rail hazardous materials receiver located with an HTUA.

(4) Each freight railroad carrier hosting the passenger operations described in § 1580.1(d) of this part.

(5) Each private rail car operation, including business/office cars and circus trains, on or connected to the general railroad system of transportation, when notified by TSA, in writing, that a threat exists concerning that operation.

(b) Each person described in paragraph (a) of this section must designate and use a primary and at least one alternate Rail Security Coordinator (RSC).

(c) The RSC and alternate(s) must be appointed at the corporate level.

(d) Each freight railroad carrier, rail hazardous materials shipper, and rail hazardous materials receiver required to have an RSC must provide to TSA the

names, title, phone number(s), and e-mail address(es) of the RSCs and alternate RSCs, and must notify TSA within 7 calendar days when any of this information changes.

(e) Each freight railroad carrier, rail hazardous materials shipper, and rail hazardous materials receiver required to have an RSC must ensure that at least one RSC:

(1) Serves as the primary contact for intelligence information and security-related activities and communications with TSA. Any individual designated as an RSC may perform other duties in addition to those described in this section.

(2) Is available to TSA on a 24 hour a day 7 days a week basis.

(3) Coordinates security practices and procedures with appropriate law enforcement and emergency response agencies.

§ 1580.103 Location and shipping information for certain rail cars.

(a) *Applicability.* This section applies to:

(1) Each freight railroad carrier transporting one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) of this part.

(2) Each rail hazardous materials shipper as defined in § 1580.3.

(3) Each rail hazardous materials receiver located with an HTUA.

(b) Each person described in paragraph (a) of this section must have procedures in place to determine the location and shipping information for each rail car under its physical custody and control that contains one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) of this part.

(c) The location and shipping information required in paragraph (b) of this section must include the following:

(1) The rail car's current location by city, county, and state, including, for freight railroad carriers, the railroad milepost, track designation, and the time that the rail car's location was determined.

(2) The rail car's routing, if a freight railroad carrier.

(3) A list of the total number of rail cars containing the materials listed in § 1580.100(b) of this part, broken down by:

(i) The shipping name prescribed for the material in column 2 of the table in 49 CFR 172.101;

(ii) The hazard class or division number prescribed for the material in column 3 of the table in 49 CFR 172.101; and

(iii) The identification number prescribed for the material in column 4 of the table in 49 CFR 172.101.

(4) Each rail car's initial and number.

(5) Whether the rail car is in a train, rail yard, siding, rail spur, or rail hazardous materials shipper or receiver facility, including the name of the rail yard or siding designation.

(d) Upon request by TSA, each railroad carrier, each rail hazardous materials shipper, and each rail hazardous materials receiver must provide the location and shipping information to TSA no later than 1 hour after receiving the request, unless otherwise approved by TSA.

(e) The freight railroad carrier, rail hazardous materials shipper, and rail hazardous materials receiver must provide the requested location and shipping information to TSA by one of the following methods:

(1) Electronic data transmission in spreadsheet format.

(2) Electronic data transmission in Hyper Text Markup Language (HTML) format.

(3) Electronic data transmission in Extensible Markup Language (XML).

(4) Facsimile transmission of a hard copy spreadsheet in tabular format.

(5) Posting the information to a secure Web site address approved by TSA.

(6) Another format approved in writing by TSA.

§ 1580.105 Reporting significant security concerns.

(a) *Applicability.* This section applies to:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper as defined in § 1580.3.

(3) Each rail hazardous materials receiver located with an HTUA.

(4) Each freight railroad carrier hosting a passenger operation described in § 1580.1(d) of this part.

(5) Operation of private cars, including business/office cars and circus, on or connected to the general railroad system of transportation trains.

(b) Each person described in paragraph (a) of this section must immediately report potential threats and significant security concerns to DHS in a manner prescribed by TSA.

(c) Potential threats or significant security concerns encompass incidents, suspicious activities, and threat information including, but not limited to, the following:

(1) Interference with the train crew.

(2) Bomb threats, specific and non-specific.

(3) Reports or discovery of suspicious items that result in the disruption of railroad operations.

(4) Suspicious activity occurring onboard a train or inside the facility of a freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver that results in a disruption of operations.

(5) Suspicious activity observed at or around rail cars, facilities, or infrastructure used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.

(6) Discharge, discovery, or seizure of a firearm or other deadly weapon on a train, in a station, terminal, facility, or storage yard, or other location used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.

(7) Indications of tampering with rail cars.

(8) Information relating to the possible surveillance of a train or facility, storage yard, or other location used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.

(9) Correspondence received by the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver indicating a potential threat.

(10) Other incidents involving breaches of the security of the freight railroad carrier's, rail hazardous materials shipper's, or rail hazardous materials receiver's operations or facilities.

(d) Information reported should include, as available and applicable:

(1) The name of the reporting freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver and contact information, including a telephone number or e-mail address.

(2) The affected train, station, terminal, rail hazardous materials facility, or other rail facility or infrastructure.

(3) Identifying information on the affected train, train line, and route.

(4) Origination and termination locations for the affected train, including departure and destination city and the rail line and route, as applicable.

(5) Current location of the affected train.

(6) Description of the threat, incident, or activity.

(7) The names and other available biographical data of individuals involved in the threat, incident, or activity.

(8) The source of any threat information.

§ 1580.107 Chain of custody and control requirements.

(a) *Within or outside of an HTUA, rail hazardous materials shipper transferring to carrier.* Except as provided in paragraph (e) of this section, at each location within or outside of an HTUA, a rail hazardous materials shipper transferring custody of a rail car containing one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) to a freight railroad carrier must:

(1) Physically inspect the rail car before loading for signs of tampering, including closures and seals; other signs that the security of the car may have been compromised; suspicious items or items that do not belong, including the presence of an improvised explosive device.

(2) Keep the rail car in a rail secure area from the time the security inspection required by paragraph (a)(1) of this section or by 49 CFR 173.31(d), whichever occurs first, until the freight railroad carrier takes physical custody of the rail car.

(3) Document the transfer of custody to the railroad carrier in writing or electronically.

(b) *Within or outside of an HTUA, carrier receiving from a rail hazardous materials shipper.* At each location within or outside of an HTUA where a freight railroad carrier receives from a rail hazardous materials shipper custody of a rail car containing one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b), the freight railroad carrier must document the transfer in writing or electronically and perform the required security inspection in accordance with 49 CFR 174.9.

(c) *Within an HTUA, carrier transferring to carrier.* Within an HTUA, whenever a rail car containing one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) is transferred from one freight railroad carrier to another, each freight railroad carrier must adopt and carry out procedures to ensure that the rail car is not left unattended at any time during the physical transfer of custody. These procedures must include the receiving freight railroad carrier performing the required security inspection in accordance with 49 CFR 174.9. Both the transferring and the receiving railroad carrier must document the transfer in writing or electronically.

(d) *Outside of an HTUA, carrier transferring to carrier.* Outside an HTUA, whenever a rail car containing one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) is transferred from one freight railroad carrier to another, and the rail car containing this hazardous material may subsequently enter an HTUA, each freight railroad carrier must adopt and carry out procedures to ensure that the rail car is not left unattended at any time during the physical transfer of custody. These procedures must include the receiving railroad carrier performing the required security inspection in accordance with 49 CFR 174.9. Both the transferring and the receiving railroad carrier must document the transfer of custody in writing or electronically.

(e) *Within an HTUA, carrier transferring to rail hazardous materials receiver.* A freight railroad carrier delivering a rail car containing one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) to a rail hazardous materials receiver located within an HTUA must not leave the rail car unattended in a non-secure area until the rail hazardous materials receiver accepts custody of the rail car. Both the railroad carrier and the rail hazardous materials receiver must document the transfer of custody in writing or electronically.

(f) *Within an HTUA, rail hazardous materials receiver receiving from carrier.* Except as provided in paragraph (j) of this section, a rail hazardous materials receiver located within an HTUA that receives a rail car containing one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) from a freight railroad carrier must:

(1) Ensure that the rail hazardous materials receiver or railroad carrier maintains positive control of the rail car during the physical transfer of custody of the rail car.

(2) Keep the rail car in a rail secure area until the car is unloaded.

(3) Document the transfer of custody from the railroad carrier in writing or electronically.

(g) *Within or outside of an HTUA, rail hazardous materials receiver rejecting car.* This section does not apply to a rail hazardous materials receiver that does not routinely offer, prepare, or load for transportation by rail one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b). If such a receiver rejects and returns a rail car containing one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) to the originating offeror or shipper, the requirements of this section do not apply to the receiver. The requirements of this section do apply to any railroad carrier to which the receiver transfers custody of the rail car.

(h) *Document retention.* The documents required under this section must be maintained for at least 60 calendar days and made available to TSA upon request.

(i) *Rail secure area.* The rail hazardous materials shipper and the rail hazardous materials receiver must use physical security measures to ensure that no unauthorized person gains access to the rail secure area.

(j) *Waivers for rail hazardous materials receivers.* A rail hazardous materials receiver located within an HTUA may request from TSA a waiver from some or all of the requirements of this section if the receiver demonstrates that the potential threat from its activities is insufficient to warrant compliance with this section. TSA will consider all relevant circumstances, including—

(1) The amounts and types of all hazardous materials received.

(2) The geography of the area surrounding the receiver's facility.

(3) Proximity to entities that may be attractive targets, including other businesses, housing, schools, and hospitals.

(4) Any information regarding threats to the facility.

(5) Other circumstances that indicate the potential threat of the receiver's facility does not warrant compliance with this section.

§ 1580.109 Preemptive effect.

Under 49 U.S.C 20106, issuance of § 1580.107 of this subpart preempts any State law, rule, regulation, order or common law requirement covering the same subject matter.

Subpart C—Passenger Rail Including Passenger Railroad Carriers, Rail Transit Systems, Tourist, Scenic, Historic and Excursion Operators, and Private Cars

§ 1580.200 Applicability.

This subpart includes requirements for:

(a) Each passenger railroad carrier, including a carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service.

(b) Each passenger railroad carrier hosting an operation described in paragraph (a) of this section.

(c) Each tourist, scenic, historic, and excursion rail operator, whether operating on or off the general railroad system of transportation.

(d) Operation of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(e) Each rail transit system.

§ 1580.201 Rail security coordinator.

(a) *Applicability.* This section applies to:

(1) Each passenger railroad carrier, including a carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service.

(2) Each passenger railroad carrier hosting an operation described in paragraph (a)(1) of this section.

(3) Each rail transit system.

(4) Each private rail car operation, including business/office cars and circus trains, on or connected to the general railroad system of transportation, when notified by TSA, in writing, that a security threat exists concerning that operation.

(5) Each tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation, when notified by TSA, in writing, that a security threat exists concerning that operation.

(b) Each person described in paragraph (a) of this section must designate and use a primary and at least one alternate Rail Security Coordinator (RSC).

(c) The RSC and alternate(s) must be appointed at the corporate level.

(d) Each passenger railroad carrier and rail transit system required to have an RSC must provide to TSA the names, titles, phone number(s), and e-mail address(es) of the RSCs, and alternate RSCs, and must notify TSA within 7 calendar days when any of this information changes.

(e) Each passenger railroad carrier and rail transit system required to have an RSC must ensure that at least one RSC:

(1) Serves as the primary contact for intelligence information and security-related activities and communications with TSA. Any individual designated as an RSC may perform other duties in addition to those described in this section.

(2) Is available to TSA on a 24 hours a day 7 days a week basis.

(3) Coordinate security practices and procedures with appropriate law enforcement and emergency response agencies.

§ 1580.203 Reporting significant security concerns.

(a) *Applicability.* This section applies to:

(1) Each passenger railroad carrier, including a carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service.

(2) Each passenger railroad carrier hosting an operation described in paragraph (a)(1) of this section.

(3) Each tourist, scenic, historic, and excursion rail operator, whether operating on or off the general railroad system of transportation.

(4) Operation of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(5) Each rail transit system.

(b) Each person described in paragraph (a) of this section must immediately report potential threats or significant security concerns to DHS in a manner prescribed by TSA.

(c) Potential threats or significant security concerns encompass incidents, suspicious activities, and threat information including, but not limited to, the following:

(1) Interference with the train or transit vehicle crew.

(2) Bomb threats, specific and non-specific.

(3) Reports or discovery of suspicious items that result in the disruption of rail operations.

(4) Suspicious activity occurring onboard a train or transit vehicle or inside the facility of a passenger railroad carrier or rail transit system that results in a disruption of rail operations.

(5) Suspicious activity observed at or around rail cars or transit vehicles, facilities, or infrastructure used in the operation of the passenger railroad carrier or rail transit system.

(6) Discharge, discovery, or seizure of a firearm or other deadly weapon on a train or transit vehicle or in a station, terminal, facility, or storage yard, or other location used in the operation of the passenger railroad carrier or rail transit system.

(7) Indications of tampering with passenger rail cars or rail transit vehicles.

(8) Information relating to the possible surveillance of a passenger train or rail transit vehicle or facility, storage yard, or other location used in the operation of the passenger railroad carrier or rail transit system.

(9) Correspondence received by the passenger railroad carrier or rail transit system indicating a potential threat to rail transportation.

(10) Other incidents involving breaches of the security of the passenger railroad carrier or the rail transit system operations or facilities.

(d) Information reported should include, as available and applicable:

(1) The name of the passenger railroad carrier or rail transit system and contact information, including a telephone number or e-mail address.

(2) The affected station, terminal, or other facility.

(3) Identifying information on the affected passenger train or rail transit vehicle including number, train or transit line, and route, as applicable.

(4) Origination and termination locations for the affected passenger train or rail transit vehicle, including departure and destination city and the rail or transit line and route.

(5) Current location of the affected passenger train or rail transit vehicle.

(6) Description of the threat, incident, or activity.

(7) The names and other available biographical data of individuals involved in the threat, incident, or activity.

(8) The source of any threat information.

APPENDIX A TO PART 1580—HIGH THREAT URBAN AREAS (HTUAS)

State	Candidate urban area	Geographic area captured in the data count	Previously designated urban areas included
AZ	Phoenix Area*	Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, Tempe, and a 10-mile buffer extending from the border of the combined area.	Phoenix, AZ.
CA	Anaheim/Santa Ana Area	Anaheim, Costa Mesa, Garden Grove, Fullerton, Huntington Beach, Irvine, Orange, Santa Ana, and a 10-mile buffer extending from the border of the combined area.	Anaheim, CA; Santa Ana, CA.
	Bay Area	Berkeley, Daly City, Fremont, Hayward, Oakland, Palo Alto, Richmond, San Francisco, San Jose, Santa Clara, Sunnyvale, Vallejo, and a 10-mile buffer extending from the border of the combined area.	San Francisco, CA; San Jose, CA; Oakland, CA.
	Los Angeles/Long Beach Area	Burbank, Glendale, Inglewood, Long Beach, Los Angeles, Pasadena, Santa Monica, Santa Clarita, Torrance, Simi Valley, Thousand Oaks, and a 10-mile buffer extending from the border of the combined area.	Los Angeles, CA; Long Beach, CA.
	Sacramento Area*	Elk Grove, Sacramento, and a 10-mile buffer extending from the border of the combined area.	Sacramento, CA.
	San Diego Area*	Chula Vista, Escondido, and San Diego, and a 10-mile buffer extending from the border of the combined area.	San Diego, CA.
CO	Denver Area	Arvada, Aurora, Denver, Lakewood, Westminster, Thornton, and a 10-mile buffer extending from the border of the combined area.	Denver, CO.
DC	National Capital Region	National Capital Region and a 10-mile buffer extending from the border of the combined area.	National Capital Region, DC.
FL	Fort Lauderdale Area	Fort Lauderdale, Hollywood, Miami Gardens, Miramar, Pembroke Pines, and a 10-mile buffer extending from the border of the combined area.	N/A.
	Jacksonville Area	Jacksonville and a 10-mile buffer extending from the city border.	Jacksonville, FL.
	Miami Area.	Hialeah, Miami, and a 10-mile buffer extending from the border of the combined area.	Miami, FL.
	Orlando Area.	Orlando and a 10-mile buffer extending from the city border.	Orlando, FL.
	Tampa Area*	Clearwater, St. Petersburg, Tampa, and a 10-mile buffer extending from the border of the combined area.	Tampa, FL.
GA	Atlanta Area	Atlanta and a 10-mile buffer extending from the city border.	Atlanta, GA.
HI	Honolulu Area	Honolulu and a 10-mile buffer extending from the city border.	Honolulu, HI.
IL	Chicago Area	Chicago and a 10-mile buffer extending from the city border.	Chicago, IL.
IN	Indianapolis Area	Indianapolis and a 10-mile buffer extending from the city border.	Indianapolis, IN.
KY	Louisville Area*	Louisville and a 10-mile buffer extending from the city border.	Louisville, KY.
LA	Baton Rouge Area*	Baton Rouge and a 10-mile buffer extending from the city border.	Baton Rouge, LA.
	New Orleans Area	New Orleans and a 10-mile buffer extending from the city border.	New Orleans, LA.
MA	Boston Area	Boston, Cambridge, and a 10-mile buffer extending from the border of the combined area.	Boston, MA.
MD	Baltimore Area	Baltimore and a 10-mile buffer extending from the city border.	Baltimore, MD.
MI	Detroit Area	Detroit, Sterling Heights, Warren, and a 10-mile buffer extending from the border of the combined area.	Detroit, MI.
MN	Twin Cities Area	Minneapolis, St. Paul, and a 10-mile buffer extending from the border of the combined entity.	Minneapolis, MN; St. Paul, MN.
MO	Kansas City Area	Independence, Kansas City (MO), Kansas City (KS), Olathe, Overland Park, and a 10-mile buffer extending from the border of the combined area.	Kansas City, MO.
	St. Louis Area	St. Louis and a 10-mile buffer extending from the city border.	St. Louis, MO.
NC	Charlotte Area	Charlotte and a 10-mile buffer extending from the city border.	Charlotte, NC.
NE	Omaha Area*	Omaha and a 10-mile buffer extending from the city border.	Omaha, NE.
NJ	Jersey City/Newark Area	Elizabeth, Jersey City, Newark, and a 10-mile buffer extending from the border of the combined area.	Jersey City, NJ; Newark, NJ.
NV	Las Vegas Area*	Las Vegas, North Las Vegas, and a 10-mile buffer extending from the border of the combined entity.	Las Vegas, NV.

APPENDIX A TO PART 1580—HIGH THREAT URBAN AREAS (HTUAS)—Continued

State	Candidate urban area	Geographic area captured in the data count	Previously designated urban areas included
NY	Buffalo Area*	Buffalo and a 10-mile buffer extending from the city border.	Buffalo, NY.
	New York City Area	New York City, Yonkers, and a 10-mile buffer extending from the border of the combined area.	New York, NY.
OH	Cincinnati Area	Cincinnati and a 10-mile buffer extending from the city border.	Cincinnati, OH.
	Cleveland Area	Cleveland and a 10-mile buffer extending from the city border.	Cleveland, OH.
	Columbus Area	Columbus and a 10-mile buffer extending from the city border.	Columbus, OH.
	Toledo Area*	Oregon, Toledo, and a 10-mile buffer extending from the border of the combined area.	Toledo, OH.
OK	Oklahoma City Area*	Norman, Oklahoma and a 10-mile buffer extending from the border of the combined area.	Oklahoma City, OK.
OR	Portland Area	Portland, Vancouver, and a 10-mile buffer extending from the border of the combined area.	Portland, OR.
PA	Philadelphia Area	Philadelphia and a 10-mile buffer extending from the city border.	Philadelphia, PA.
	Pittsburgh Area	Pittsburgh and a 10-mile buffer extending from the city border.	Pittsburgh, PA.
TN	Memphis Area	Memphis and a 10-mile buffer extending from the city border.	Memphis, TN.
TX	Dallas/Fort Worth/Arlington Area	Arlington, Carrollton, Dallas, Fort Worth, Garland, Grand Prairie, Irving, Mesquite, Plano, and a 10-mile buffer extending from the border of the combined area.	Dallas, TX; Fort Worth, TX; Arlington, TX.
	Houston Area	Houston, Pasadena, and a 10-mile buffer extending from the border of the combined entity.	Houston, TX.
	San Antonio Area	San Antonio and a 10-mile buffer extending from the city border.	San Antonio, TX.
WA	Seattle Area	Seattle, Bellevue, and a 10-mile buffer extending from the border of the combined area.	Seattle, WA.
WI	Milwaukee Area	Milwaukee and a 10-mile buffer extending from the city border.	Milwaukee, WI.

*FY05 Urban Areas eligible for sustainment funding through the FY06 UASI program; any Urban Area not identified as eligible through the risk analysis process for two consecutive years will not be eligible for continued funding under the UASI program.

APPENDIX B TO PART 1580—SUMMARY OF THE APPLICABILITY OF PART 1580

[This is a summary—see body of text for complete requirements]

Proposed security measure and rule section	Freight railroad carriers NOT transporting specified hazardous materials	Freight railroad carriers transporting specified hazardous materials (1580.100(b))	Rail operations at certain facilities that ship (i.e., offer, prepare, or load for transportation) hazardous materials	Rail operations at certain facilities that receive or unload hazardous materials within HTUA	Passenger railroad carriers and rail transit systems	Certain other rail operations (private, business/office, circus, tourist, historic, excursion)
Allow TSA to inspect (1580.5).	X	X	X	X	X	X
Appoint rail security coordinator (1580.101 freight; 1580.201 passenger).	X	X	X	X	X	Only if notified in writing that security threat exists.
Report significant security concerns (1580.105 freight; 1580.203 passenger).	X	X	X	X	X	X
Provide location and shipping information for rail cars containing specified hazardous materials if requested (1580.103)		X	X	X		
Chain of custody and control requirements for transport of specified hazardous materials that are or may be in HTUA (1580.107)		X	X	X		

Issued in Arlington, Virginia, on December 7, 2006.

Kip Hawley,

Assistant Secretary.

[FR Doc. E6–21512 Filed 12–20–06; 8:45 am]

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Federal Register

Thursday,
December 21, 2006

Part VI

Department of Education

Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007; Notice

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Charter School Program (CSP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.282A.

DATES: *Applications Available:* December 21, 2006.

Deadline for Transmittal of Applications: February 16, 2007.

Deadline for Intergovernmental Review: April 17, 2007.

Eligible Applicants: State educational agencies (SEAs) in States with a State statute specifically authorizing the establishment of charter schools.

Note: Non-SEA eligible applicants in states in which the SEA elects not to participate in or does not have an application approved under the CSP may apply for funding directly from the Department. The Department plans to hold a separate competition for non-SEA eligible applicants under CFDA Nos. 84.282B and 84.282C.

Estimated Available Funds: The Administration has requested $72,000,000 for new awards under this program for FY 2007. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process in a timely manner, if Congress appropriates funds for this program.

Estimated Range of Awards: $500,000–$20,000,000 per year.

Estimated Average Size of Awards: $5,000,000 per year.

Estimated Number of Awards: 10–12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to three years.

Note: Planning and implementation subgrants awarded by an SEA to non-SEA eligible applicants will be awarded for a period of up to three years, no more than 18 months of which may be used for planning and program design and no more than two years of which may be used for the initial implementation of a charter school. Dissemination subgrants are awarded for a period of up to two years.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model and to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools, and to evaluate the effects of charter schools, including their effects on students, student academic achievement, staff, and parents. The Secretary awards grants to SEAs to enable them to conduct charter school programs in their States. SEAs use their CSP funds to award subgrants to non-SEA eligible applicants for planning, program design, and initial implementation of a charter school, and to support the dissemination of information about, including information on successful practices in, charter schools.

Priorities: This competition includes five competitive preference priorities. In accordance with 34 CFR 75.105(b)(1) and 34 CFR 75.105(b)(2)(iv), priority 1 is from the notice of final priorities for discretionary grant programs, published in the **Federal Register** on October 11, 2006 (71 FR 60046), and priorities 2 through 5 are from section 5202(e) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), 20 U.S.C. 7221a(e).

Competitive Preference Priorities: For FY 2007 these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we give preference to and will award up to an additional fifty (50) points to an application, depending on how well the application meets these priorities. In order to receive preference, an applicant must identify the priorities that it believes it meets and provide documentation supporting its claims. In order to receive points for priority 2 or to receive points for priorities 3 through 5, an application must meet priority 2 and must meet one or more of priorities 3 through 5.

An SEA that meets priority 2 but does not meet one or more of priorities 3 through 5 will not receive any points for priorities 2 through 5.

An SEA that does not meet priority 2 but meets one or more of priorities 3 through 5 will not receive any points for priorities 2 through 5.

These priorities are:

Priority 1—Secondary Schools (10 points). Projects that support activities and interventions aimed at improving the academic achievement of secondary school students who are at greatest risk of not meeting challenging State academic standards and not completing high school.

Priority 2—Periodic Review and Evaluation (10 points). The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school at least once every five years, unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter, and is meeting or exceeding the student academic achievement requirements and goals for charter schools as provided under State law or the school's charter.

Priority 3—Number of High-Quality Charter Schools (10 points). The State has demonstrated progress in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which an SEA applies for a grant under this competition.

Priority 4—One Authorized Public Chartering Agency Other than a Local Educational Agency (LEA), or an Appeals Process (10 points). The State—

(a) Provides for one authorized public chartering agency that is not an LEA, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to State law; or

(b) In the case of a State in which LEAs are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

Priority 5—High Degree of Autonomy (10 points). The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

Note: In responding to each of the competitive preference priorities, the Secretary encourages applicants to provide documentation, including citations and examples from their State's charter school law.

Program Authority: 20 U.S.C. 7221–7221j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final priorities for discretionary grant programs published in the **Federal Register** on October 11, 2006 (71 FR 60046).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $72,000,000 for new awards under this program for FY 2007. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process in a timely manner, if Congress appropriates funds for this program.

Estimated Range of Awards: $500,000–$20,000,000 per year.

Estimated Average Size of Awards: $5,000,000 per year.

Estimated Number of Awards: 10–12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to three years.

Note: Planning and implementation subgrants awarded by an SEA to non-SEA eligible applicants will be awarded for a period of up to three years, no more than 18 months of which may be used for planning and program design and no more than two years of which may be used for the initial implementation of a charter school. Dissemination subgrants are awarded for a period of up to two years.

III. Eligibility Information

1. *Eligible Applicants:* SEAs in States with a State statute specifically authorizing the establishment of charter schools.

Note: Non-SEA eligible applicants in States in which the SEA elects not to participate in or does not have an application approved under the CSP may apply for funding directly from the Department. The Department plans to hold a separate competition for non-SEA eligible applicants under CFDA Nos. 84.282B and 84.282C.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Dean Kern, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W227, FB6, Washington, DC 20202–5970. Telephone: (202) 260–1882 or by e-mail: *dean.kern@ed.gov.*

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 a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 60 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times: Applications Available:* December 21, 2006. *Deadline for Transmittal of Applications:* February 16, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. We do not consider an application that does not address the application requirements, selection criteria, and other required information outlined in the application package.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Deadline for Intergovernmental Review: April 17, 2007.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:*

Use of Funds for Post-Award Planning and Design of the Educational Program and Initial Implementation of the Charter School. A non-SEA eligible applicant receiving a subgrant under this program may use the subgrant funds only for—

(a) Post-award planning and design of the educational program, which may include (i) Refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (ii) professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include (i) Informing the community about the school; (ii) acquiring necessary equipment and educational materials and supplies; (iii) acquiring or developing curriculum materials; and (iv) other initial operational costs that cannot be met from State or local sources.

Use of Funds for Dissemination Activities. An SEA may reserve not more than 10 percent of its grant funds to support dissemination activities. A charter school may use those funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program) or to disseminate information about the charter school through such activities as—

(a) Assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student academic achievement in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student achievement.

Award Basis. In determining whether to approve a grant award and the amount of such award, the Department will consider, among other things, the amount of any carryover funds the applicant has under an existing grant under the program.

We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements.* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Charter School Program, CFDA Number 84.282A must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Charter School Program at *http://www.Grants.gov.* You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.282, not 84.282A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/GrantsgovRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date. *Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Dean Kern, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W227, FB6, Washington, DC 20202–5970. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282A), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.282A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Applicants applying for CSP grant funds must address both the statutory application requirements and the selection criteria described in the following paragraphs. An applicant may choose to respond to these application requirements in the context of its responses to the selection criteria.

(a) *Application Requirements.* (i) Describe the objectives of the SEA's charter school grant program and describe how these objectives will be fulfilled, including steps taken by the SEA to inform teachers, parents, and communities of the SEA's charter school grant program;

(ii) Describe how the SEA will inform each charter school in the State about Federal funds the charter school is eligible to receive and Federal programs in which the charter school may participate;

(iii) Describe how the SEA will ensure that each charter school in the State receives the school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and a year in which the school's enrollment expands significantly;

(iv) Describe how the SEA will disseminate best or promising practices of charter schools to each local educational agency (LEA) in the State;

(v) If an SEA elects to reserve part of its grant funds (no more than 10 percent) for the establishment of a revolving loan fund, describe how the revolving loan fund would operate;

(vi) If an SEA desires the Secretary to consider waivers under the authority of the CSP, include a request and justification for any waiver of statutory or regulatory provisions that the SEA believes is necessary for the successful operation of charter schools in the State; and

(vii) Describe how charter schools that are considered to be LEAs under State law and LEAs in which charter schools are located will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act.

(b) *Selection Criteria.* The following selection criteria are from the authorizing statute for this program and 34 CFR 75.210 of EDGAR.

SEAs that propose to use a portion of their grant funds for dissemination activities must address each selection criterion (i) through (vi) individually and title each accordingly. SEAs that do not propose to use a portion of their grant funds for dissemination activities must address selection criteria (i)

through (iv) and (vi), and need not address selection criterion (v). SEAs that do not address criterion (v) because they are not proposing to use a portion of their grant funds for dissemination activities will not be penalized.

The maximum possible score is 150 points for SEAs that do not propose to use grant funds to support dissemination activities and 180 points for SEAs that propose to use grant funds to support dissemination activities.

The maximum possible score for each criterion is indicated in parentheses following the criterion.

In evaluating an application, the Secretary considers the following criteria:

(i) The contribution the charter schools grant program will make in assisting educationally disadvantaged and other students to achieve State academic content standards and State student academic achievement standards (30 points).

Note: The Secretary encourages applicants to provide a description of the objectives for the SEA's charter school grant program and how these objectives will be fulfilled, including steps taken by the SEA to inform teachers, parents, and communities of the SEA's charter school grant program and how the SEA will disseminate best or promising practices of charter schools to each LEA in the State.

(ii) The degree of flexibility afforded by the SEA to charter schools under the State's charter school law (30 points).

Note: The Secretary encourages the applicant to include a description of how the State's law establishes an administrative relationship between the charter school and the authorized public chartering agency and exempts charter schools from significant State or local rules that inhibit the flexible operation and management of public schools.

The Secretary also encourages the applicant to include a description of the degree of autonomy charter schools have achieved over such matters as the charter school's budget, expenditures, daily operation, and personnel in accordance with their State's law.

(iii) The number of high-quality charter schools to be created in the State (30 points).

Note: The Secretary considers the SEA's reasonable estimate of the number of new charter schools to be authorized and opened in the State during the three year period of this grant.

The Secretary also considers how the SEA will inform each charter school in the State about Federal funds the charter school is eligible to receive and ensure that each charter school in the State receives the school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and during a year in which the school's enrollment expands significantly.

(iv) The quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (30 points).

Note: In addition to describing the proposed objectives of the SEA charter school grant program and how these objectives will be fulfilled, the Secretary encourages applicants to provide descriptions of the steps to be taken by the SEA to award subgrant funds to eligible applicants desiring to receive these funds, including descriptions of the peer review process the SEA will use to review applications for assistance, the timelines for awarding such funds, and how the SEA will assess the quality of the applications.

(v) In the case of SEAs that propose to use grant funds to support dissemination activities under section 5204(f)(6) of the ESEA, the quality of the dissemination activities (15 points) and the likelihood that those activities will improve student academic achievement (15 points).

Note: The Secretary encourages applicants to describe the steps to be taken by the SEA to award these funds to eligible applicants, including descriptions of the peer review process the SEA will use to review applications for dissemination, the timelines for awarding such funds, and how the SEA will assess the quality of the applications.

(vi) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (30 points).

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. For specific requirements on grantee reporting, please go to the ED Performance Report Form 524B at *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has set three performance indicators to

measure this goal: (1) The number of States, including the District of Columbia and Puerto Rico, with charter school laws, (2) The number of charter schools in operation around the Nation, and (3) The percentage of charter school students who are achieving at or above the proficient level on State examinations in mathematics and reading. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more years).

All grantees will be expected to submit an annual performance report documenting their contribution in assisting the Department in meeting these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Dean Kern, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W227, FB6, Washington, DC 20202–5961. Telephone: (202) 260–1882 or by e-mail: *dean.kern@ed.gov*.

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VIII. Other Information

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Dated: December 18, 2006.

Morgan S. Brown,

Assistant Deputy Secretary, Office of Innovation and Improvement.

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Federal Register

Vol. 71, No. 245

Thursday, December 21, 2006

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The United States Government Manual	**741–6000**
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FEDERAL REGISTER PAGES AND DATE, DECEMBER

69429–70274 1
70275–70456 4
70457–70642 5
70643–70850 6
70851–71036 7
71037–71462 8
71462–74450 11
74451–74754 12
74755–75082 13
75083–75406 14
75407–75646 15
75647–75850 18
75851–76110 19
76111–76570 20
76571–76896 21

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

901 70457
1326 76573

3 CFR

Proclamations:
8087 70455
8088 70851
8089 70853
8090 75083
8091 76109

Executive Orders:
12866 (See EO 13416) 71033
13317 (Amended by 13418) 75647
13415 70641
13416 71033
13417 71459

Administrative Orders:
Presidential Determinations:
No. 2007–4 of November 22, 2006 74451
No. 2007–5 of November 27, 2006 74453
No. 2007–8 of December 14, 2006 76571

5 CFR

Proposed Rules:
3201 70325

7 CFR

33 70643
249 74618
319 75649
457 74455
981 70646
1220 69429
1792 70275
1951 75851

Proposed Rules:
51 69497
272 71075
273 71075
301 76224
319 70330
981 70683

8 CFR

1003 70855

9 CFR

Proposed Rules:
78 74826
93 74827

10 CFR

70 69430
72 71463
430 71340
431 71340
433 70275
434 70275
435 70275
600 70457
606 70457

Proposed Rules:
20 74847
54 74848

11 CFR

Proposed Rules:
104 71084
111 ..... 71088, 71090, 71093

12 CFR

205 69430
215 71472
313 75659
611 76111
619 76111
620 76111
621 76111
624 76111
627 76111
630 76111
703 76122
1750 75085

Proposed Rules:
205 69500
Ch. III 74857

13 CFR

123 75407

14 CFR

13 70460
23 74456
25 ..... 70646, 74755, 74758
39 ..... 70284, 70286, 70294, 70297, 70300, 70648, 70857, 70860, 70862, 70865, 70868, 71475, 71478, 71480, 74459,74462,74464,74466, 75106, 75108, 75409, 75411, 75413, 75854, 75855, 76575, 76576
71 ..... 69438, 70302, 70465, 70650, 74761, 75110, 75857, 75859, 75860, 75861, 75862, 75863
73 ..... 70466, 76125
95 76578
97 ..... 69438, 74762, 74764
401 75616
415 75616
431 75616
435 75616
440 75616
460 75616

Proposed Rules:
1.....76224
21.....76224
39.....70908, 71096, 71099, 71101, 71103, 71492, 71494, 71497, 71499, 74873, 74878, 75145, 75432, 75684, 75896
43.....76224
45.....76224
71.....70909, 70911, 75686
145.....70254
217.....76226
241.....76226
250.....76226
291.....76226
298.....76226
399.....71106

15 CFR

14.....76573
26.....76573
801.....75417
930.....75864

16 CFR

Proposed Rules:
Ch. II.....74472

17 CFR

200.....71037
210.....76580
228.....76580
229.....76580
232.....74698
239.....74698
240.....74698, 76580
249.....74698, 76580
249b.....74698
269.....74698
274.....74698

Proposed Rules:
240.....71109, 75068
242.....75002, 75068
270.....76618

18 CFR

50.....69440
292.....75662
366.....76126
380.....69440
385.....76126

Proposed Rules:
2.....70692
33.....70692
40.....70695
365.....70692
366.....70692

19 CFR

10.....76127
12.....69447
191.....76127

Proposed Rules:
210.....71113

20 CFR

Proposed Rules:
652.....76558
661.....76558
662.....76558
663.....76558
664.....76558
667.....76558

21 CFR

2.....70870
25.....74766
80.....70873
101.....74785, 76599
500.....74766
514.....74766
520.....70302, 71038
558.....70304, 74466, 74766
800.....75865
1301.....69478

Proposed Rules:
2.....70912
201.....74474
312.....75147, 75168
1312.....69504

22 CFR

41.....75662

Proposed Rules:
22.....74880
51.....74880

23 CFR

655.....75111

Proposed Rules:
630.....75898

25 CFR

900.....76600

Proposed Rules:
292.....70335
502.....71115
546.....71115
547.....71115, 76618

26 CFR

1.....70875, 70877, 71039, 71040, 71045, 74467, 75614, 75879, 75882, 76134
54.....75014
301.....71040
602.....71039, 71040, 71045

Proposed Rules:
1.....71116, 71241, 74482, 75898
301.....70335

27 CFR

Proposed Rules:
9.....70472
40.....70476
41.....70476
44.....70476
45.....70476

28 CFR

61.....71047

Proposed Rules:
570.....70696
571.....76619
572.....76619

29 CFR

54.....75055
2590.....75014
4022.....69480, 75420
4044.....69481, 75420
4050.....75115
4281.....75115

Proposed Rules:
102.....74881
825.....69504
1910.....76623
1915.....76623
1917.....76623
1918.....76623
1919.....76623
1926.....76623
4050.....75181
4281.....75181

30 CFR

3.....71430
48.....71430
50.....71430
75.....71430
934.....76145

31 CFR

1.....69482
82.....76148
356.....76150

Proposed Rules:
538.....71500
560.....71500

32 CFR

626.....71051
627.....71051
656.....71051

33 CFR

100.....76152
117.....70305, 70467, 70468, 70877, 76601
151.....75421
158.....75421
165.....69484, 71483, 75664, 75666, 75668

Proposed Rules:
165.....69514, 69517
401.....70336
402.....76228

34 CFR

Proposed Rules:
674.....71117
682.....71117
685.....71117

36 CFR

7.....76154
242.....75883
1280.....76166

Proposed Rules:
242.....75899

37 CFR

253.....69486

38 CFR

3.....75669
21.....75672

39 CFR

Proposed Rules:
20.....76230

40 CFR

51.....74792
52.....69486, 70312, 70315, 70468, 70880, 70883, 71486, 71489
60.....75117
62.....75117
63.....70651, 76518, 76603
70.....70468, 70665, 75422
71.....75422
81.....71489, 75431
82.....75386
96.....74792
97.....74792
122.....69622
180.....70667, 70670, 71052, 74795, 74802, 76167, 76173, 76178, 76180, 76185, 76190, 76197, 76200
239.....71241
258.....71241
300.....70318
710.....76204
799.....71058

Proposed Rules:
6.....76082
51.....75902
52.....69519, 70338, 70339, 70476, 70699, 70914, 70915, 75687, 75690, 75694, 75916
62.....75816
63.....75182, 76553
69.....74886
70.....70476, 70702
81.....70915
180.....70703
261.....76255
721.....75703
799.....75704

42 CFR

405.....69624, 71062
410.....69624, 71062
411.....69624, 71062
414.....69624, 71062
415.....69624, 71062
424.....69624, 71062
460.....71244
462.....71244
466.....71244
473.....71244
476.....71244
482.....71378

Proposed Rules:
1001.....71501

44 CFR

65.....70885
67.....70894, 70904, 75885, 76206

Proposed Rules:
67.....70930, 75918, 76260

45 CFR

146.....75014

46 CFR

30.....75421
98.....75421
151.....75421
153.....75421

47 CFR

1.....76208
2.....70671
11.....76220
27.....70906
64.....74469, 74819, 75122
73.....76208
74.....75614
87.....70671
97.....74823

Proposed Rules:
Ch. I.....70709
2.....70710
87.....70710

48 CFR

Ch. I.....74656, 74680

2.....74667
10.....74667
12.....74667
16.....74656, 74667
32.....74656
52.....74656, 74667
Ch. 2.....75890
201.....69488, 75891
205.....75891
207.....75891
208.....69489
211.....75891
212.....69489, 71072
215.....69492
216.....74469
217.....75891
219.....75891
222.....71072
223.....75891
225.....75891, 75893
228.....75891
230.....69492
232.....69489, 75891
237.....75891
252.....69489, 69492, 71072, 74469, 75891, 75893
253.....69492
301.....76488
302.....76488
303.....76488
304.....76488
305.....76488
306.....76488
307.....76488
309.....76488
311.....76488
312.....76488
314.....76488
315.....76488
316.....76488
319.....76488
323.....76488
324.....76488
325.....76488
330.....76488
332.....76488
333.....76488
334.....76488
335.....76488
339.....76488
342.....76488
352.....76488
370.....76488
1802.....71072
1805.....71072
1819.....71072
1825.....71072
1827.....71072
1828.....71072
1852.....71072

Proposed Rules:

23.....70937
32.....75186
36.....70937
52.....70937, 75186
719.....70939

49 CFR

173.....75679
571.....74823
572.....75304, 75342

Proposed Rules:

171.....69527
172.....69527, 76834
173.....69527
174.....69527, 76834
178.....69527
213.....70590
214.....70590
215.....70590
217.....70590
218.....70590
219.....70590
220.....70590
221.....70590
222.....70590
223.....70590
224.....70590
225.....70590
228.....70590
229.....70590
230.....70590
231.....70590
232.....70590
233.....70590
234.....70590
235.....70590
236.....70590
238.....70590
239.....70590
240.....70590
241.....70590
365.....76730
385.....76730, 76796
386.....76796
387.....75433, 76730
390.....76730, 76796
392.....76796
393.....76796
396.....76796
571.....70477
1520.....76852
1580.....76852

50 CFR

17.....74592
100.....75883
229.....70319, 70321, 75679, 75681
300.....76221
622.....70680, 75894
635.....75122, 76615
648.....70682, 70906, 71073, 74471, 75134, 76222, 76617
665.....69495
679.....70323

Proposed Rules:

10.....75188
17.....70479, 70483, 70715, 70717, 75189, 75215, 75923, 76024, 76058
22.....74483
92.....75060
100.....75899
222.....76265
223.....76265
229.....70339
622.....70492, 75220
648.....70493, 75226
660.....70939, 70941, 76270
665.....69527
679.....70943, 75437, 75460
697.....75705

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 21, 2006

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Summer flounder; published 12-21-06

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Synthetic organic chemical manufacturing industry; published 12-21-06

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

Uniform compliance date; published 12-21-06

HEALTH AND HUMAN SERVICES DEPARTMENT

Indian Health Service

Indian Self-Determination and Education Assistance Act:

Civilian Board of Contract Appeals; address change; published 12-21-06

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

New Jersey; published 11-21-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Air Tractor, Inc.; published 11-16-06

BAE Systems (Operations) Ltd.; published 11-16-06

Boeing; published 11-16-06

Columbia Aircraft Manufacturing; published 12-11-06

Turbomeca; published 11-16-06

COMMENTS DUE NEXT WEEK

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

New England and Mid-Atlantic Fishery Management Councils; hearings; comments due by 12-29-06; published 10-31-06 [FR E6-18286]

Fishery conservation management:

Northeastern United States Fisheries—

Atlantic bluefish; comments due by 12-27-06; published 11-27-06 [FR E6-20005]

West Coast States and Western Pacific Fisheries—

Pacific Coast groundfish; comments due by 12-29-06; published 11-29-06 [FR 06-09451]

CONSUMER PRODUCT SAFETY COMMISSION

Consumer Product Safety Act and Federal Hazardous Substances Act:

Adult all terrain vehicle requirements and three-wheeled all terrain vehicle ban; comments due by 12-26-06; published 8-10-06 [FR 06-06703]

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Criminal history checks; Senior Companions, Foster Grandparents, and AmeriCorps Program participants; comments due by 12-26-06; published 10-26-06 [FR E6-17912]

DEFENSE DEPARTMENT

Defense contracting:

Munitions list/commerce control list items; DLA procedures for eligible purchasers; comments due by 12-26-06; published 10-25-06 [FR E6-17848]

Federal Acquisition Regulation (FAR):

Contract debts; policies and procedures; comments due by 12-26-06; published 10-24-06 [FR 06-08806]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants; hazardous; national emission standards:

Asbestos management and control; comments due by 12-28-06; published 11-28-06 [FR E6-20157]

Air pollution; standards of performance for new stationary sources:

Other solid waste incineration units; comments due by 12-26-06; published 11-24-06 [FR E6-19865]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

New Mexico; comments due by 12-26-06; published 11-24-06 [FR E6-19861]

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

Florida; comments due by 12-28-06; published 11-28-06 [FR E6-20073]

Georgia; comments due by 12-28-06; published 11-28-06 [FR E6-20141]

Texas; comments due by 12-27-06; published 11-27-06 [FR E6-19991]

Solid wastes:

State underground storage tank program approvals—

Colorado; comments due by 12-27-06; published 11-27-06 [FR E6-19988]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contract debts; policies and procedures; comments due by 12-26-06; published 10-24-06 [FR 06-08806]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare and Medicaid:

Long term care facilities; fire safety requirements; automatic sprinkler systems; comments due by 12-26-06; published 10-27-06 [FR E6-17911]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Skin bleaching drug products; over-the-counter use; comments due by 12-27-06; published 8-29-06 [FR E6-14263]

HOMELAND SECURITY DEPARTMENT

Transportation Security Administration

Air cargo security requirements; comments due by 12-26-06; published 10-25-06 [FR 06-08904]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

Public Housing Operating Fund Program; comments due by 12-26-06; published 11-24-06 [FR 06-09363]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory birds; revised list; comments due by 12-29-06; published 8-24-06 [FR 06-07001]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contract debts; policies and procedures; comments due by 12-26-06; published 10-24-06 [FR 06-08806]

NATIONAL CREDIT UNION ADMINISTRATION

Credit Unions:

Organization and operations—

General lending maturity limit and other financial services; comments due by 12-26-06; published 10-27-06 [FR E6-17835]

NUCLEAR REGULATORY COMMISSION

Nuclear power reactors; approaches to risk-inform and performance-base requirements; comments due by 12-29-06; published 5-4-06 [FR E6-06745]

PERSONNEL MANAGEMENT OFFICE

Allowances and differentials:

Cost-of-living allowances (nonforeign areas)—

Alaska, Puerto Rico, and Virgin Islands; rate changes; comments due by 12-26-06; published 10-27-06 [FR E6-17950]

STATE DEPARTMENT

Deaths and estates; comments due by 12-26-06; published 10-24-06 [FR E6-17591]

TRANSPORTATION DEPARTMENT

Standard time zone boundaries:

Indiana; comments due by 12-28-06; published 11-28-06 [FR 06-09432]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

LaGuardia Airport, NY; congestion management rule; comments due by 12-29-06; published 10-24-06 [FR E6-17818]
Airworthiness directives:
Bombardier; comments due by 12-29-06; published 10-30-06 [FR E6-17650]
EADS SOCATA; comments due by 12-28-06; published 11-28-06 [FR 06-09429]
General Electric Co.; comments due by 12-26-06; published 10-24-06 [FR E6-17742]
Hartzell Propeller Inc.; comments due by 12-26-06; published 10-27-06 [FR E6-17925]
Short Brothers & Harland Ltd.; comments due by 12-28-06; published 11-28-06 [FR 06-09427]
Sikorsky, et al.; comments due by 12-29-06; published 10-30-06 [FR E6-18147]
Teledyne Continental Motors; comments due by 12-26-06; published 10-26-06 [FR E6-17935]
Turbomecca; comments due by 12-29-06; published 11-29-06 [FR E6-20229]

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Occupational noise exposure for railroad operating employees; comments due by 12-26-06; published 10-27-06 [FR 06-08612]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
General allocation and accounting regulations; tax-exempt bond proceeds; comments due by 12-26-06; published 9-26-06 [FR 06-08202]
Correction; comments due by 12-26-06; published 11-22-06 [FR E6-19789]

TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau
Alcohol, tobacco and other excise taxes:
Cigars and cigarettes; tax classification; comments due by 12-26-06; published 10-25-06 [FR 06-08835]
Alcoholic beverages:
Labeling and advertising, major food allergen labeling standards; comments due by 12-26-06; published 9-20-06 [FR 06-07963]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4766/P.L. 109–394

Esther Martinez Native American Languages Preservation Act of 2006 (Dec. 14, 2006; 120 Stat. 2705)

S. 2250/P.L. 109–395

Congressional Tribute to Dr. Norman E. Borlaug Act of 2006 (Dec. 14, 2006; 120 Stat. 2708)

Last List December 14, 2006

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